

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE MANAGEMENT
COMMITTEE

July 24, 2012

Committee
Report No. _____

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

Chair and Members:

Your Infrastructure Management Committee, having met on July 2, 2012, makes reference to County Communication 12-131, from the Director of Environmental Management, transmitting a proposed resolution entitled "ACCEPTING DEDICATION OF SEWERLINE EASEMENTS FOR THE WAILUKU FORCE MAIN PROJECT, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE".

The purpose of the proposed resolution is to accept the dedication from Elleair Hawaii, Inc., of a perpetual, non-exclusive, sewerline easement over portions of property situated at Kahului, Maui, Hawaii, identified as TMK: (2) 3-7-03:026 and (2) 3-7-03:028.

Your Committee notes that, pursuant to Section 3.44.015(C), Maui County Code, the Council may accept donations of real property or any interest in real property by the passage of a resolution, approved by a majority of its members.

The Director of Environmental Management stated that the Department replaced a sewer pipeline as part of a recent capital improvement project known as the Wailuku Wastewater Pump Station Force Main Replacement Project. He further stated that the Department has been replacing certain pipelines in order to reduce the risk of sewage spills. When the pipeline was replaced, it needed to be moved outside of the County's existing easements. Therefore, the Department is proposing that a new easement be accepted. Acceptance of the easement will allow the Department to operate and maintain the sewerline within the easement area.

Your Committee recommended that the resolution be revised to incorporate a nonsubstantive revision.

Your Committee voted 7-0 to recommend adoption of the revised proposed resolution and filing of the communication. Committee Chair Cochran, Vice-Chair Victorino, and members Carroll, Couch, Hokama, Mateo, and Pontanilla voted "aye".

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE MANAGEMENT
COMMITTEE

July 24, 2012
Page 2

Committee
Report No. _____

Your Committee is in receipt of a revised proposed resolution entitled "ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE WAILUKU FORCE MAIN PROJECT, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE", approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revision.

Your Infrastructure Management Committee RECOMMENDS the following:

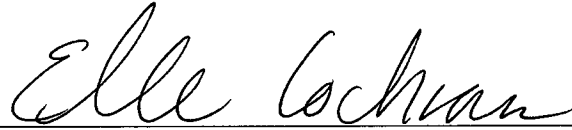
1. That Resolution _____, as revised herein and attached hereto, entitled "ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE WAILUKU FORCE MAIN PROJECT, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication 12-131 be FILED.

COUNCIL OF THE COUNTY OF MAUI
**INFRASTRUCTURE MANAGEMENT
COMMITTEE**

July 24, 2012
Page 3

Committee
Report No. _____

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



ELLE COCHRAN, Chair

im:cr:12054aa:scj

Resolution

No. _____

ACCEPTING DEDICATION OF SEWERLINE EASEMENT
FOR THE WAILUKU FORCE MAIN PROJECT,
PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE

WHEREAS, ELLEAIR HAWAII, INC., a Hawaii corporation, owner of real property described as Tax Map Key Numbers (2) 3-7-003:026 and (2) 3-7-003:028, desires to dedicate that certain perpetual, non-exclusive Sewerline Easement, as more fully described in Exhibit "1", attached hereto and made a part hereof, to the County of Maui; and

WHEREAS, the Director of Environmental Management has reviewed said dedication and recommends approval of the same; and

WHEREAS, pursuant to Section 3.44.015(C), Maui County Code, the County Council may accept donations of real property or any interest in real property by the passage of a resolution approved by a majority of its members; now, therefore,

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

1. That it hereby accepts the Sewerline Easement, as described in Exhibit "1", attached hereto, to be dedicated by Elleair Hawaii, Inc. to the County of Maui in accordance with the terms and conditions set forth in said easement; and

Resolution No. _____

2. That it does hereby authorize the Mayor of the County of Maui to execute all necessary documents in connection with the acceptance of said dedication; and

3. That certified copies of this Resolution be transmitted to the Mayor of the County of Maui, the Director of Environmental Management, and Elleair Hawaii, Inc.

APPROVED AS TO FORM
AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

S:\ALL\RMT\Resos\Sewerline Easement23007003026 and 028Elleair.doc

LAND COURT

REGULAR SYSTEM

Return by Mail to:

County of Maui
Department of Environmental Management
200 South High Street
Wailuku, Maui, 96793

NUMBER OF PAGES:

TITLE OF DOCUMENT:

SEWERLINE EASEMENT

PARTIES TO DOCUMENT:

GRANTOR: ELLEAIR HAWAII, INC.
170 Kaahumanu Avenue
Kahului, Hawaii 96732

GRANTEE: County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

TAX MAP KEY(S) (2) 3-7-003:026
(2) 3-7-003:028

EXHIBIT " 1 "

SEWERLINE EASEMENT

THIS GRANT is made this _____ day of _____, 20____, by and between ELLEAIR HAWAII, INC., a Hawaii corporation, whose address is 170 Kaahumanu Avenue, Kahului, Hawaii 96732 (hereinafter referred to as the "Grantor"), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, the principal office and mailing address of which is 200 South High Street, Wailuku, Hawaii 96793 (hereinafter referred to as the "Grantee").

W I T N E S S E T H:

That the Grantor, in consideration of the sum of ONE DOLLAR (\$1.00) paid to the Grantor by the Grantee, and other valuable consideration, the receipt whereof is hereby acknowledged, and subject to the terms, conditions, and covenants contained herein, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, a perpetual, nonexclusive easement over, under, across and through those portions of that certain real property situate at Kahului, Maui, State of Hawaii and designated as Tax Map Key Nos. (2) 3-7-003:026 and (2) 3-7-003:028, (the "Property"), as more particularly described in Exhibit "A", and as shown on Exhibit "B", attached hereto and made a part hereof, hereinafter referred to as the "Easement Area"), for underground sewerline purposes, including the right to construct, reconstruct, install, maintain, operate, repair, replace, and remove underground sewer pipelines and related facilities (collectively, the "Sewer System Improvements"), including manholes and other equipment and appurtenances necessary or expedient for the proper maintenance, operation or repair of such underground sewer pipelines.

TOGETHER with reasonable rights of ingress to and egress from the Easement Area across existing roadways or such other portions of the Grantor's property provided or specified by the Grantor for such purposes, as reasonably required in connection with the rights granted herein.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the Grantor and the Grantee hereby covenant and agree that the foregoing grant is made upon the following restrictions and conditions, which shall be binding upon, as applicable, the Grantor, the Grantee, and their respective successors and assigns:

1. Use and Restoration of Premises. Upon and in connection with performing any maintenance or repair work, the Grantee shall restore the surface of the Easement Area and the surrounding area, and the improvements thereon, damaged in the performance of said maintenance or repair work of the Sewer System Improvements, to their original condition to the extent such restoration is reasonably possible.

2. Use by the Grantor. The Grantor shall not erect or construct any building foundations, buildings, or structures above or below the present ground level of the Easement Area, raise or lower the present ground level of the Easement Area, or plant any hedges or trees within the Easement Area, unless the Grantor receives prior written approval from the Grantee, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that this provision shall not prevent the Grantor from laying, constructing, operating, maintaining, repairing, or removing its own sewer or water pipelines, conduits or drains, other utilities or facilities on

or below the surface of the Easement Area, provided that such sewer or water pipelines, conduits, drains or other utilities or facilities do not unreasonably interfere with the exercise by the Grantee of the rights herein granted; provided, further, however, that notwithstanding and irrespective of any prior written approval of the Grantee, the Grantor shall promptly repair any damage to the Sewer System Improvements or other appurtenances in the Easement Area, resulting or arising from Grantor's erection or construction of said building foundation, building or structure, from the Grantor's raising or lowering of the ground level, from the Grantor's planting of hedges or trees, or from the Grantor's construction, operation, maintenance, repair or removal of its own sewer or water pipelines, conduits or drains in the Easement Areas.

3. Maintenance of Easement Areas. This grant of easement does not obligate or charge the Grantee with any duties or responsibilities with regard to the ownership, condition, repair, and/or maintenance of the Easement Areas except as provided in section 1 above.

4. Indemnity.

(a) The Grantee shall indemnify and hold harmless the Grantor, its successors and assigns, from and against all claims for property damage, personal injury, or wrongful death arising out of or in connection with the intentional, reckless or negligent act of the Grantee, its agents, employees, contractors and servants, or from or in connection with the exercise by the Grantee of the rights and privileges granted herein, but only to the extent that the Grantee's liability for such damage, loss or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the Grantee,

and further, to the extent the payment for such damage, loss or injury is permitted by law and approved by the Maui County Council, pursuant to Chapter 3.16, Maui County Code, as amended.

(b) The Grantor shall indemnify and hold harmless the Grantee from and against all claims for property damage, personal injury, or wrongful death when such damage, injury or death proximately results from or arises out of the intentional, reckless or negligent act of the Grantor, and will reimburse the Grantee for any judgments, costs, and expenses, including reasonable attorney's fees, incurred in connection with the defense of any such claim, or incurred by the Grantee in enforcing this Grant, but only to the extent that the Grantor's liability for such damage, loss or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the Grantor, and only to the extent the payment for such damage, loss or injury is permitted by law.

5. Damage to Sewer System Improvements. The Grantor, regardless of any prior approval granted by the County of Maui to make improvements within the Easement Areas, shall be responsible for all costs and expenses incurred by the Grantee in connection with the repair of damages to the Sewer System Improvements when and to the extent such damages result from or arise out of the negligence of the Grantor, and shall reimburse the Grantee for costs and expenses, including reasonable attorney's fees, incurred by the Grantee in enforcing this provision.

6. Non-Exclusive Easement. The right and easement granted herein are nonexclusive, and the Grantor shall have the right to make one or more revocable or irrevocable, non-exclusive grants or assignments of all or portions of the

Easement Areas from time to time to governmental authorities, public or private utilities, corporations, owners associations or other parties, and the Grantee hereby consents thereto; provided, however, that any such grant or assignment shall not unreasonably interfere with the Grantee's use and enjoyment of the Easement Areas for the purposes stated herein.

7. No Warranties. The Grantor does not warrant the condition of the Easement Areas. The Grantee accepts the Easement Areas in the condition it is in at the commencement of this easement, and the Grantee hereby acknowledges that the Grantor has made no representations concerning the conditions of the Easement Areas or its suitability for the use intended to be made thereof. The Grantee accepts and assumes all risks with respect to entry upon the Easement Areas and the conditions thereof.

8. Definitions. When more than one person is involved in the grant of this indenture and the covenants herein contained, the term "Grantor" and "Grantee" and related verbs and pronouns in the singular shall include the plural. Where appropriate, the masculine gender shall be deemed to include the feminine or neuter genders. The term "Grantor" wherever used herein shall be held to mean and include the Grantor, its successors and assigns, and the term "Grantee", wherever used herein shall be held to mean and include the Grantee, its successors and permitted assigns. This instrument shall be binding upon and shall inure to the benefit of the Grantor and its successors and assigns, and the Grantee and its successors and permitted assigns.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and

said counterparts shall together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the day and year first written above.

GRANTOR:

ELLEAIR HAWAII, INC.

By [Signature]
Print Name: Hiroshi Jake
Its Vice President

By _____
Print Name: _____
Its _____

GRANTEE:

COUNTY OF MAUI

By _____
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:

[Signature]
KYLE K. GINOZA
Director of Environmental Management

APPROVED AS TO FORM
AND LEGALITY:

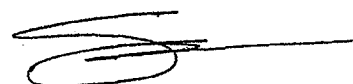
[Signature]
RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

S:\ALL\RMT\EM\AGREEMENTS\EASEMENTS\
SEWERLINE EASEMENTS\Elleair 37003025 and 028.2011.doc

STATE OF Hawaii)
)
County of Maui) SS.

On this 29th day of March, 2012, before me personally appeared Hiroshi Joke, to me personally known, 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.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



LS

Notary Public, State of Hawaii

[Stamp or Seal]

Print Name: SCOTT TANAKA

My Commission Expires: 07/29/2015

My Commission Expires: _____

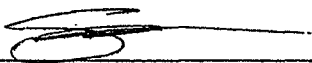
NOTARY PUBLIC CERTIFICATION

Doc. Date: NOT DATED AT TIME OF SIGNING # Pages: 16

Notary Name: SCOTT TANAKA Judicial Circuit: second

Document Description: Sewerline Easement

[Stamp or Seal]

Notary Signature: 

LS

Date: MAR 29 2012

STATE OF _____)
)
) SS.
_____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, 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.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

[Stamp or Seal]

Notary Signature: _____

Date: _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

[Stamp or Seal]

Notary Signature: _____

Date: _____

**Wailuku Force Main
Description of Easement S-7**

A Sewerline Easement S-7 in favor of the County of Maui, over and across a portion of Royal Patent 4475, Land Commission Award 7713, Apana 23 to V. Kamamalu (Certificate of Boundaries No. 203) at Kahului, Wailuku, Maui, Hawaii and being more particularly described as follows:

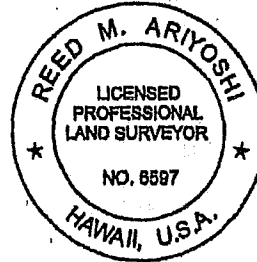
Beginning at a point at the southeasterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,503.65 feet North and 8,411.66 feet East and running by azimuths measured clockwise from True South:

1. 70° 18' 40" 316.75 feet along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 23 to V. Kamamalu (Certificate of Boundaries No. 203);
2. Thence along the easterly side of Kahului Beach Road (F.A.S.P. S-0340(1)) on a curve to the right, with the point of curvature azimuth from the radial point being: 7° 12', and the point of tangency azimuth from the radial point being: 17° 14' 54", having a radius of 162.00 feet, the chord azimuth and distance being: 102° 13' 27" 28.37 feet;
3. 250° 18' 40" 307.18 feet along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 23 to V. Kamamalu (Certificate of Boundaries No. 203);
4. 274° 20' 36.85 feet along same to the point of beginning and containing an Area of 4,691 Square Feet, more or less.

EXHIBIT " A "

SUBJECT, HOWEVER, to the following:

1. A portion of an existing Utility Easement "3" in favor of the County of Maui.
2. A portion of an existing Utility Easement in favor of the County of Maui.



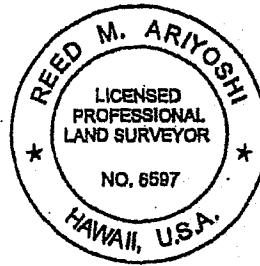
Reed M. Ariyoshi 04/30/12 Exp.
Licensed Professional Land Surveyor
Certificate No. 6597

**Wailuku Force Main
Description of Easement S-8**

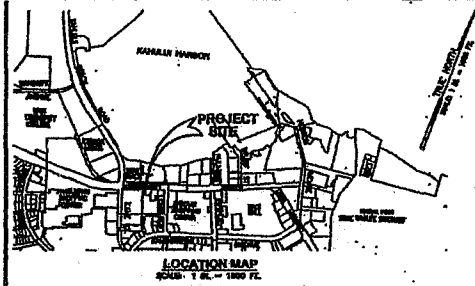
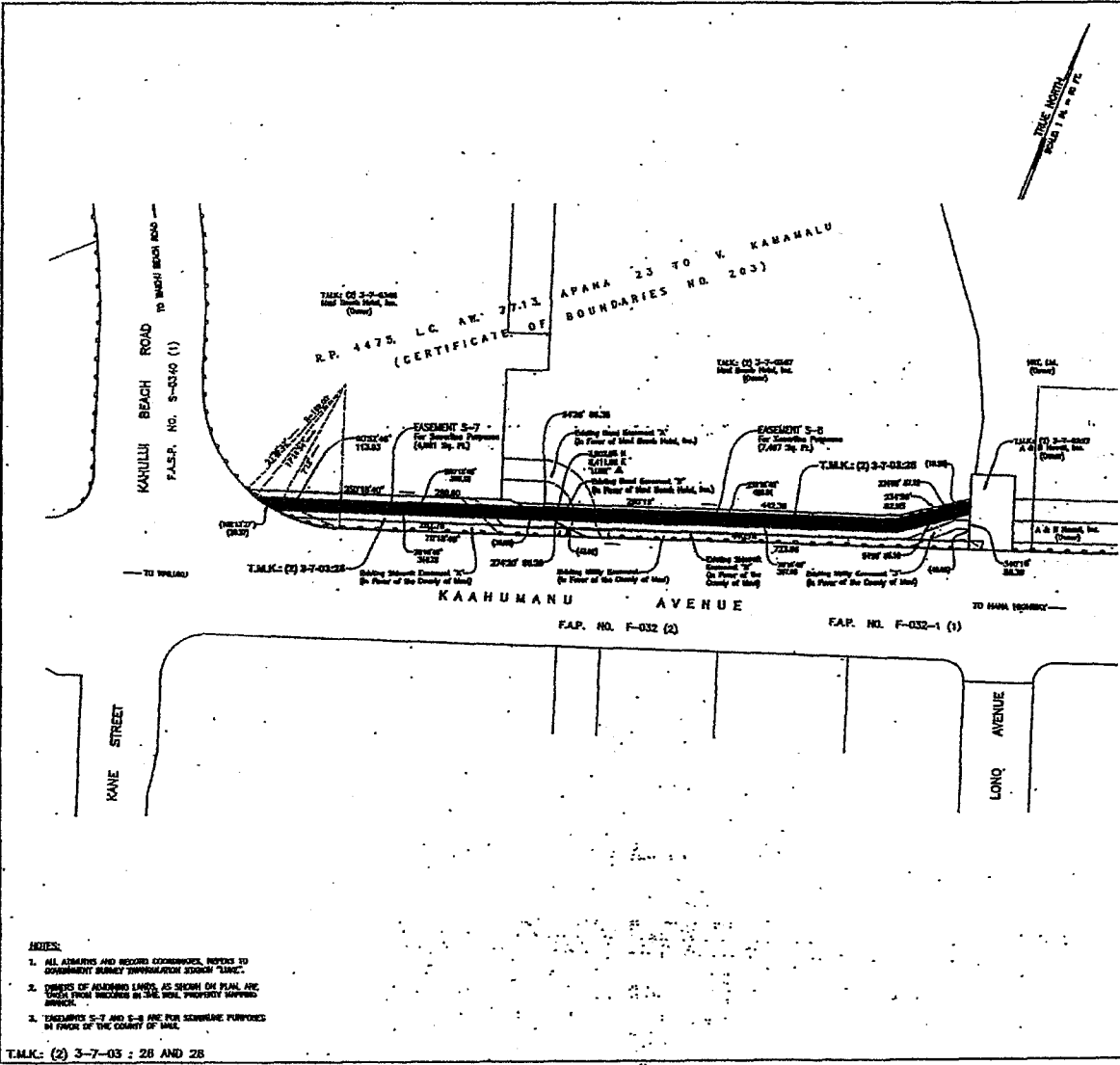
A Sewerline Easement S-8 in favor of the County of Maui, over and across a portion of Royal Patent 4475, Land Commission Award 7713, Apana 23 to V. Kamamalu (Certificate of Boundaries No. 203) at Kahului, Wailuku, Maui, Hawaii and being more particularly described as follows:

Beginning at a point at the southwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,503.65 feet North and 8,411.66 feet East and running by azimuths measured clockwise from True South:

1. 94° 20' 36.85 feet along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 23 to V. Kamamalu (Certificate of Boundaries No. 203);
2. 250° 18' 40" 429.61 feet along same;
3. 234° 56' 87.19 feet along same;
4. 340° 16' 15.55 feet along same;
5. 54° 56' 85.10 feet along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 23 to V. Kamamalu (Certificate of Boundaries No. 203);
6. 70° 18' 40" 397.98 feet along same to the point of beginning and containing an Area of 7,497 Square Feet, more or less.



Reed M. Ariyoshi 04/30/12 Exp.
Licensed Professional Land Surveyor
Certificate No. 6597



EASEMENT MAP
DESIGNATION OF EASEMENTS S-7 AND S-8
AFFECTING TAX-MAP KEY (2) 3-7-03 ; PARCELS 28 AND 28
 BEING A PORTION OF ROYAL PATENT 4475, LAND
 COMMISSION AWARD 7712, APAKA 23 TO V. KAMAMALU
 (CERTIFICATE OF BOUNDARIES NO. 203)
 KAHULI, KAHULUI MAUI, HAWAII
 SCALE: 1 IN. = 60 FT.
 OWNER: ELLEART HAWAII, INC.
 ADDRESS: KAHULUI, MAUI, HAWAII



Robert M. Daniels 11640
 State of Hawaii
 License No. 11640

WARREN S. LINDSEY - ENGINEER, INC.
 1920 Second Professional Court - Suite 202
 2145 Kalia Road - KAHULUI, MAUI, HAWAII 96741
 (808) 242-4101 Fax: (808) 242-4101

November 8, 2010

- NOTES:**
1. ALL DIMENSIONS AND RECORD COORDINATES, NOTES TO CORRECTIONS AND SURVEY INFORMATION SHOULD BE "AS SHOWN".
 2. COPIES OF ADJACENT MAPS, AS SHOWN ON PLAN, ARE KEPT FROM RECORDS BY THE SOLE PROPERTY SURVEYOR.
 3. EASEMENTS S-7 AND S-8 ARE FOR SEWERLINE PURPOSES IN FORCE OF THE COUNTY OF MAUI.
- T.M.K. (2) 3-7-03 : 28 AND 28