

THE LINEUP AT WAI KAI

VOLUNTARY ACKNOWLEDGEMENT OF RISKS, RELEASE OF LIABILITY, WAIVER OF CLAIMS AND INDEMNIFICATION, ARBITRATION, AND IMAGE RELEASE AGREEMENT.

Notice: This document affects your legal rights. By signing this document, you are waiving certain legal rights, including the right to sue. By signing below, you acknowledge that you have read and understood the disclosures of risks, voluntarily accept those risks, and agree to be bound by all terms of this Voluntary Acknowledgement of Risks, Release of Liability, Waiver of Claims and Indemnification, Arbitration, and Image Release Agreement (the "Release" or "Agreement").

In consideration of being allowed entry onto the Wai Kai Lagoon, the surrounding waterfront area, and/or the Wai Kai Wave and/or being allowed to enter the real property located on, or about, 91-1621 Keoneula Boulevard, Ewa Beach HI 96706 (collectively, the "Venue"), for any reason, including, but not limited to, swimming, surfing, body surfing, boogie boarding, kayaking, outrigger canoe paddling, stand up paddle boarding and all other types of recreational paddling, electric boards, boat tours and excursions, pedal boats, all other forms of boats, using bikes (manual or electric), skateboarding, inline skating, roller-skating, sliding, floating, tubing, submerging, walking, running, crawling, exercising, racing, riding in any moving vehicle, participating in water-based activities, and/or lounging or spectating anywhere on the Venue and/or on the Wai Kai Lagoon waterfront area, (the "Activities") the Participant, and the Participant's parent(s) or legal guardian(s) or supervising companion, if the Participant is a minor (the "minor") (collectively Participant and Participant's parent(s) or legal guardian(s) or supervising companion are referred to as "Participant," "Releasor," and/or "I"), agree to the terms of Release, and to the fullest extent permitted by law, do hereby AGREE, as follows:

- 1) I FOR MYSELF AND/OR THE MINOR(S) understand and agree that this Agreement benefits, and is in favor of, all owners, operators, and specific named vendors of the Venue and their affiliates including, but not limited to, Wai Kai Wave, LLC, Surf Park Management, Inc., Wai Kai Recreations, LLC, Wai Kai Commercial Development, LLC, Haseko (Hawaii), Inc., Haseko (Ewa), Inc., Hoakalei Corporation, Hoakalei Development, LLC, Haseko Development, Inc., Wai Kai Lagoon, Inc., and Surfline\Wavetrak, Inc., and any and all of each of their respective parents, subsidiaries, affiliates, officers, directors, shareholders, members, managers, principals, agents, employees, representatives, successors, and assigns (collectively, the "**Releasees**").
- 2) I FOR MYSELF AND/OR THE MINOR(S) understand and agree that Haseko (Hawaii), Inc., Haseko (Ewa), Inc., Hoakalei Corporation, Hoakalei Development, LLC, Haseko Development, Inc., Wai Kai Lagoon, Inc., and their respective parents, subsidiaries, affiliates, officers, directors, shareholders, members, managers, principals, agents, employees, representatives, successors, and assigns are not the owners or operators of a business providing recreational activities to the public, but instead are the owners or managers of the Lagoon, or their affiliates, who are allowing me and the minors to access and use the Lagoon for recreational purposes without charge.
- 3) I FOR MYSELF AND/OR THE MINOR(S) understand and agree that I am giving up valuable and substantial rights by agreeing to waive, release, and discharge any and all claims that I may have against Releasees arising out of any bodily injury, psychological injury, or property damage that I may suffer while at the Venue including, without limitation, serious bodily injury, emotional distress, mental suffering, paralysis, drowning, near drowning, and death.
- 4) I FOR MYSELF AND/OR THE MINOR(S) understand and agree that I am undertaking a substantial obligation by agreeing to indemnify and hold Releasees harmless from any and all liability arising from or associated with any bodily injury, psychological injury, or property damage that I may suffer and/or cause while at the Venue including, without limitation, serious bodily injury, emotional distress, mental suffering, paralysis, drowning, near drowning, and death.

5) I FOR MYSELF AND/OR THE MINOR(S) hereby assume full responsibility for any and all risk of bodily injury, psychological injury, death, or property damage I may suffer as a result of my entry into and presence at and around the Venue and/or my or participation in the Activities. Without limitation, this includes serious bodily injury, emotional distress, mental suffering, paralysis, drowning, near drowning, death, or property damage resulting from the negligence or carelessness of Releasees, and/or that I may suffer as a result of inherently dangerous activities and conditions at the Venue.

I understand and acknowledge that my presence and participation in any and all activities at the Venue, including but not limited to, surfing, boogie/body boarding, and other water-related activities are inherently dangerous and involve significant risk of bodily injury, death, and property damage, and while the Venue's rules, certain safety equipment, and my or the minor's personal discipline may reduce these risks, the risks of property damage, serious injury or death exist regardless of my or the minor's experience or familiarity with surfing, boogie/body boarding, and other water-related activities. I understand that my presence and participation in activities at the Venue, surfing, boogie/body boarding, and other water-related activities can lead to injuries, death, and/or property damage from a combination of factors including but not limited to use or failure of equipment (boards, leashes, and other assistive devices); rough falls and forceful contact with equipment, water, other participants and persons, walkways, the decks surrounding the water activities; other surfers or water users; the conditions of the Venue, including deep water, high, steep and/or slippery slopes, ramps, walls or embankments, grounds and grassy areas, sand and sandy areas, high elevations, loose rocks and boulders, the lack of places to exit the deep waters of the Wai Kai Lagoon other than at certain designated entry and exit points, and the activities of other persons at the Venue, wildlife, and/or weather; installation, maintenance and operation of technology, equipment and machinery; errors by individuals who may be assisting me or the minor; drowning; delays, errors, or the occasional use of force by rescuers; prolonged sun exposure; and/or other causes. In addition, areas where people gather socially involve risks of illness, medical complications, injury, or death, associated with epidemic or pandemic diseases such as COVID-19. Notwithstanding these risks and other hazards of my and/or the minor's presence and participation in activities at the Venue, surfing, boogie/body boarding, other water-related activities, and large gatherings, which may be foreseeable but not specifically identified herein, I understand and acknowledge that I expressly and voluntarily assume all risks and full responsibility for any bodily injury, death or property damages pertaining to, or involving, myself or the minor, and arising out of or related to the Venue and activities at the Venue, whether or not due to any negligence or other unintentional wrongdoing of any of the parties being released.

Please check the box to confirm you have read and accepted these terms

CHECK BOX

6) I FOR MYSELF AND/OR THE MINOR(S) understand and acknowledge that Releasees may not be aware of my or the minor's fitness limitations, abilities, familiarity with the water and surfing, and/or health conditions. I hereby represent that for myself and/or the minor(s) (i) I/we are in good health and in proper physical and mental condition to participate in the Activities; and (ii) I/we are not under the influence of alcohol or any illicit or prescription drugs which would in any way impair my ability to safely participate in the Activities, and will not be under such influence at any time I/we participate in the Activities. I agree that it is my sole responsibility to determine whether I and/or the minor are sufficiently fit and healthy enough to participate in the Activities.

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7) I FOR MYSELF AND/OR THE MINOR(S) waive, release and discharge Releasees from all claims and liabilities resulting from Releasees':

- a) negligence, including failing to maintain the Venue in a safe condition;
- b) failure to provide adequate or adequately trained lifeguards or safety personnel or patrols at the Venue;
- c) failure to maintain adequate emergency, medical, and safety procedures and protocols;
- d) failure to warn me about or protect me from dangerous equipment, machinery, operations, or conditions at the Venue;
- e) ownership or management of the Venue;
- f) operation of services, technology or equipment at the Venue or otherwise made available by the Releasees; and/or

g) failure to maintain or create places to exit the deep waters of the Wai Kai Lagoon other than at certain designated entry/exit points.

8) I FOR MYSELF AND/OR THE MINOR(S) further waive, release and discharge Releasees from any and all claims and liabilities resulting from the conduct of vendors, emergency personnel, rescue personnel and all other third parties at the Venue including, without limitation, conduct that is negligent, grossly negligent, or intentional.

9) I FOR MYSELF AND/OR THE MINOR(S) agree to indemnify and hold Releasees harmless from any and all losses, liabilities, damages, costs, and attorney's fees Releasees may incur as a result of any bodily injury, psychological injury, paralysis, drowning, near drowning, death, or property damage I suffer at the Venue, or the events that result in my bodily injury, psychological injury, paralysis, drowning, near drowning, death, or property damage.

10) I FOR MYSELF AND/OR THE MINOR(S) agree that I will not sue Releasees for any bodily injury, psychological injury, paralysis, drowning, near drowning, death, or property damage I suffer at the Venue.

11) I FOR MYSELF AND/OR THE MINOR(S) agree that if I make a claim for bodily injury, psychological injury, paralysis, drowning, near drowning, death, or property damage arising from or related to the Venue (hereafter referred to as "**My Claim**") against a third party and one or more claims, cross-claims or third party complaints (hereafter referred to as "**Third Party Claims**") are made against Releasees including, without limitation, claims for contribution or indemnification, I will waive, release, reduce or diminish My Claim to the fullest extent necessary to eliminate Releasees' liability with respect to the Third Party Claims.

12) I FOR MYSELF AND/OR THE MINOR(S) agree that if any provision of this Agreement is determined to be invalid or unenforceable, that determination shall not render this entire Agreement invalid or unenforceable, and the remainder of this Agreement shall continue in full force and effect.

13) RELEASE OF ALL RIGHTS RELATED TO MY AND/OR THE MINOR(S) AUDIO, VIDEO AND PHOTOGRAPHIC IMAGE: I for myself and/or the minor(s) hereby agree to a blanket release of all rights related to my and/or the minor(s) audio, photographic image, and/or video that may arise out of my participation in the Activities or use of the Venue. I understand that this release includes any and all marketing, promotion or advertising that may occur anywhere and anytime on any media as later used by Releasees or their licensees. Further, I for myself and/or the minor(s) hereby grant full permission for Releasees, to record any or all of my, or the minor(s)', participation, in the Activities or use of the Venue and hereby grant the Releasees the irrevocable, sublicensable right and license to use my, or the minor(s)', name, image, voice and/or likeness, with or without notice, without restriction as to changes or alterations, in the Activities in all forms, media and manners, including for photos, motion pictures, TV, radio, Internet, recordings, videotapes, and other media, known or unknown, and to use them in perpetuity throughout the world, no matter by whom taken or recorded, in any manner for publicity, promotions, advertising, trade or commercial purposes, and/or any other lawful purposes (whether public or private), without any reimbursement of any kind due to me, or the need to pay me any fee or compensation whatsoever.

14) I FOR MYSELF AND/OR THE MINOR(S) waive, release and discharge the Releasees, and agree that I will not sue Releasees, for any and all claims and liabilities for invasion of privacy, right of publicity, misappropriation or misuse of image, and/or defamation.

15) FOLLOW ALL RULES: I FOR MYSELF AND/OR THE MINOR(S) have read and understand all rules provided with this Release and agree to follow all rules of the Activities, including all additional written instructions and verbal commands provided by the Venue's coaches, guides, attendants, other staff, and/or any of the Releasees their agents, employees and/or representatives. I further agree to exercise good judgment for the health and safety of myself and others, and to use common sense.

Please check the box to confirm you have read and accepted these terms

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16) I understand and acknowledge that by signing this Release I am giving the parties being released a continuous and ongoing release that includes any and additional visits to the Venue for any reason for a period of six (6) months from the date I execute this Release.

17) I understand and acknowledge that I may seek advice from legal counsel if I have any doubt before signing this Release. By signing this Release, I acknowledge that either I have sought the advice of legal counsel or wish to now waive the opportunity to talk to a lawyer before signing this agreement. I further understand and acknowledge that by signing this Release I am representing that I understand the language used in this Release. I represent that if there is any word or phrase that I did not understand that I have sought the advice of an attorney or other person for an explanation. I represent that in the event of injury, death or property damage pertaining to, or involving, myself or the minor, neither me nor the minor's heirs nor representatives shall have a right to claim that I did not understand the agreements contained in this Release.

18) I agree that regardless of where this document is executed, this Release is deemed a private contract entered into in Hawaii. I also agree that regardless of where this document is executed or where an injury occurs, that any occurrence or claim which raises an issue regarding the enforceability of this Release shall be governed by Hawaii law. I also agree that, subject to the Mediation/Arbitration provisions of Section 18 herein below, if any lawsuit is filed against the parties being released, that it shall be filed in a court of competent jurisdiction in the State of Hawaii.

19) MEDIATION/ARBITRATION OF ANY AND ALL DISPUTES. I, FOR MYSELF AND/OR THE MINOR(S), agree that any and all claims, controversies or disputes arising out of or relating to this Agreement, the Venue, the Activities, and/or the breach thereof, which remain unresolved after direct negotiations between the parties, shall first be submitted to confidential Mediation in accordance with the Rules, Procedures, and Protocols for Mediation of Disputes of Dispute Prevention & Resolution, Inc., then in effect. If any issues, claims or disputes remain unresolved after mediation concludes, the parties agree to submit any such issues to binding arbitration before three arbitrators in accordance with the Rules, Procedures, and Protocols for Arbitration of Disputes of Dispute Prevention & Resolution, Inc., then in effect. The parties further agree that the award of the arbitrator(s) is binding upon the parties and that judgment upon the award rendered may be entered in any court of competent jurisdiction.

20) I further agree that my electronic signature(s) included in this document is intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signatures means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record.

I FOR MYSELF AND/OR THE MINOR(S) CERTIFY THAT I HAVE READ AND FULLY UNDERSTAND THIS AGREEMENT AND AGREE TO THE TERMS OF THIS AGREEMENT. I CERTIFY THAT I AM SIGNING THIS AGREEMENT VOLUNTARILY AND WITHOUT ANY INDUCEMENT, ASSURANCE OR GUARANTEE BEING MADE TO ME AND THAT I AM AWARE THAT THE ONLY CONSIDERATION BEING PROVIDED TO ME IN EXCHANGE FOR MY SIGNING THIS AGREEMENT IS PERMISSION TO ENTER THE VENUE._

Please check the box to confirm you have read and accepted these terms

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Participant: I represent that I am Eighteen (18) years of age and older

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If the Participant is not 18 years of age or older, then the following Parent or Guardian Consent must read and sign before the participant is allowed to use the Venue and its facilities.

PARENT OR GUARDIAN CONSENT

I, the undersigned, declare that I am the parent of, or the legal guardian of, the below named minor, and have the capacity to execute documents on behalf of such minor. I understand that as a condition to participate in the Activities the parent or legal guardian of the minor Participant must sign certain legal documents, including but not limited to Acknowledgements of Risks, Releases, and Indemnity Agreements. I am signing those documents, freely, without any fraud or duress and acknowledge that I have read and understand the same.

In the event that it is determined that I am not the parent or legal guardian of the minor, or did not have the legal capacity to execute the documents on behalf of said minor, then I agree to defend and indemnify (including attorney's fees): WAI KAI WAVE, LLC; SURF PARK MANAGEMENT, INC.; WAI KAI RECREATION, LLC; WAI KAI COMMERCIAL DEVELOPMENT; and/or HASEKO (HAWAII), INC.; HASEKO (EWA), INC.; HOAKALEI CORPORATION; HOAKALEI DEVELOPMENT, LLC; HASEKO DEVELOPMENT, INC.; WAI KAI LAGOON, INC.; SURFLINE\WAVETRAK, INC.; and each of its/their respective affiliates, owners, employees, managers, members, agents, volunteers, lessors, parent companies, subsidiaries, insurers, related companies and business concerns, past and present, as well as each of their partners, trustees, directors, officers, intellectual property holders, contractors, subcontractors, material suppliers, fabricators, agents, attorneys, servants and employees, past and present, and successors-in-interest, and each of them, if any litigation is instituted, as a result of any injury or death or property damage claim for damage arising out of, relating to, or in any way connected with, minor's participation in the Activities or use of the Venue. I understand that this indemnity provision is in addition to (and not in lieu of) any other indemnity provision found in this and/or related/separate document.

If the participant is a minor then the following terms apply.

[Please check the box to confirm you have read and accepted these terms]

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PARTICIPANT/LEGAL GUARDIAN:

Name:

Birth Date:

Phone Number:

Email Address:

Signature Certificate

Waiver No:

Timestamp:

Station ID:

Station Name:

The signing party listed below digitally agreed to the above agreement.

Signing Party

Name:

Birth Date:

Email Address:

Phone Number:

Mailing Address:

Signature:

Included Minors
