

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
COMMITTEE

July 7, 2015

Committee
Report No. _____

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

Chair and Members:

Your Infrastructure and Environmental Management Committee, having met on June 15, 2015, makes reference to County Communication 14-277, from the Director of Environmental Management, transmitting a proposed resolution entitled "ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE DOLE ADMINISTRATION BUILDING PROJECT, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE".

The purpose of the proposed resolution is to accept, from Lanai Resorts, LLC, a sewerline easement containing an existing 8-inch sewerline and sewer manhole, located adjacent to the Lana'i Culture & Heritage Center, 730 Lanai Avenue, Lanai City, Lanai, Hawaii.

Your Committee notes 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.

The Deputy Director of Environmental Management stated the existing 8-inch sewerline and sewer maintenance hole are located on private property and are part of the County sewer system. Acceptance of the easement will provide the appropriate authorization for the County to access private property for the purpose of maintaining the County sewer system.

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

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

Page 2

**Committee
Report No. _____**

Your Committee is in receipt of a revised proposed resolution entitled "ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE DOLE ADMINISTRATION BUILDING PROJECT", approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Infrastructure and Environmental Management Committee RECOMMENDS the following:

1. That Resolution _____, as revised herein and attached hereto, entitled "ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE DOLE ADMINISTRATION BUILDING PROJECT", be ADOPTED; and
2. That County Communication 14-277 be FILED.

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



ELLE COCHRAN, Chair

Resolution

No. _____

ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE DOLE ADMINISTRATION BUILDING PROJECT

WHEREAS, LANAI RESORTS, LLC, a Hawaii limited liability company, desires to dedicate that certain perpetual, non-exclusive Sewerline Easement affecting TMK: (2) 4-9-011:001, 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 adoption of a resolution; 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 Lanai Resorts, LLC, to the County of Maui in accordance with the terms and conditions set forth in said easement; and

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

Resolution No. _____

3. That certified copies of this Resolution be transmitted to the Mayor of the County of Maui, the Director of Environmental Management, and Lanai Resorts, LLC.

APPROVED AS TO FORM
AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui
2014-3081

LAND COURT

REGULAR SYSTEM

(AREA ABOVE RESERVED FOR RECORDING INFORMATION)

After Recordation, Return by Mail or Pick-up Phone#: _____

FILL IN NAME AND ADDRESS BELOW:

| |
|-------------------------------|
| Harrilynn Kameenui |
| 733 Bishop Street, Suite 2000 |
| Honolulu, Hawaii 96813 |

DOCUMENT CONTAINS ____ PAGES

EXHIBIT " 1 "

SEWERLINE EASEMENT
(Easement 184, Map 159, LC Appl 862)

THIS GRANT is made this _____ day of _____, 2014, by and between and **LANAI RESORTS, LLC**, a Hawaii limited liability company, whose business address is 733 Bishop Street, Suite 2000, Honolulu, Hawaii 96813 (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 (the "Grantee");

WITNESSETH:

WHEREAS, Grantee has requested a perpetual and nonexclusive easement over, under, across and through EASEMENT 184 (10 ft. wide), as shown on Map 159, affecting a portion of that certain real property at Lanai City, Island of Lanai, State of Hawaii, described as Lot 757 of Map 67 of Land Court Application 862, and covered by Certificate of Title No. 468,683, and designated as Tax Map Key No. (2) 4-9-011:001, and as shown on Vicinity Map attached hereto as Exhibit "A". Said EASEMENT 184 is shown on the map attached hereto as Exhibit "B" and made a part hereof (the "Easement Area"), and is 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.

WHEREAS, the Grantor is willing to grant to Grantee the sewer system easement for the above-stated purposes, and not for any other purposes, in accordance with the terms and conditions contained herein.

NOW, THEREFORE, inconsideration of the sum of ONE DOLLAR (\$1.00) paid to the Grantor by the Grantee, and other valuable consideration, the receipt of 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 the Easement Area, for 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. Waste and Unlawful, Improper or Offensive Use of the Premises. The Grantee shall not commit, suffer or permit to be committed any waste, nuisance, strip, unlawful, improper or offensive use of the Easement Area.
2. Due Care. The Grantee will use due care and diligence in the installation, operation, maintenance and repair of the Sewer System Improvements, and shall keep the Sewer System Improvements in good and safe condition and repair, and unless otherwise agreed to by the Grantor, the Grantee shall not damage, impair or otherwise disturb the improvements, property, equipment and facilities of the Grantor or other parties within the Easement Area. The Grantee will exercise its rights hereunder in such manner as to occasion as little interference as possible in connection with the use of the Easement Area and other adjacent lands by the owners and occupants thereof.
3. 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.
4. 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 or 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.

5. 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 provided in Sections 2 and 3 above.
6. Indemnity.
 - a. The Grantee shall indemnify, defend 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 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, defend 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 grossly negligent act of the Grantor's use, maintenance or operations in the Easement Area, 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.
7. 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 gross 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.
8. 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.

9. Relocation. Upon the Grantor's request, the Grantee shall relocate the Sewer System Improvements and appurtenances to such substitute easement area or areas as may be granted by the Grantor to the Grantee, or to such public roadways as may be created in the vicinity of the easement hereinabove set forth, and the Grantor shall pay all costs of the relocation.
10. 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. The Grantee acknowledges ownership of the existing sewer improvements and equipment already in place within the Easement Area and assumes liability and responsibility for such improvements and equipment from the date of installation, and not as of the date of this grant of easement.
11. 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 assign, and the Grantee and its successors and permitted assigns.
12. 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:

LANAI RESORTS, LLC,

A Hawaii limited liability company

By: Lanai Island Holdings, LLC,
a Hawaii limited liability company
Its: Member

By: LIH Corporation,
a Hawaii corporation
Its: Manager

By 
Print Name: Kurt Matsumoto
Its: Vice President

GRANTEE:

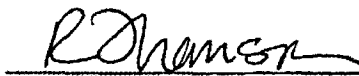
County of Maui

By _____
Print Name: Alan M. Arakawa
Its Mayor

APPROVAL RECOMMENDED:



APPROVAL AS TO FORM AND LEGALITY:



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

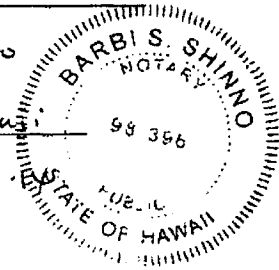
On this 23rd day of June, 2014 before me personally appeared KURT MATSUMOTO, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

JS

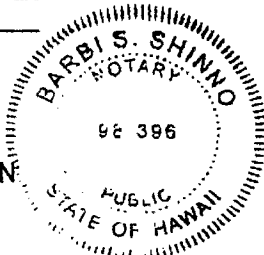
Print Name: Barbis S. Shinno

Notary Public, State of Hawaii

My commission expires: 8-11



| | |
|---|-------------------|
| Doc. Date: <u>6-23-14</u> | # Pages: <u>3</u> |
| Notary Name: <u>Barbis S. Shinno</u> | |
| <u>First</u> | <u>Circuit</u> |
| Doc. Description: <u>Severance Agreement</u> | |
| <u>Executed May 13th, May 15th, LC App 1306</u> (Stamp or Seal) | |
| <u>Let a copy of same</u> | |
| <u><i>JS</i></u> | <u>6-23-14</u> |
| Notary Signature | Date |
| NOTARY CERTIFICATION | |



STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 2014, 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.

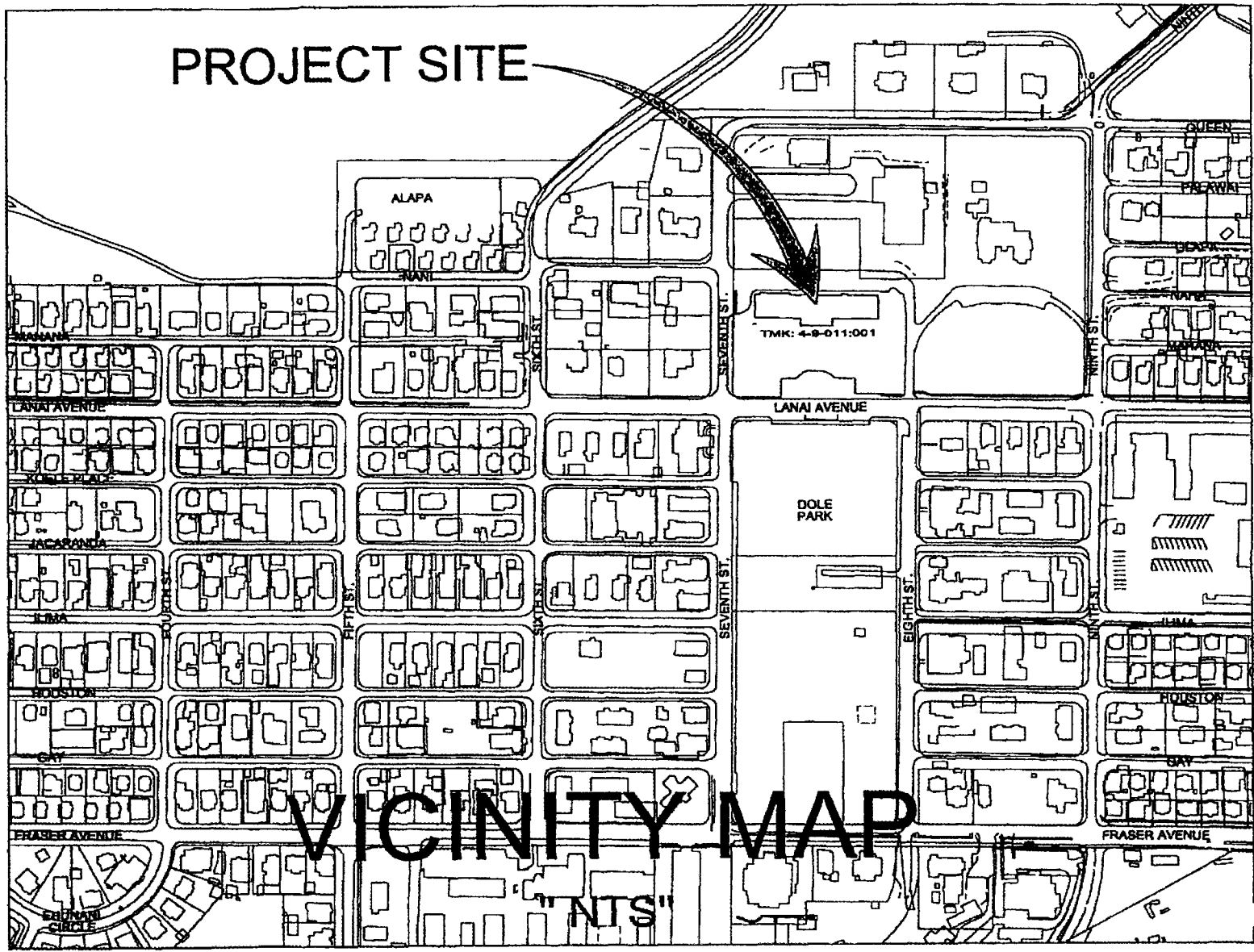
[Stamp or Seal]

Print Name:

Notary Public, State of _____

My commission expires:

| | |
|------------------------|----------------|
| Doc. Date: _____ | # Pages: _____ |
| Notary Name: _____ | |
| _____ Circuit | |
| Doc. Description: | |
| _____ | |
| _____ (Stamp or Seal) | |
| _____ | |
| Notary Signature _____ | Date _____ |
| NOTARY CERTIFICATION | |



PROJECT SITE

ALAPA

TMK: 4-9-011:001

LANAI AVENUE

DOLE PARK

VICINITY MAP

"NTS"

EXHIBIT "A"

LAND COURT

STATE OF HAWAII

LAND COURT APPLICATION 862

DESIGNATION OF EASEMENT 184

AFFECTING LOT 757 AS SHOWN ON MAP 67

AT LANAI CITY, ISLAND OF LANAI, HAWAII

BY SHARON KEMER, CLERK OF THE
LAND COURT, ON MARCH 11, 2014



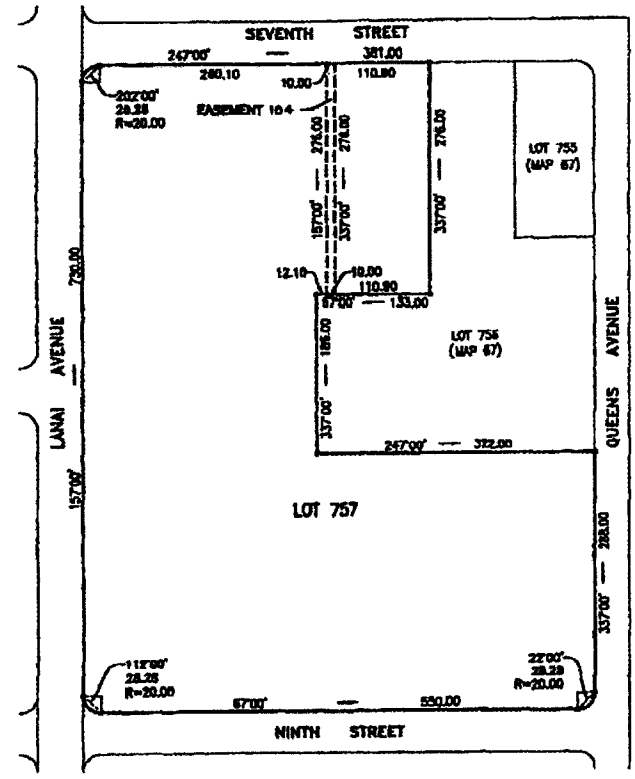
ATTEST, TESTIFY, & ASSOCIATES, INC.
Lisa S. Kemer
LISA S. KEMER
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 8828
LAND COURT CERTIFICATE NUMBER 882

OWNER: LANAI RESORTS, LLC
TRANSFER CERTIFICATE OF TITLE: 406,083

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED MARCH 11, 2014

BY ORDER OF THE COURT:
Sharon Kemer
REGISTRAR OF THE LAND COURT

EXHIBIT "B"



NOTE:
AREA OF EASEMENT 184 FOR SEWER PURPOSES = 2,780 SQ. FT.

Filed February 26, 2014 Sharon Kemer, Registrar for Roy Zuregithana/Owner

ATA AUSTIN, TRUTMAN & ASSOCIATES, INC.
COMMERCIAL SURVEYING • ENGINEERING • GENERAL CONTRACTING

Page 10 of 10