

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

November 16, 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 October 29, 2012, makes reference to County Communication 12-213, from the Director of Environmental Management, transmitting a proposed resolution entitled "ACCEPTING GRANT OF EASEMENT FOR SEWERLINE PURPOSES AND APPROVING PARTIAL CANCELLATION OF EASEMENT FOR THE MAUI LANI SHOPPING CENTER, PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE".

The purpose of the proposed resolution is to accept the dedication of a perpetual, non-exclusive, sewerline easement from HRT Realty, LLC, and approve the partial cancellation of an easement within the same parcel, situated in Wailuku, Maui, Hawaii, identified as TMK: (2)-3-8-007:121. Adoption of the proposed resolution will enable the sewerline within the proposed Maui Lani Shopping Center to be relocated.

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 resolution, approved by a majority of its members.

Your Committee further notes that, pursuant to Section 3.44.020(A), Maui County Code, the Council may dispose of easements in real property by resolution, approved by a majority of its members.

The Director of Environmental Management stated that the subject sewerline currently serves the adjoining neighborhood of Sand Hills. The developer of the shopping center parcel where the easement is located intends to relocate the sewerline along the property line so that the sewerline will no longer cut across the parcel.

The Director stated that approval to partially cancel a portion of the existing easement and authorize the acceptance of a new easement will result in a net gain of easement area to the County. He further noted that the sewer system improvements have not been completed to date, but are expected to be completed by the end of the calendar

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

November 16, 2012  
Page 2

**Committee  
Report No.** \_\_\_\_\_

year. The easement will provide the County certain rights within the easement area, including the ability to repair and replace sewerlines located there.

Your Committee voted 6-0 to recommend adoption of the proposed resolution and filing of the communication. Committee Chair Cochran, Vice-Chair Victorino, and members Carroll, Couch, Mateo, and Pontanilla voted "aye". Committee member Hokama was excused.

Your Infrastructure Management Committee RECOMMENDS the following:

1. That Resolution \_\_\_\_\_, attached hereto, entitled "ACCEPTING GRANT OF EASEMENT FOR SEWERLINE PURPOSES AND APPROVING PARTIAL CANCELLATION OF EASEMENT FOR THE MAUI LANI SHOPPING CENTER, PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication 12-213 be FILED.

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

  
\_\_\_\_\_  
ELLE COCHRAN, Chair

# Resolution

No. \_\_\_\_\_

ACCEPTING GRANT OF EASEMENT FOR SEWERLINE PURPOSES AND  
APPROVING PARTIAL CANCELLATION OF EASEMENT  
FOR THE MAUI LANI SHOPPING CENTER,  
PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE

WHEREAS, HRT REALTY, LLC, a Maryland limited liability company, owner of real property described as Tax Map Key Number (2) 3-8-007:121, desires to enter into that certain Grant of Easement for Sewerline Purposes, as more fully described in Exhibit "1", attached hereto and made a part hereof; and

WHEREAS, the County of Maui desires to enter into that Partial Cancellation of Easement, as more fully described in Exhibit "2", attached hereto and made a part hereof; and

WHEREAS, the proposed transactions will facilitate relocation of County sewer system improvements within the Maui Lani Shopping Center, Tax Map Key Number (2) 3-8-007:121; and

WHEREAS, the Director of Environmental Management has reviewed said Grant of Easement for Sewerline Purposes and said Partial Cancellation of Easement 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

**Resolution No. \_\_\_\_\_**

or any interest in real property by the passage of a resolution approved by a majority of its members; and

WHEREAS, pursuant to Section 3.44.020(A), Maui County Code, the County Council may dispose of easements in real property by 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 Grant of Easement for Sewerline Purposes, as described in Exhibit "1" attached hereto, to be dedicated by HRT REALTY, LLC to the County of Maui in accordance with the terms and conditions set forth in said easement; and

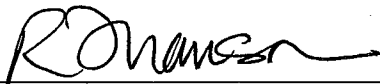
2. That it hereby approves the Partial Cancellation of Easement, as described in Exhibit "2" attached hereto, in accordance with the terms and conditions set forth in said document; and

3. That it does hereby authorize the Mayor of the County of Maui to execute all necessary documents in connection with the acceptance of said Grant of Easement for Sewerline Purposes and said Partial Cancellation of Easement; and

Resolution No. \_\_\_\_\_

4. That certified copies of this Resolution be transmitted to the Mayor of the County of Maui, the Director of Environmental Management, and HRT REALTY, LLC.

APPROVED AS TO FORM  
AND LEGALITY:



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RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui

S:\ALL\RMT\Resos\Sewerline Easement38007121HRT.doc

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Tax Key: (2) 3-8-007-121

Total No. of Pages: \_\_\_\_\_

GRANT OF EASEMENT FOR SEWERLINE PURPOSES

This Grant is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between HRT REALTY, LLC, a Maryland limited liability company, whose address is 3660 Waiialae Avenue, Suite 400, Honolulu, Hawaii 96816, hereinafter referred to as the "Grantor", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address 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,

non-exclusive easement over, under, across and through that portion of Lot 11-A-1-A of Maui Lani (Large-Lot) Subdivision ("Lot 11-A-1-A"), located at Wailuku, Maui, Hawaii, that is more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Easement Area"). Although the Easement Area encumbers Lot 11-A-1-A, the easement granted hereunder shall be 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, installed in connection with the construction and development of TMK (2) 3-8-007-121 (Lot 11-A-1-A of the Maui Lani (Large-Lot) Subdivision).

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. Waste and Unlawful, Improper or Offensive Use of Premises. The Grantee shall not commit or permit to be committed any waste or nuisance or any unlawful, improper, or offensive use of the Easement Area and adjoining areas.

2. Use and Restoration of Premises. The Grantee shall diligently maintain the Sewer System Improvements in good and safe condition and repair. Without limiting the foregoing, the Grantee shall promptly repair any leaks, spills and overflow from the Sewer System Improvements and all damages to the Easement Area and the surrounding area, and the improvements thereon, resulting therefrom. 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 or otherwise from any leaks, spills or overflow from the Sewer System Improvements, to its original condition to the extent such restoration is reasonably possible. The Grantee's construction, reconstruction, installation, maintenance, operation, repair, replacement and removal of the Sewer System Improvements shall not unreasonably interfere with the use of the Easement Area by the Grantor. Except as permitted herein, the Grantee shall not exercise any of its rights hereunder in any manner that causes any permanent damage to or destruction of any land, building, structure, facilities or improvements located within or adjacent to the Easement Area. The Grantee shall give the Grantor five (5) days prior written notice of the Grantee's intent to enter upon the Easement Area for the purpose of exercising its rights under this instrument, except in the event of an emergency, in which case notice will be given as soon as reasonably possible.

3. 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 (or others with the approval of the Grantor) from (and no approval from the Grantee shall be required for) grading the Easement Area and/or constructing, installing and maintaining roadways, walkways, curbs, landscaping and other surface improvements to the Easement Area, or 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 Area.

4. Maintenance of Easement Area. 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 Area except as required in paragraph 2 above.

5. 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 attorneys' 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.

6. Damage to Sewer System Improvements. The Grantor, regardless of any prior approval granted by the County of Maui to make improvements within the Easement Area, 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 attorneys' fees, incurred by the Grantee in enforcing this provision.

7. Non-Exclusive Easement. The right and easement granted herein are non exclusive, 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 Area 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 Area for the purposes stated herein.

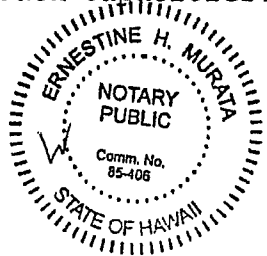
8. No Warranties. The Grantor does not warrant the condition of the Easement Area. The Grantee accepts the Easement Area in the condition it is in at the commencement of this easement, and the Grantee hereby acknowledges that the Grantor has made no representations concerning the conditions of the Easement Area 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 Area and the conditions thereof.

9. 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.



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

On this \_\_\_\_\_ day of JUL 11 2012, 20\_\_\_\_, before me personally appeared ALVIN AWAYA, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Ernestine H. Murata  
Print Name: ERNESTINE H. MURATA  
Notary Public, State of Hawaii.

My commission expires: OCT 14 2013

Date of Doc: <u>Not Dated</u>	# Pages: <u>12</u>
Name: <u>ERNESTINE H. MURATA</u>	First Circuit
Doc. Description: <u>Grant of Easement for Sewerline Purposes.</u>	
<u>Ernestine H. Murata</u> Notary Signature	<u>JUL 11 2012</u>
NOTARY CERTIFICATION	

A circular notary seal for Ernestine H. Murata, Notary Public, State of Hawaii. The seal contains the text "ERNESTINE H. MURATA", "NOTARY PUBLIC", "Comm. No. 85-406", and "STATE OF HAWAII".

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

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(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii.

My commission expires: \_\_\_\_\_

Date of Doc: _____	# Pages: _____
Name: _____	First Circuit
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature _____	
NOTARY CERTIFICATION	
(Seal)	

STATE OF HAWAII                    )  
  )  SS.  
COUNTY OF MAUI                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me 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 by authority of its Charter, 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.

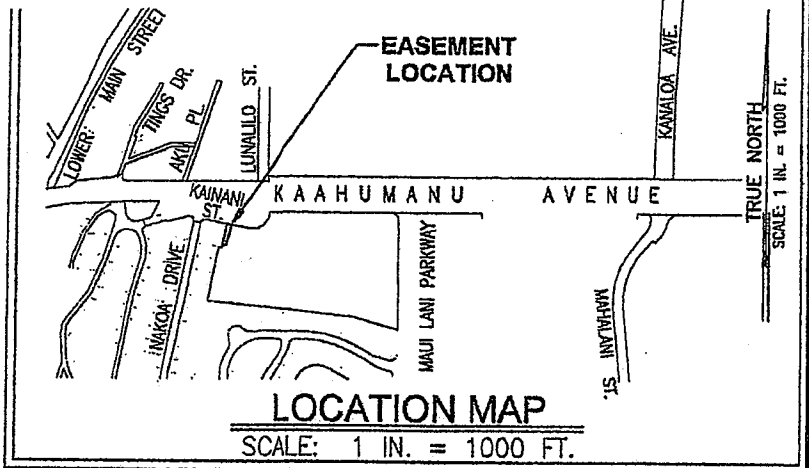
\_\_\_\_\_  
Notary Public, State of Hawaii  
Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Date of Doc: _____	# Pages: _____
Name: _____	Second Circuit
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature	
NOTARY CERTIFICATION	
:Seal:	

EXHIBIT "A"

TRUE NORTH  
SCALE: 1 IN. = 50 FT.



KAAHUMANU AVENUE  
F.A.P. NO. F-032-1(1)  
(KAINANI STREET)

2,918.38 N  
698.63 E  
"LUKE" Δ

281°07'15"  
29.45

R.P. 1996

L.C. A.W.

NAKOA DRIVE

LOT 3  
EKO A SUBDIVISION

T.M.K.: (2)  
3-4-42 : 030  
Dorothy M  
Tokunaga, LLC  
(Owner)

TO KUIHELANI

SEWERLINE  
EASEMENT S-1  
(2,704 SQ.FT.)

69°07'16"  
20.02

T.M.K.: (2)  
3-4-42 : 001  
Karen Kameta  
(Owner)

LOT 11-A-1-A  
MAUI LANI (LARGE-LOT) SUBDIVISION  
T.M.K.: (2) 3-8-07 : 121  
HRT Realty, LLC  
(Owner)

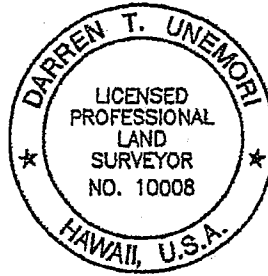
**Maui Lani (Large-Lot) Subdivision  
Description of Sewerline Easement S-1**

A Sewerline Easement S-1 affecting a portion of Lot 11-A-1-A of Maui Lani (Large-Lot) Subdivision, also affecting a portion of Royal Patent 1996, Land Commission Award 420 to Kuihelani at Wailuku, Maui, Hawaii and more particularly described as follows:


Beginning at a point at the northwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,918.38 feet North and 698.63 feet East and running by azimuths measured clockwise from True South:

1.    281° 07' 15"           29.45 feet along the southerly side of Kaahumanu Avenue (F.A.P. No. F-032-1(1));
  
2.    17° 38'               113.40 feet along the remainder of Lot 11-A-1-A of Maui Lani (Large-Lot) Subdivision, being also along the remainder of Royal Patent 1996, Land Commission Award 420 to Kuihelani;
  
3.    69° 07' 16"           20.02 feet along same;
  
4.    191° 18'              123.28 feet along Lot 3 of Ekoa Subdivision, being also along the remainder of Royal Patent 1996, Land Commission Award 420 to Kuihelani to the point of beginning and containing an Area of 2,704 Square Feet, more or less.





WARREN S. UNEMORI ENGINEERING, INC.

By:   
Licensed Professional Land Surveyor  
Certificate No. 10008

Wells Street Professional Center  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
January 19, 2012

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END OF EXHIBIT "A"

Page 2 of 2

Page 12 of 12




IN WITNESS WHEREOF, the County has executed these presents on the \_\_\_\_ day of \_\_\_\_\_, 2012.

COUNTY OF MAUI

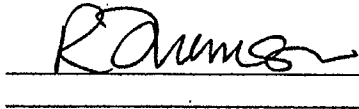
By \_\_\_\_\_  
ALAN M. ARAKAWA  
Its Mayor

APPROVAL RECOMMENDED:

  
\_\_\_\_\_

Director of Environmental Management

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_

Deputy Corporation Counsel  
County of Maui

STATE OF HAWAII                    )  
  )  SS.  
COUNTY OF MAUI                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me 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 by authority of its Charter, and the said ALAN M. ARAKAWA  
acknowledged the said instrument to be the free act and deed of  
said County of Maui.

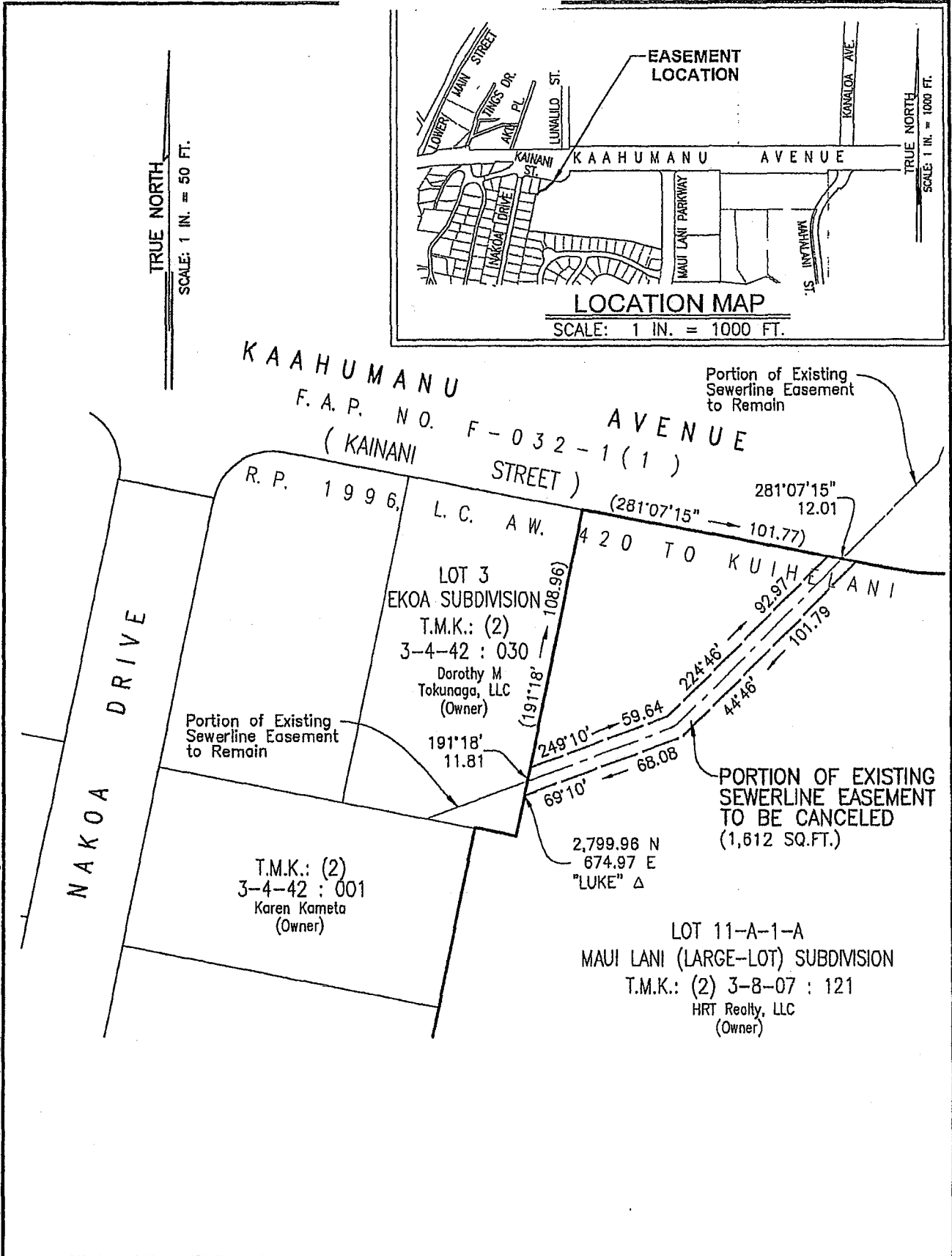
IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal.

\_\_\_\_\_  
Notary Public, State of Hawaii  
Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Date of Doc: _____	# Pages: _____
Name: _____	Second Circuit
Doc. Description: _____	
_____	
_____	
_____	
_____	
Notary Signature	
NOTARY CERTIFICATION	(Seal)

EXHIBIT "A"



V:\Projdata\01proj\01088\01088.dwg\maps\Esmi-map-00.dwg

**Maui Lani (Large-Lot) Subdivision  
Portion of Existing Sewerline Easement**

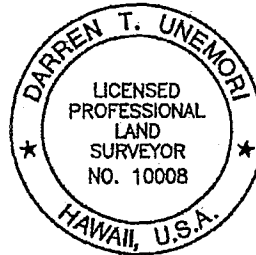
A portion of Sewerline Easement (recorded in Liber 2578, Page 346 in the Bureau of Conveyances of the State of Hawaii) affecting a portion of Lot 11-A-1-A of Maui Lani (Large-Lot) Subdivision, also affecting a portion of Royal Patent 1996, Land Commission Award 420 to Kuihelani at Wailuku, Maui, Hawaii and 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 2,799.96 feet North and 674.97 feet East and running by azimuths measured clockwise from True South:

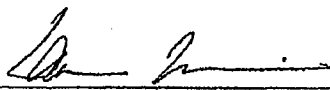
1. 191° 18' 11.81 feet along Lot 3 of Ekoa Subdivision, being also along the remainder of Royal Patent 1996, Land Commission Award 420 to Kuihelani;
2. 249° 10' 59.64 feet along the remainder of Lot 11-A-1-A of Maui Lani (Large-Lot) Subdivision, being also along the remainder of Royal Patent 1996, Land Commission Award 420 to Kuihelani;
3. 224° 46' 92.97 feet along same;
4. 281° 07' 15" 12.01 feet along the southerly side of Kaahumanu Avenue (F.A.P. No. F-032-1(1));
5. 44° 46' 101.79 feet along the remainder of Lot 11-A-1-A of Maui Lani (Large-Lot) Subdivision, being also along the remainder of Royal Patent 1996, Land Commission Award 420 to Kuihelani;

6. 69° 10'

68.08 feet along same to the point of beginning and containing an Area of 1,612 Square Feet, more or less.



WARREN S. UNEMORI ENGINEERING, INC.

By:   
\_\_\_\_\_  
Licensed Professional Land Surveyor  
Certificate No. 10008

Wells Street Professional Center  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
January 19, 2012

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END. OF EXHIBIT "A"