

COUNCIL OF THE COUNTY OF MAUI

**ECONOMIC DEVELOPMENT, ENERGY,  
AGRICULTURE, AND RECREATION  
COMMITTEE**

November 1, 2013

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

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

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on October 15, 2013, makes reference to County Communication 13-278, from the Director of Parks and Recreation, transmitting a proposed resolution entitled "APPROVING AND AUTHORIZING THE EXECUTION OF A PARK ASSESSMENT AGREEMENT FOR THE KE ALII KAI II SUBDIVISION, KAMAOLE, KIHEI, MAUI, HAWAII, PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE".

The purpose of the proposed resolution is to authorize the execution of a park assessment agreement, pursuant to Section 18.16.320, Maui County Code, between the County of Maui, Department of Parks and Recreation, and developers of the Moana Estates Subdivision (formerly known as the Ke Alii Kai II Subdivision) and Ke Alii Ocean Villas ("developers") for the dedication of approximately 3.727 acres, identified as TMK: (2) 3-9-060:093, Kamaole, Kihei, Maui, Hawaii, for park and playground purposes ("subject park").

Your Committee notes a subdivider seeking to comply with the County's park dedication requirements is required to enter into a park assessment agreement with the County. The agreement shall be subject to Council approval by resolution, pursuant to Subsection 18.16.320(B)(3), Maui County Code.

A representative of the Department of Parks and Recreation informed your Committee the Council for the 2009-2011 term had considered a proposed resolution authorizing acceptance of the dedication of the subject park. However, the resolution was never adopted because of unresolved drainage and maintenance concerns raised by homeowners residing in the subdivision.

The representative further informed your Committee the developers have agreed to maintain the subject park, including all drainage improvements, for a ten-year period following dedication of the subject park to the County. Upon expiration of the ten-year

COUNCIL OF THE COUNTY OF MAUI  
**ECONOMIC DEVELOPMENT, ENERGY,  
AGRICULTURE, AND RECREATION  
COMMITTEE**

Page 2

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

period, the Department of Parks and Recreation will assume responsibility for maintenance of the subject park, other than drainage improvements. The drainage improvements will be maintained by the Department of Public Works.

The President of the Moana Estates Homeowners Association testified that the Association is in support of the park assessment agreement and its terms.

Your Committee voted 7-0 to recommend adoption of the proposed resolution and filing of the communication. Committee Chair Guzman, Vice-Chair Carroll, and members Baisa, Cochran, Crivello, Victorino, and White voted "aye".

Your Committee notes the title of the proposed resolution incorrectly omits a reference to the Ke Alii Ocean Villas and refers to the Moana Estates Subdivision by its former name (Ke Alii Kai II Subdivision). Therefore, the title of the resolution should be revised.

Your Committee is in receipt of a revised proposed resolution entitled "APPROVING AND AUTHORIZING THE EXECUTION OF A PARK ASSESSMENT AGREEMENT FOR THE MOANA ESTATES SUBDIVISION AND THE KE ALII OCEAN VILLAS, KAMAOLE, KIHEI, MAUI, HAWAII, PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE". The revised proposed resolution incorporates a revision to the title and other nonsubstantive revisions.

Your Economic Development, Energy, Agriculture, and Recreation Committee RECOMMENDS the following:


1. That Resolution \_\_\_\_\_, as revised herein and attached hereto, entitled "APPROVING AND AUTHORIZING THE EXECUTION OF A PARK ASSESSMENT AGREEMENT FOR THE MOANA ESTATES SUBDIVISION AND THE KE ALII OCEAN VILLAS, KAMAOLE, KIHEI, MAUI, HAWAII, PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication 13-278 be FILED.

COUNCIL OF THE COUNTY OF MAUI  
**ECONOMIC DEVELOPMENT, ENERGY,  
AGRICULTURE, AND RECREATION  
COMMITTEE**

Page 3

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

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

  
\_\_\_\_\_  
DON S. GUZMAN, Chair

ear:cr:13019aa:kmh

# Resolution

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

APPROVING AND AUTHORIZING THE EXECUTION OF A PARK ASSESSMENT AGREEMENT FOR THE MOANA ESTATES SUBDIVISION AND THE KE ALII OCEAN VILLAS, KAMAOLE, KIHEI, MAUI, HAWAII, PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE

WHEREAS, KAK II LLC has developed a residential subdivision known as Moana Estates and formerly known as the Ke Alii Kai II Subdivision, situated at Tax Map Key No. (2)3-9-019:004, Kamaole, Kihei, Maui, Hawaii; and

WHEREAS, pursuant to Section 18.16.320, Maui County Code, as a condition of subdivision approval, KAK II LLC, as the subdivider, is required to provide land in perpetuity or dedicate land for park and playground purposes; and

WHEREAS, KE ALII VILLAS LLC has developed a condominium and related improvements known as the Ke Alii Ocean Villas and formerly known as Ke Alii Villas Condominium, situated at Tax Map Key Nos. (2)3-9-020:020 and 027, Kamaole, Kihei, Maui, Hawaii; and

WHEREAS, pursuant to Section 18.16.320, Maui County Code, as a condition of development approval, KE ALII VILLAS LLC, as the developer, is required to provide land in perpetuity or dedicate land for park and playground purposes; and

WHEREAS, KAK II LLC and KE ALII VILLAS LLC have completed construction of a park comprising 3.727 acres, more or less, on Lot 93 of "Moana Estates", also known as "Ke Alii Kai II Subdivision", as shown on File Plan Number 2434, filed in the Bureau of Conveyances of the State of Hawaii, hereinafter referred to as "Lot 93";

WHEREAS, KAK II LLC and the Department of Parks and Recreation hope and desire to enter into the Park Assessment Agreement, attached hereto as Exhibit "1", and by reference made a part hereof; and

WHEREAS, KAK II LLC, has offered to provide limited maintenance for the park and related improvements within Lot 93 for a ten-year period, the details of which are within the Park

Maintenance Agreement, attached hereto as Exhibit "3" to Exhibit "1"; and

WHEREAS, the Park Assessment Agreement is subject to approval by the Council of the County of Maui; NOW, THEREFORE,

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

1. That the Council approves the Park Assessment Agreement; and

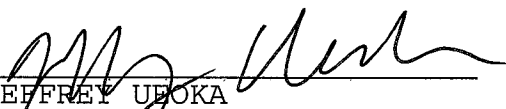
2. That it does hereby authorize the Mayor, or the Mayor's duly authorized representative, to execute all necessary documents, in connection with the Park Assessment Agreement; and

3. That it does hereby authorize the Mayor, or the Mayor's duly authorized representative, to execute all necessary documents, in connection with the Park Maintenance Agreement; and

4. That it does authorize the Mayor, or the Mayor's duly authorized representative, to execute all necessary documents to amend any and all agreements and/or instruments that may be inconsistent with the above dedication and Park Maintenance Agreement;

5. That certified copies of this resolution be transmitted to the Mayor, the Director of Parks and Recreation, the Director of Public Works, the Director of Environmental Management, the Corporation Counsel, KAK II LLC, and KE ALII VILLAS LLC.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY UJOKA  
Deputy Corporation Counsel  
County of Maui

S:\ALL\JTU\RESOS\KAK II Moana Estates.wpd

**KE ALII VILLAS CONDOMINIUM AND KE ALII KAI II SUBDIVISION  
PARK ASSESSMENT AGREEMENT**

This PARK ASSESSMENT AGREEMENT, is executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by KE ALII VILLAS LLC, a Hawaii limited liability company, and KAK II LLC, a Hawaii limited liability company, whose addresses are 220 South King Street, Suite 2170, Honolulu, Hawaii 96813 (hereinafter collectively referred to as "Developer"), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 ("County"), hereinafter collectively referred to as the "Parties".

WHEREAS, the Ke Ali'i Villas Condominium project contains 144 residential condominium units; and

WHEREAS, the Ke Ali'i Kai Subdivision contains 90 residential lots; and

WHEREAS, Developer intends to satisfy the conditions of Section 18.16.320, Maui County Code ("MCC"), for 234 lots/units through the dedication of the area identified as Tax Map Key No. (2)3-9-060:093, area approximately 3.727 acres (the "Park Site"); and

WHEREAS, Developer shall only be credited for park assessment purposes for the usable areas of the Park Site; and

WHEREAS, KAK II LLC is the current owner of the Park Site; and

WHEREAS, the Unilateral Agreement, dated December 7, 2004 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-197810 ("Unilateral Agreement") required Developer to develop and dedicate the Park Site and related improvements for a public park (collectively the "Park"); and

WHEREAS, the Unilateral Agreement provided that Park would be maintained for a period of ten (10) years commencing upon dedication of the Park Site to the County initially by Developer and, upon establishment, by the Ke Ali'i Kai Subdivision homeowners' association; and

NOW, THEREFORE, the Parties hereby agree as follows:

1. The Unilateral Agreement shall be canceled and terminated.
2. Park Assessment Requirements
  - a. Number of Lots. 234 lots/units were developed in the Ke Ali'i Villas Condominium project and the Ke Ali'i Kai Subdivision.

- b. Calculation of Park Assessment Requirement. Developer is required to dedicate 2.69 acres of improved park area.
- c. Land Area. Developer shall dedicate approximately 3.727 acres of usable park area.
- d. Credits. Developer is not requesting park credits.
- e. Map. A map showing the location of the Park Site and Park in relation to the surrounding area attached as Exhibit "1".
- f. Improvements. Developer shall improve the Park Site by completing the following prior to dedication to County:
  - i. Restroom  
Developer has constructed a comfort station on the Park Site.
  - ii. Parking Lot  
Developer has constructed two (2) parking lots with a total of thirty-three (33) parking stalls on the Park Site.
  - iii. Grassing, grading, irrigation, and drainage  
Developer shall further improve the Park Site drainage as shown on Exhibit "C" of Exhibit "3" attached hereto and such improvements shall be completed to the satisfaction of both the Director of the Department of Public Works and the Director of the Department of Parks and Recreation.
  - iv. The County shall be responsible for any additional improvements to the Park.
- g. Estimated Completion Date. The Park at the time of this Agreement, is completed.
- h. Proposed Uses of Park. This park will be used for active recreation and the County, at its sole and absolute discretion, intends to improve the Park with sports fields and courts.
- i. Conceptual Rendering. The Park has been completed, a map showing the Park is attached hereto as Exhibit "2".
- j. Dedication. The Park Site shall be accepted by the Director of Parks and Recreation in accordance with Section 3.44.015.F, Maui County Code.

- k. Term of Agreement. This agreement shall commence upon execution and shall terminate upon dedication of the Park Site to the County.
3. The terms relating to the Developer's maintenance of the Park is contained within the Park Maintenance Agreement attached hereto and made a part hereof as Exhibit "3".
  4. Acceptance of this Park by the County shall satisfy the requirements of Section 18.16.320, Maui County Code, for the 234 lots/units developed in the Ke Ali'i Villas Condominium project and the Ke Ali'i Kai Subdivision.
  5. Notifications  
  
County of Maui  
Director  
Department of Parks and Recreation  
700 Halia Nakoa Road  
Wailuku, Maui, Hawaii 96793  
  
Ke Alii Villas LLC  
220 South King Street, Suite 960  
Honolulu, Hawaii 96813  
  
KAK II LLC  
220 South King Street, Suite 960  
Honolulu, Hawaii 96813
  6. Developer shall record this Agreement with the Bureau of Conveyances of the State of Hawaii after execution.
  7. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors, and assigns, as the case may be.
  8. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii. The venue for any action with respect to this Agreement shall be in Wailuku, Maui, Hawaii.
  9. This Agreement and the attachments hereto contain the entire agreement of the Parties with respect to said Agreement, and shall supersede all negotiations, agreements, and understandings with respect thereto. This Agreement may only be amended by written agreement approved by Maui County Council resolution.
  10. The parties hereto agree that 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 agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or same counterparts. For all purposes, duplicate




unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date first written above.

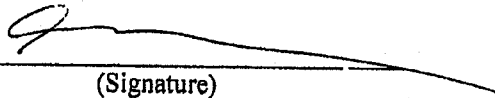
KE ALII VILLAS LLC

By TOWNE DEVELOPMENT OF HAWAII  
INC., Its Member

By   
(Signature)  
Christopher L. Lau  
(Print Name)  
Its Exec. Vice President  
(Title)

KAK II LLC

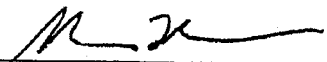
By TOWNE DEVELOPMENT OF HAWAII  
INC., Its Member


By   
(Signature)  
Christopher L. Lau  
(Print Name)  
Its Exec. Vice President  
(Title)

COUNTY OF MAUI

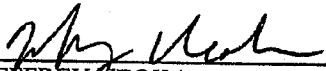
By \_\_\_\_\_  
ALAN M. ARAKAWA  
Its Mayor

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
GLENN T. CORREA  
Director of Parks and Recreation

  
\_\_\_\_\_  
DAVID C. GOODE  
Director of Public Works

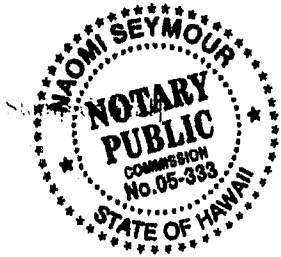
APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

STATE OF Hawaii }  
County of Maui } SS.

On this 6th day of August, 2013, before me personally appeared Christopher L. Lau, to me 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.



Naomi Seymour  
Notary Public, State of Hawaii  
Print Name: Naomi Seymour  
My commission expires: 5-29-2017

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>Undated</u>	# Pages: <u>22 pages</u>
Notary Name: <u>Naomi Seymour</u>	Judicial Circuit: <u>Second</u>
Doc. Description: <u>Ke Alii Villas Condominium</u> <u>and Ke Alii Kai II Subdivision</u> <u>Park Assessment Agreement</u>	
Notary Signature: <u>Naomi Seymour</u>	A circular notary seal for Naomi Seymour, Notary Public, Commission No. 05-333, State of Hawaii. The seal features a star around the perimeter and the text "NAOMI SEYMOUR", "NOTARY PUBLIC", "COMMISSION No. 05-333", and "STATE OF HAWAII".
Date: <u>8-6-13</u>	

STATE OF \_\_\_\_\_ }  
\_\_\_\_\_ } SS.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me 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.

Notary Seal

Notary Public, State of \_\_\_\_\_

Print Name: \_\_\_\_\_

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

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII        )  
                                  )  
COUNTY OF MAUI        )        SS.

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.

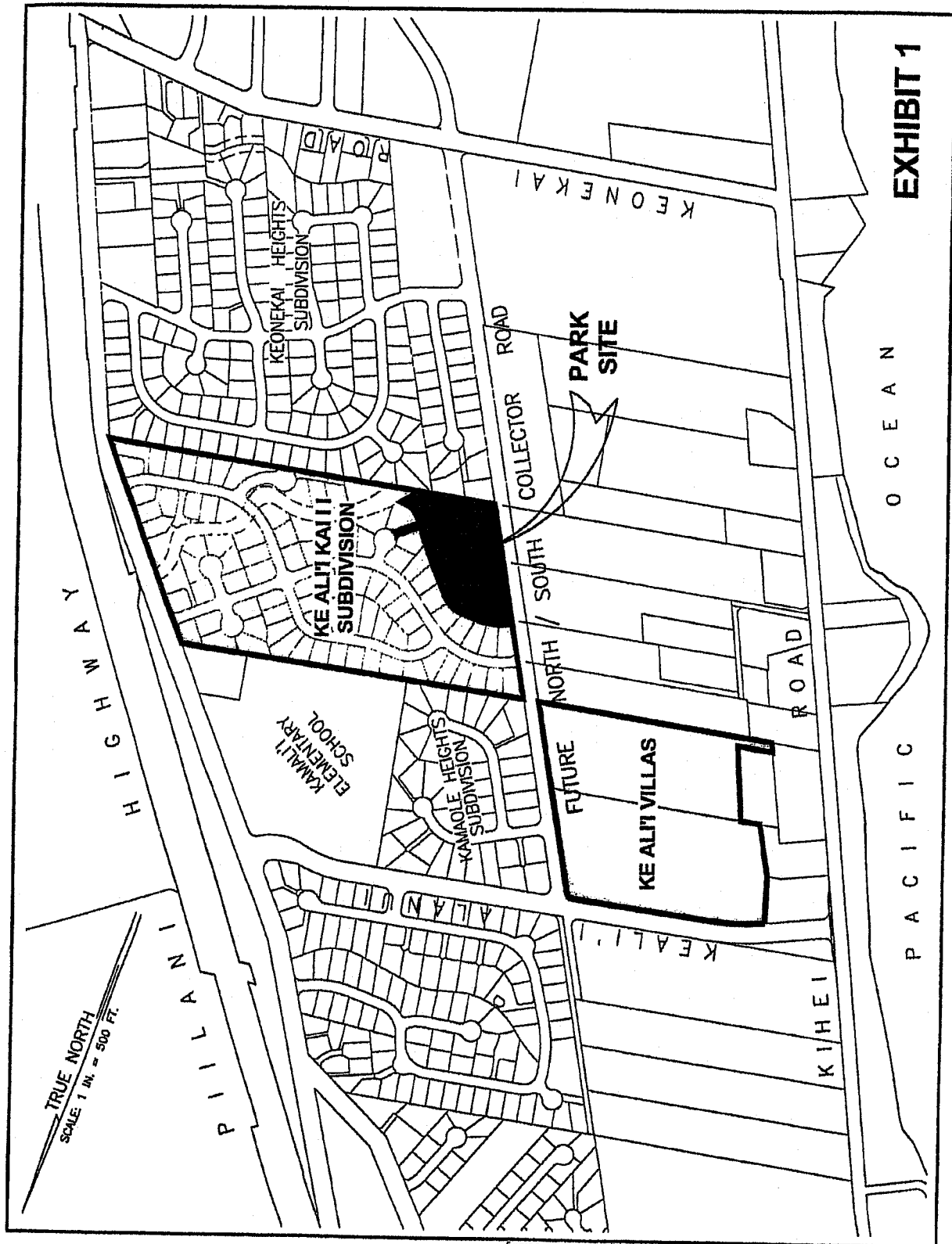
Notary Seal

\_\_\_\_\_  
Notary Public, State of Hawaii

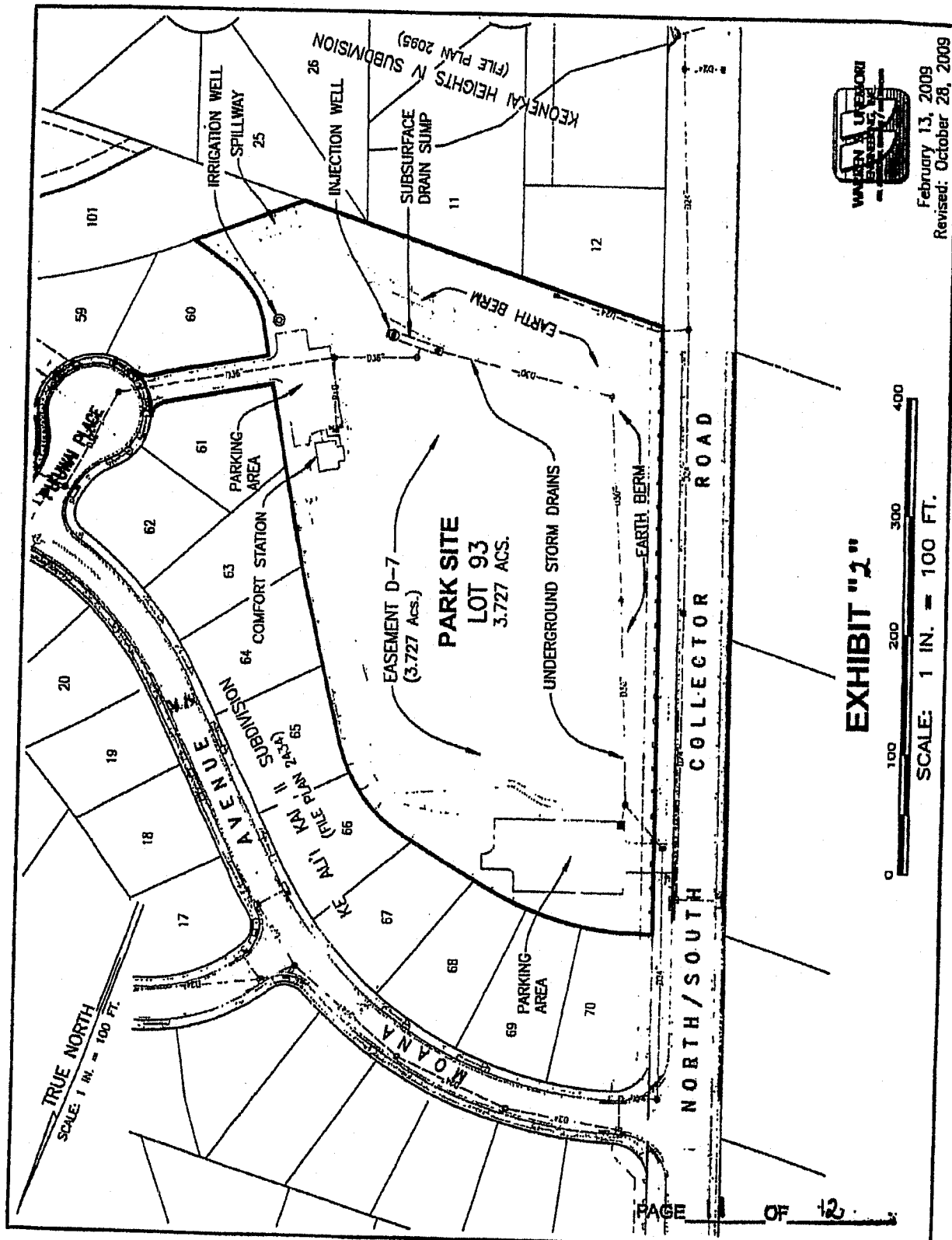
Print Name: \_\_\_\_\_

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

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ _____ _____ _____	
Notary Signature: _____	
Date: _____	



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LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( )

To:

TITLE OF DOCUMENT:

PARK MAINTENANCE AGREEMENT

PARTIES TO DOCUMENT:

DEVELOPER: KAK II LLC  
220 S. King Street, Suite 960  
Honolulu, Hawaii 96813

COUNTY: COUNTY OF MAUI  
200 S. High Street  
Wailuku, Maui, Hawaii 96793

TAX MAP KEY NO. (2) 3-9-060:093

(This document consists of \_\_\_\_ pages)

EXHIBIT "3"



**PARK MAINTENANCE AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the KAK II LLC, a Hawaii limited liability company, whose address is 220 S. King Street, Suite 960, Honolulu, Hawaii 96813, hereafter referred to as the "DEVELOPER", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, with its principal office and mailing address at 200 South High Street, Wailuku, Maui, Hawaii 96793, hereafter referred to as the "COUNTY".

**WITNESSETH:**

WHEREAS, a centrally located public park and related improvements (collectively the "Park"), as depicted on the map attached hereto as Exhibit "A" and by reference made a part hereof, will be constructed by Developer of the Moana Estates, also known as the Ke Ali'i Kai II Subdivision, situated at Kamaole (Kihei), Wailuku, Maui, Hawaii, Tax Map Key No. (2) 3-9-060:093; and

WHEREAS, the Park (Lot 93 of the Moana Estates) will be constructed in accordance with plans approved by the County's Department of Parks and Recreation, hereafter referred to as the "Parks Department", and is intended to be dedicated to the County upon satisfactory completion of the same as specified by the Parks Department; and

WHEREAS, Developer is willing to maintain the Park upon the terms and conditions herein contained; and

WHEREAS, the parties desire to memorialize their understanding with respect to maintenance of the Park;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Developer and the County hereby agree to the following terms and conditions:

**I. SPECIFIC PROVISIONS**

1. Initial Term.

a. For a ten (10) year period beginning from the date that the Park is dedicated to the County of Maui, the Developer shall take all reasonable steps to inspect and maintain all features of the Park, including, but not limited to those items listed on Exhibit "B" attached hereto and incorporated herein by reference, along with all drainage improvements, in a manner that will not unreasonably interfere with the public's use thereof. The Developer shall take all reasonable steps to conduct its obligations hereunder in a manner consistent with public health and safety. The Parks Department, however, shall be responsible for the repair and replacement of all features of the Park listed on Exhibit "B" caused by accident, fire, natural disaster or vandalism.

b. For the aforementioned ten (10) year period, the Developer shall pay for the costs of all utility services relating to the Park and related improvements, including, but not limited to, water, electricity, and trash disposal.

2. Subsequent Maintenance.

Upon expiration of the aforementioned ten (10) year period, the Parks Department shall assume all maintenance responsibilities of the Park with the exception of all drainage improvements contained in the Park, including, but not limited to those drainage improvements shown on Exhibit "C" attached hereto and incorporated herein by reference, which shall be maintained by the Department of Public Works.

**II. RIGHT OF ENTRY**

The Developer shall have the right to enter upon the Park, or any portion thereof, in order to landscape and provide limited maintenance services thereon for beautification purposes as it deems necessary in the exercise of its rights under this Agreement for the aforementioned ten (10) year period. Notwithstanding any other provisions herein to the contrary, the rights hereunder of the Developer to landscape and provide limited maintenance within the Park, or any portion thereof, shall be only for the purposes of maintaining the aesthetic quality of the Park.

The Developer shall have the perpetual non-exclusive right and easement for access purposes over and across the Park, or any portion thereof, in order to maintain and repair the Park as shown on said Exhibit "A".

**III. RIGHT TO ASSIGN**

Notwithstanding any other prior documents or agreements, including, but not limited to The Moana Estates Homeowners Association's (the "HOA") Declaration of Covenants, Conditions and Restrictions (and such other "governing documents" of the HOA), the HOA's sole obligation with respect to the Park including any component and/or function thereof and this agreement shall be strictly limited to contributing the sum of \$2,750.00 per month to Developer for a 10 year term following the dedication of the Park to the County pursuant to a Settlement and Release Agreement by and between Developer and the HOA. In the event the HOA defaults in its aforesaid payment obligations, and any such default continues and is not cured within a period of 30-days from the date that the payment was due, the Developer shall have the right to unilaterally assign and delegate its rights and obligations hereunder only to the HOA, pursuant to the Declaration of Covenants, Conditions and Restrictions of Moana Estates dated May 12, 2006 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-090605, as amended, by executing an notice of assignment referring specifically to this Agreement, and recording the notice assignment in said Bureau of Conveyances, whereupon the Association shall be substituted for the Developer for all purposes under this Agreement with respect to all rights and obligations so assigned and transferred and the Developer shall be released from all obligations and liabilities arising after the date of assignment. Developer shall provide written notice of the notice assignment to the County.

**IV. INDEMNIFICATION**

The Developer shall defend, indemnify and hold harmless the County from any and all suits or actions of every kind and nature due to any injury, damages or death and any claim resulting therefrom which arise out of the intentional failure or gross negligence of the Developer in carrying out its obligations hereunder.

The County shall defend, indemnify and hold harmless the Developer from any and all suits or actions of every kind and nature due to any injury, damages or death and any claim resulting therefrom which arise out of the intentional failure of the County, or gross negligence of the County, in carrying out its obligations hereunder, or which otherwise arise out of its ownership of the Park.

**V. COUNTY INSPECTIONS: NOTICE TO THE DEVELOPER**

If, in the course of its normal and regular inspections of the Park, the County discovers a condition requiring correction which it believes to be within the scope and responsibility of the Developer, the County shall notify the Developer of said condition as soon as practicable. If the condition is within the scope of maintenance responsibilities hereunder of Developer, the Developer shall take reasonable steps to remedy such condition.

**VI. DEVELOPER'S DUTY TO NOTIFY**

If, in the course of its maintenance responsibilities, the Developer discovers a condition which it believes to be within the scope and responsibility of the County hereunder, the Developer shall notify the County of said condition as soon as practicable. If the condition falls outside of the scope of maintenance responsibilities hereunder of Developer the County shall take reasonable steps to remedy such condition.

In addition to the foregoing, if the Developer discovers that any of the features of the Park listed on Exhibit "B" have been damaged or destroyed by accident, fire, natural disaster or vandalism, the Developer shall notify the County of said condition as soon as practicable.

**VII. INSURANCE**

For the aforementioned ten (10) year period, the Developer shall require that maintenance work under this Agreement be covered by standard coverage comprehensive general liability insurance of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) combined single limit.

**VIII. ENTIRE AGREEMENT; AMENDMENT**

This Agreement constitutes the entire understanding between the parties in respect to the subject matter referred to herein, and any modifications or amendment to the terms herein shall not be effective or valid unless in writing, and signed by the parties hereto.

**IX. GOVERNING LAW**

This Agreement and all rights and liabilities of the parties hereto shall be subject to, and interpreted in accordance with, and governed by, the laws of the State of Hawaii. If either party fails to observe or perform any of its obligations set forth in this Agreement, the non-breaching party shall be entitled to pursue all remedies available to it at law or in equity.

**X. BINDING EFFECT**

This Agreement and the various rights and obligations arising hereunder shall inure to the benefit of and be binding upon each of the parties, and their respective successors and assigns.

**XI. COUNTERPARTS**

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. 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 document.

IN WITNESS WHEREOF, the parties hereto have executed this Park Maintenance Agreement as of the day and year first above mentioned.

DEVELOPER:

KAK II LLC

By TOWNE DEVELOPMENT OF HAWAII  
INC., Its Member

By \_\_\_\_\_  
CHRISTOPHER L. LAU  
Its Executive Vice President

COUNTY:

COUNTY OF MAUI

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

APPROVAL RECOMMENDED:

\_\_\_\_\_  
GLENN T. CORREA  
Director of Parks and Recreation

\_\_\_\_\_  
DAVID C. GOODE  
Director of Public Works

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared CHRISTOPHER L. LAU, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Executive Vice President of TOWNE DEVELOPMENT OF HAWAII, INC., a Hawaii corporation, the Member of KAK II LLC, a Hawaii limited liability company, and 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.

\_\_\_\_\_  
Notary Public, State of Hawaii.

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

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: PARK MAINTENANCE AGREEMENT

Document Date: \_\_\_\_\_

No. of Pages: \_\_\_\_\_ (Notary Stamp or Seal)

Jurisdiction (in which notarial act is performed): \_\_\_\_\_ Circuit

Printed Name of Notary \_\_\_\_\_

Signature of Notary \_\_\_\_\_

Certification Date \_\_\_\_\_

STATE OF HAWAII )

COUNTY OF MAUI )

SS.

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.

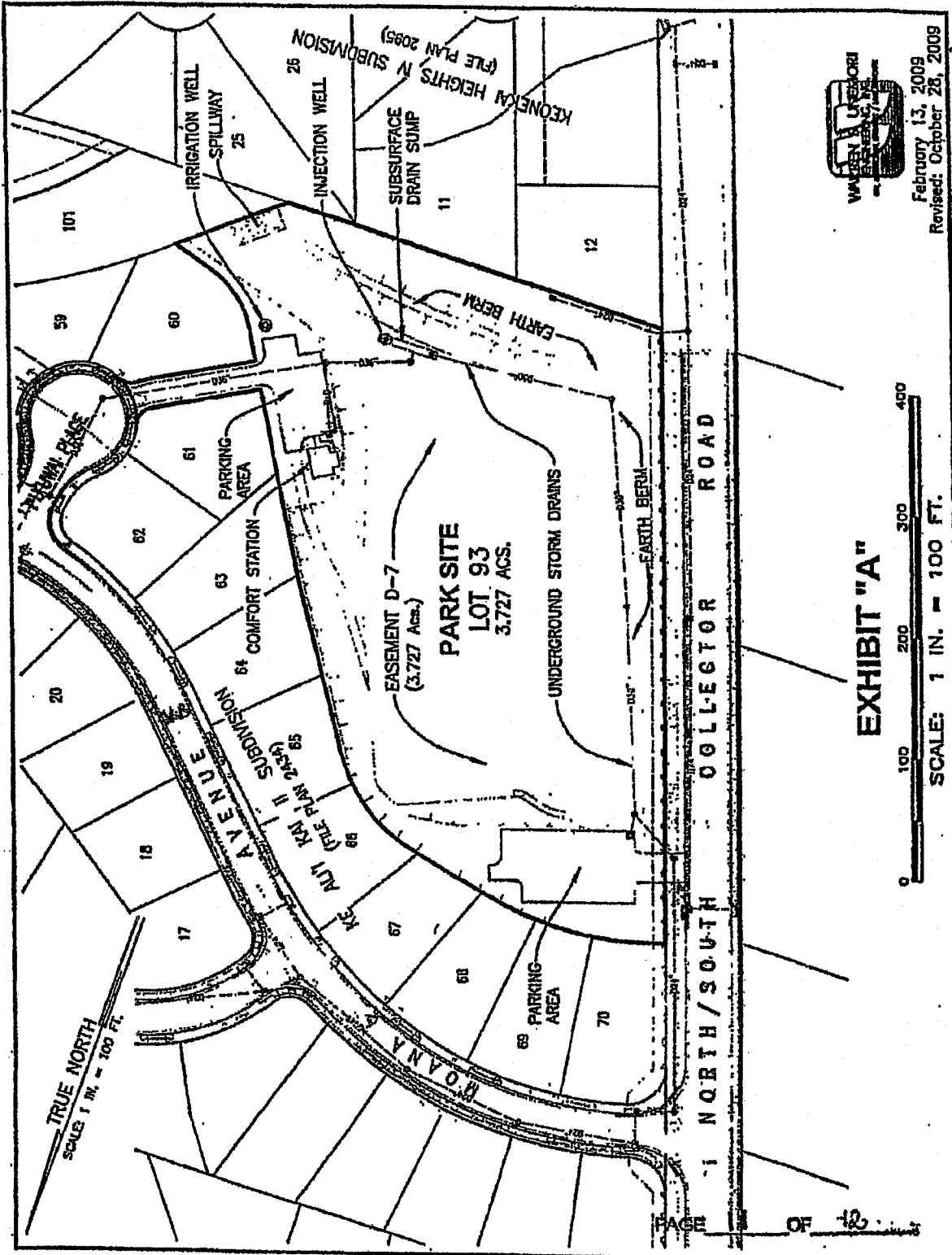
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, State of Hawaii

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

<b>NOTARY CERTIFICATION STATEMENT</b>	
Document Identification or Description:	<u>PARK MAINTENANCE AGREEMENT</u>
Document Date:	_____
No. of Pages:	_____ (Notary Stamp or Seal)
Jurisdiction (in which notarial act is performed):	<u>Second</u> Circuit
Printed Name of Notary	
_____	
Signature of Notary	Certification Date
_____	_____





February 13, 2009  
 Revised: October 28, 2009

**EXHIBIT "A"**

SCALE: 1 IN. = 100 FT.

V:\Project\02proj\02051\dwg\2004\exhibits\EXHIBIT-A.dwg

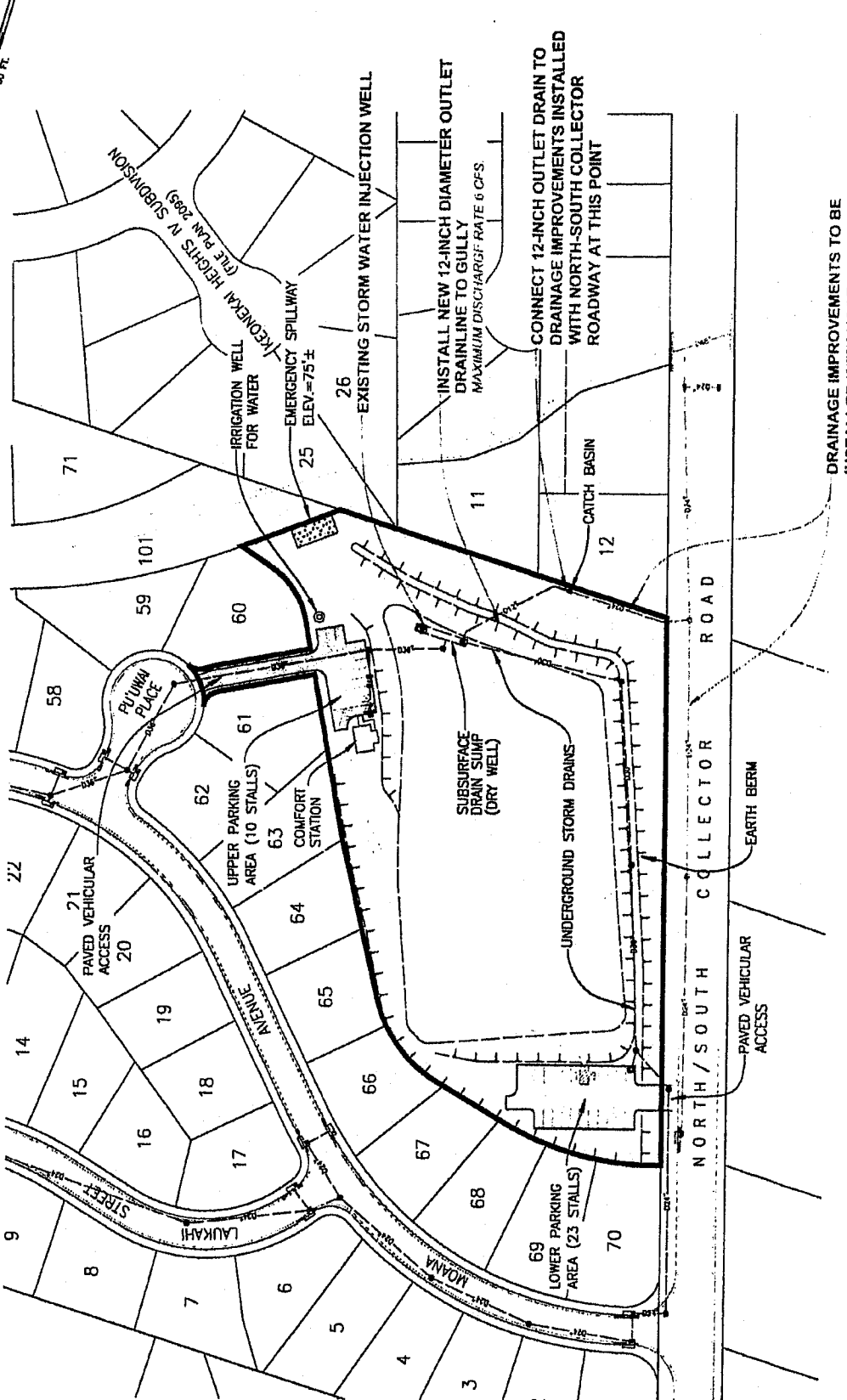
## MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES

	Regular Maintenance & Inspection	Repair & Replacement
	Periodic cleaning, restocking supplies, mowing, cutting, paint touch-up, etc.	Repair or replacement of fixtures, equipment or structures caused by accident, fire, natural disaster or vandalism
Grass	Developer	N/A
Shrubs	Developer	N/A
Trees	Developer	DPR
Sprinkler heads and lines	Developer	DPR
Sprinkler timer	Developer	DPR
Well shaft	Developer	DPR
Well pump	Developer	DPR
Well electric system	Developer	DPR
Well reporting	Developer	N/A
Comfort station cleaning	Developer	N/A
Comfort station supplies	Developer	N/A
Comfort station plumbing & fixtures	Developer	DPR
Comfort station doors & partitions	Developer	DPR
Comfort station paint	Developer	DPR
Comfort station structure	Developer	DPR
Comfort station roof	Developer	DPR
Comfort station sewer pit & pump	Developer	DPR
Comfort station electrical system	Developer	DPR
Chainlink fence	Developer	DPR
Gates	Developer	DPR
Parking lots	Developer	DPR

"Developer" – KAK II LLC  
 "DPR" – Department of Parks and Recreation

Exhibit "B"

TRUE NORTH  
SCALE: 1 IN. = 60 FT.



**MOANA ESTATES**  
IMPROVEMENTS REQUIRED FOR COUNTY ACCEPTANCE  
OF PARK DRAINAGE SYSTEM

SCALE 1 IN. = 60 FT.

EXHIBIT "C"



February 14, 2013