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August 31, 2020 8:01 AM

Doc No(s) T - 11200154
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B - 33563929

/s/ LESLIE T. KOBATA
ASSISTANT REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

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After Recordation, Return By Mail To:
McKeon Imlay Mehling (DHN)
2145 Kaohu Street, Suite 203
Wailuku, Hawaii 96793

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TGA-520290C

TMK NOS: (2) 2-1-7-96 CPR Nos.: 0001,
0002, 0003, 0004, 0005, 0006, 0007, 0008,
0009 and 0010

Total No. of Pages: 43

Affecting Transfer Certificates of Title Nos.: Unit 1: 1,072,608; Unit 2: 1,053,953; Unit 3:
1,053,473; Unit 4: 1,133,481; Unit 5: 1,053,475; Unit 6: 1,152,166; Unit 7: 1,135,799; Unit 8:
1,053,478; Unit 9: 1,060,777; and Unit 10: 1,072,872

SEWERLINE EASEMENT AGREEMENT

This SEWERLINE EASEMENT AGREEMENT (the "Agreement") made this

10th day of August, 2020 (the "Effective Date"), by and

between the ASSOCIATION OF APARTMENT OWNERS OF MAKENA PLACE, a Hawaii
non-profit corporation, whose mailing address is 4590 Makena Road, Kihei, Hawaii 96753,
hereinafter called "GRANTOR", and the ASSOCIATION OF APARTMENT OWNERS OF
MAKENA SURF, an unincorporated association, whose mailing address is 4850 Makena
Alanui, Kihei, Hawaii 96753, hereinafter called "GRANTEE".

Background Statement

1. The Makena Place condominium property regime (the “Makena Place Project”) is described in, and was established by the filing with the Office of Assistant Registrar of the Land Court of the State of Hawaii (the “Registrar”) of, among others, the following documents: (a) a master deed for that certain parcel of real property described on Exhibit “A” attached hereto and made a part hereof (the “Makena Place Property”); (b) the Declaration Of Condominium Property Regime Of Makena Place, dated June 13, 1996, filed with the Registrar as Document No. 2392911, as amended (collectively the “Makena Place Declaration”); (c) Condominium Map No. 1202, filed with the Registrar, as amended (collectively the “Makena Place Condominium Map”); and (d) the Bylaws Of The Makena Place Association Of Apartment Grantors, dated June 13, 1997, filed with the Registrar as Document No. 2392912, as amended (the “Makena Place Bylaws”).

2. Pursuant to the Makena Place Declaration and the Makena Place Condominium Map, the Makena Place Project consists of, among other things, ten (10) “units” (as the singular of this quoted term is used in §514B-3, Haw. Rev. Stat.) (individually the “Makena Place Apartment” and collectively the “Makena Place Apartments”).

3. The current owners of the Makena Place Apartments and the Transfer Certificates of Title issued by the Registrar to each such owner of their respective Makena Place Apartments are shown on Exhibit “B” attached hereto and made a part hereof (collectively the “Makena Place Apartment Owners”).

4. Pursuant to the Makena Place Declaration and the Makena Place Bylaws, Grantor is the “Association” (as this quoted term is used in §514B-3, Haw. Rev. Stat.) for the Makena Place Project.

5. By Land Court Order No. 68241, filed with the Registrar on December 20, 1983, the Judge of the Land Court of the State of Hawaii approved the designation of Easement “26” (the “Easement Area”) as shown on Map 6, filed with the Registrar with Land Court Application No. 1846 of Ulupalakua Ranch, Inc. The Easement Area is a specified portion of the Makena Place Property.

6. The Makena Surf condominium property regime (the “Makena Surf Project”) is described in, and was established by the filing with the Registrar of, among others, the following documents: (a) master deeds for those certain parcels of real property described on Exhibit “C” attached hereto and made a part hereof (collectively the “Makena Surf Property”); (b) the Declaration of Horizontal Property Regime For The “Makena Surf” Condominium Project, dated June 28, 1983, filed with the Registrar as Land Court Document No. 1187665, and recorded with the Bureau of Conveyances of the State of Hawaii (the “Bureau”) in Liber 17273, Page 327, as amended (collectively the “Makena Surf Declaration”); (c) Condominium Map No. 876 and Condominium Map No. 497, filed with the Registrar and recorded with the Bureau (collectively the “Makena Surf Condominium Map”); and (d) the By-Laws of the Association, dated June 25, 1983, filed with the Registrar as land Court Document No. 1187666 and recorded in the Bureau in Liber 17273, Page 377, as amended (collectively the “Makena Surf Bylaws”).

7. Pursuant to the Makena Surf Declaration and the Makena Surf Condominium Map, the Makena Surf Project consists of, among other things, one hundred seven (107) “units” (as the singular of this quoted term is used in §514B-3, Haw. Rev. Stat. (individually the “Makena Surf Apartment” and collectively the “Makena Surf Apartments”).

8. Pursuant to the Makena Surf Declaration and the Makena Surf Bylaws, Grantee is the “Association” (as this quoted term is used in §514B-3, Haw. Rev. Stat.) for the Makena Surf Project.

9. The Makena Place Property (and the Makena Place Project) abuts the Makena Surf Property (and the Makena Surf Project).

10. There is a sewerline (the “Sewerline”) which is located in the Easement Area and which carries wastewater from the Makena Surf Apartments and other improvements at the Makena Surf Project, across the Easement Area, to a sewer pump station on a parcel of real property owned by the County of Maui (the “Pump Station”).

11. Grantee has asked Grantor to grant a sewerline easement under and across the Easement Area.

NOW THEREFORE, effective on the date this Agreement is filed with the Registrar (the “Filing Date”) and pursuant to §514B-104(a)(9), Haw. Rev. Stat., Grantor does hereby grant and convey unto the Grantee, its successors and permitted assigns a perpetual, non-exclusive easement (the “Easement”), in gross, for the Sewerline under and across the Easement Area, which shall only be used for the transmission through the Sewerline of wastewater generated from the Makena Surf Property to the Pump Station, including the right

to enter the Easement Area solely to maintain, repair, operate, reconstruct and remove the Sewerline under and across the Easement Area.

RESERVING, HOWEVER, to Grantors, its successors and assigns, the right to narrow and change the dimensions and the permitted uses of the Easement Area and to remove and relocate the Sewerline to other portions of the Makena Place Property, all as provided in paragraph 9 herein.

TO HAVE AND TO HOLD the same unto the Grantee, its successors and permitted assigns, forever, subject, however, to the covenants, conditions, restrictions, liens and encumbrances imposed by the Makena Place Declaration, and subject also to the following covenants:

1. Definitions.

In addition to other defined words and terms in this Agreement, the following words and terms, which are designated by the capitalization of the first (1st) letter thereof, shall have the following meanings in this Agreement and all amendments thereto:

(a) “Accountant” means an individual who holds in good standing a license and designation of “certified public accountant” granted by the state board of public accounting established under §466-4, Haw. Rev. Stat.

(b) “Anniversary Date” collectively means (i) December 31 of the fifth (5th) consecutive calendar year immediately following the year of the Effective Date; and (ii) December 31 of each immediately following fifth (5th) consecutive calendar year.

(c) “Financial Statement” means an audited balance sheet of Grantee, and the related notes thereto, prepared by an Accountant in accordance with accounting principles generally accepted in the United States of America.

(d) “Grantee’s Affiliates” mean the owners of the Makena Surf Apartments, their successors in title, and their and Grantee’s respective officers, directors, shareholders, partners, members, managers, trustees, personal representatives, executors, guardians, conservators, mortgagees, lenders, agents, employees, invitees, licensees, and any other person or entity claiming by, through or under any of the foregoing.

(e) “Grantor’s Affiliates” mean the Makena Place Apartment Owners, their successors in title, and their and Grantor’s respective officers, directors, partners, members, managers, shareholders, trustees, personal representatives, executors, guardians, conservators, employees, agents, licensees, invitees, mortgagees, lenders and any other individual or entity claiming by, though or under any of the foregoing.

(f) “Replacement Reserves” means funds for the upkeep, repair and maintenance of the Makena Surf Property, the Sewerline and the Grantee Improvements in the Easement Area that the Grantee is obligated to upkeep, repair and maintain under either the Makena Surf Declaration, this Agreement or Chapter 514B, Haw. Rev. Stat.

(g) “Reserve Study” means the reserve study prepared by Grantee pursuant to §514B-148, Haw. Rev. Stat., showing, among other things, the estimated amount of the Replacement Reserves.

2. Covenants Run With The Land.

All of the covenants, conditions and restrictions set forth in this Agreement to be respectively performed or observed by Grantor and Grantee shall run with the Makena Place Property and the Makena Surf Property and the same shall be binding upon every individual or entity who acquires any right or interest under the Easement or this Agreement without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant, or the like, and that the acquisition of any such right or interest under the Easement or this Agreement shall be deemed to constitute the acceptance of all of such covenants, conditions and restrictions by such individual or entity, and that upon the transfer of any such right or interest under the Easement or this Agreement the same shall be subject to, and the transferee shall assume and be bound and obligated to observe or perform, all of such covenants, conditions and restrictions.

3. Maintenance Of Easement Area And Sewerline.

Grantor makes no representation or warranty to Grantee as to the condition of either the Sewerline or the Easement Area. From and after the Filing Date, Grantee, at its sole cost and expense, shall maintain, repair, construct, re-construct and keep in good and safe condition the Sewerline and any equipment or improvements installed in the Easement Area by Grantee under this Agreement (collectively the "Grantee Improvements").

Notwithstanding any provision of any federal, state, or municipal statute, ordinance, rule or regulation or common law to the contrary, Grantor shall not be required, obligated or owe a duty to Grantee, the owners of, and lienholders in and to, the Makena Surf Apartments, and their respective heirs, successors and assigns, to maintain, repair, construct, re-construct or

keep in good and safe condition, or to contribute any monies for the maintenance, repair, construction, re-construction or for keeping in good and safe condition, the Easement Area, the Sewerline and the Grantee Improvements and any improvements therein at any time from and after the Filing Date.

4. Indemnification And Assumption Of Risks.

(a) Grantee, as a material part of the consideration for Grantor's entering into this Agreement, shall and does hereby assume all risk of bodily injury to persons, wrongful death and property damage, business interruption or economic loss made or suffered as a result of or in proximate relation to the Sewerline. Grantee agrees to defend, indemnify and save harmless Grantor and Grantor's Affiliates from and against any and all liability, loss, costs, charges, fines, penalties, obligations or expenses of whatsoever nature in connection with any and all claims, demands and causes of action by or on behalf of any individual or entity arising from the conduct or management of any work or thing whatsoever done by Grantee or any of Grantee's Affiliates related in any way to the Easement Area or to the Sewerline, and will further defend, indemnify and save Grantor and Grantor's Affiliates harmless from any and all claims, demands and causes of action arising from any breach or default on the part of Grantee in the performance of any covenant or agreement on the part of Grantee or any of Grantee's Affiliates to be performed pursuant to the terms of this Agreement, or arising from any act or negligence of Grantee or any of Grantee's Affiliates, and shall reimburse Grantor and Grantor's Affiliates for all costs, attorneys' fees, expenses and liabilities incurred in connection with any such claim or any action or proceeding brought thereon or resulting therefrom. Grantee further agrees that in the case of any claims, demand,

proceeding, action or cause of action, threatened or actual, against any Grantor and Grantor's Affiliates, Grantee, upon Grantor's written request, shall defend Grantor and Grantor's Affiliates, however, counsel may be selected in the reasonable discretion of Grantee. Grantor has an obligation under this Agreement to make a formal tender of defense within a reasonable time period of receiving notice of the circumstances giving rise to the exercise of the indemnification and defense provisions contained herein. Nothing in this Agreement shall be deemed to require Grantee to indemnify or defend Grantor or Grantor's Affiliates from or against claims or causes of action of any kind, arising from the Sewerline or otherwise, that are alleged to have been directly caused by Grantor or Grantor's Affiliates actions.

(b) Grantee, as a material part of the consideration for Grantor's entering into this Agreement, will and hereby does assume all risk of loss or damage to the Sewerline, the Grantee Improvements, stored or placed in, upon or about the Easement Area or the Makena Surf Project, and does hereby agree that Grantor and Grantor's Affiliates shall not be responsible for loss or damage to the Grantee Improvements, and Grantee waives all claims in respect thereof and acknowledges that this assumption of risk by Grantee has been bargained for in determining the obligations of Grantee under this Agreement. Grantor and Grantor's Affiliates shall not be liable for loss or damage to any property entrusted by Grantee nor for any loss or damage to any property at any time stored or kept in the Easement Area by Grantee or any of Grantee's Affiliates, either from rain, ocean tidal surges, or from any other water which may leak, issue or flow from, to or on any part of the Makena Place Property, or from the pipes or plumbing or from any other place or quarter in the Makena Place Property,

or for any loss or damage to property in the Makena Surf Project caused by theft, or for damage of any character, including bodily injury, wrongful death, property damage, business interruption or economic loss arising out of defects of construction or maintenance of the Makena Place Property, or any machinery, equipment, electrical wiring, plumbing, air conditioning or other facility therein, or from any failure or breakdown thereof, or from lack of repair thereof or improper operation or shortage of the same, or from any other cause. Nothing in this section shall be deemed to constitute an assumption of risk by Grantee for alleged actions directly taken by Grantor or Grantor's Affiliates that cause harm to the Sewerline or Grantee's Improvements in any way.

(c) Grantor and Grantor's Affiliates shall not be liable to Grantee, Grantee's Affiliates, or to any person claiming by, through or under Grantee or Grantee's Affiliates under any lease, assignment, contract, license, subrogation, operation of law or otherwise or who shall be upon the Easement Area with the express, implied or constructive consent of Grantee, for any loss of, damage to or the destruction of the Sewerline or the Easement Area, or any part thereof, or any goods, wares, merchandise, furniture, fixtures, equipment or personal property thereon or for the interruption of any business, or for injury to the person (including wrongful death) or property of Grantee or to any such person claiming by, through or under Grantee, resulting from any cause whatsoever, including without limitation any ocean tidal surges, broken or blocked pipe or drain, defective or damaged wiring, malfunction, insufficiency of supply, interruption of electric power, malfunction or insufficiency or interruption of any air conditioning, electrical, plumbing system, storm

system, or any other utility or services. Nothing in this section shall be deemed to constitute an assumption of liability by Grantee for alleged actions directly taken by Grantor or Grantor's Affiliates that cause harm to the Easement Area, Sewerline, or Grantee's improvements in any way.

(d) Notwithstanding the provisions in paragraphs 4(a), 4(b) and 4(c) herein, Grantee shall not be liable for any loss, damage, liability, governmental fines and penalties and the like arising from any discharge from, or other problem with, the Sewerline or the Easement Area directly caused by Grantor or Grantor's Affiliates.

5. Insurance.

(a) Grantee shall not make or permit any use of the Easement Area which will increase the costs of, or adversely affect Grantor's obtaining, any insurance for the Makena Place Property or which will cause the cancellation of any such insurance policy. If any use made or permitted by Grantee at the Easement Area causes any increase in the costs of obtaining any such insurance, Grantee shall reimburse Grantor for such increased costs, but such reimbursement shall not be a waiver of default or consent to such use or activity not expressly authorized herein.

(b) Grantee shall procure at Grantee's expense and keep in force during the term of this Agreement, a commercial general liability insurance policy and an umbrella liability insurance policy covering Grantor and Grantor's Affiliates, insuring against any

claims for bodily injury, death or property damage and all other liability arising out of the Sewerline, its use, entry upon the Easement Area and all areas appurtenant thereto by Grantee or Grantee's Affiliates, and all of Grantee's operations conducted thereon. The base limits of the commercial general liability policy shall be ONE MILLION DOLLARS (\$1,000,000.00) and the base limits of the umbrella policy shall be FIVE MILLION DOLLARS (\$5,000,000.00 (collectively the "Base Policy Limits").

(c) At any time after any Anniversary Date, Grantor may in writing request from Grantee (i) the Reserve Study in effect on such Anniversary Date, and Grantee, within sixty (60) consecutive calendar days after receipt of such written request, shall deliver such Reserve Study to Grantor; and (ii) the Financial Statement as of such Anniversary Date, and Grantee, within one hundred fifty (150) consecutive calendar days after receipt of such written request, shall deliver such Financial Statement to Grantor. In the event the fully funded amount of the Replacement Reserves shown on a Financial Statement as of any Anniversary Date is less than fifty percent (50%) of the total amount of the Replacement Reserves required by the Reserve Study as of such Anniversary Date, then at any time after such Anniversary Date, Grantor may request in writing from Grantee an increase in the Base Policy Limits by an amount (the "Reserve Shortfall") equal to the difference between fifty percent (50%) of the amount of such Replacement Reserves and the amount of such fully funded Replacement Reserves shown on such Financial Statement, and Grantee, within sixty (60) consecutive calendar days after receipt of such written request, shall increase the Base Policy Limits by the amount of such difference. In the event there is no Reserve Shortfall,

then the Base Policy Limits shall not be increased.

(d) The policies of insurance provided for in paragraphs 5(b) and 5(c) herein shall be issued by insurance companies with a financial strength rating of not less than "A" and a financial size category rating of not less than "XIII" as rated in the most current available "Best's Insurance Reports," and qualified to do business in the State of Hawaii, and shall be issued in the name of Grantee, with Grantor, as well as all owners of, and all persons and entities holding mortgage liens and/or security interests in, the Makena Place Apartments to be identified as additional insured (collectively the "Insureds"). Executed copies of such policies of insurance or certificates thereof shall be delivered to the Grantor on or before the Filing Date, and thereafter within sixty (60) days prior to the expiration of the term of such policy. As often as any such policies shall expire or terminate, renewal or additional policies shall be procured and maintained by Grantee as its sole cost and expense in like manner and to like extent. All policies of insurance delivered to Grantor shall contain a provision that the company writing said policy shall provide Grantor sixty (60) day's notice in writing in advance of any cancellation or lapse or the Filing Date of any reduction in the amounts of insurance. All public liability policies shall be written as primary policies, not contributing with and not in excess of coverage which the Grantor or Grantor's Affiliates may carry or be available to them.

Notwithstanding anything to the contrary contained herein, Grantee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called "blanket" policy or policies of insurance carried and maintained by Grantee;

provided, however, that the Insureds, and the others hereinabove referred to shall be named as additional insureds thereunder as their interest may appear and that the coverages afforded Insureds will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements set forth herein are otherwise satisfied. All policies of insurance obtained by Grantee shall contain a waiver of any insurer's right to maintain any claim against the Grantor and Grantor's Affiliates by subrogation, and no such insurer shall have the right to maintain any claim or action against the Grantor and Grantor's Affiliates by subrogation or otherwise.

6. Discharge Of Mechanic's/ Materialmen's Lien.

Grantee shall defend and indemnify Grantor, the Makena Place Apartment Owners, and their respective heirs, successors and assigns, against any mechanic's or materialmen's lien imposed against the Makena Place Property or any part thereof, arising out of the exercise by Grantee of Grantee's rights and obligations under this Agreement. Grantee does hereby further covenant to Grantor, the Makena Place Apartment Owners and their respective successors and assigns, that if any such claim for a mechanic's or materialmen's lien should be filed as to the Makena Place Property, or any part thereof, Grantee shall cause the same to be discharged within thirty (30) days after the filing of the Notice of Lien therefor with the Second Circuit Court of the State of Hawaii, by filing with the Clerk of said Second Circuit Court cash or a bond, as provided by §507-45, Haw. Rev. Stat., or by such other means as Grantee may employ, to obtain such discharge within the period of time specified above.

7. Condemnation.

If any authority exercising the power of eminent domain should take all or any part of the Easement Area, the Sewerline, or any of the rights, easements, privileges or appurtenances thereto belonging, Grantee shall be entitled to any condemnation award or condemnation damages for the loss of the Sewerline or Grantee's easement rights under this Agreement, and Grantor shall be entitled to the remainder of the condemnation award.

Grantor and Grantee shall have the right, in the event of such condemnation, to independently contest any material issues arising in the course of such action, and each shall be liable for their own costs, fees and expenses incurred as a result thereof. If the State of Hawaii or the County of Maui, or any agency or political subdivision of the State of Hawaii or the County of Maui, or any public utility exercising eminent domain powers, should commence an eminent domain action to acquire the Easement Area, the Sewerline, or any part thereof, the property taken shall be valued in fee simple, without the encumbrance created by the Easement, and Grantor and Grantee shall be entitled to their respective awards and damages so computed.

8. Hazardous Materials.

As used herein, the term "Hazardous Material" means any hazardous, infectious or toxic substances, material or waste so designated or described by any environmental law of the United States or the State of Hawaii, or so designated or described by any government agency authorized to enforce any such environmental law. Grantee shall not cause or permit any Hazardous Material to be brought upon, kept or used at or about the Makena Place Property on and after the Filing Date. If the presence of Hazardous Material at

the Makena Place Property permitted by any Grantee on or after the Filing Date results in the contamination of the Makena Place Property, or if contamination of the Makena Place Property by Hazardous Materials otherwise occurs from and after the Filing Date for which Grantee is liable to Grantor for damages resulting therefrom, then Grantee shall indemnify and defend Grantor from any and all resulting claims, judgments, damages, penalties, fines, costs and liabilities or losses (including without limitation, diminution in value of the Makena Place Property or the Makena Place Apartments, damage for the loss or restriction on use of any of the Makena Place Property or the Makena Place Apartments, attorney's fees, and expert fees). Such obligation of the Grantee to so indemnify Grantor includes, without limitation, any liability incurred in connection with any investigation of site conditions or any clean-up, and any remedial, removal or restoration work required, because of any Hazardous Material being present in the soil or ground water on or under the Makena Place Property. Without limiting the foregoing, if the presence of any Hazardous Material at the Makena Place Property caused or permitted by Grantee on and after the Filing Date of the Makena Place Property, Grantee shall promptly take all actions at its sole expense necessary to return Makena Place Property to the condition existing prior to the introduction of any such Hazardous Material. The criteria established by a statute, government rule or regulation, or the decision of an administrative agency which is authorized to enforce any such environmental law shall determine whether any "contamination of the Makena Place Property" has occurred. Grantee shall immediately notify Grantor in writing of (a) any enforcement, clean-up, removal, remediation, or mitigation action threatened or undertaken by any government action against any Grantee based upon Hazardous Materials at the

Makena Place Property; (b) any claim made by any person against any Grantee based upon the presence of Hazardous Materials at the Makena Place Property or the migration of Hazardous Materials from the Makena Place Property; (c) the discovery of any occurrence or condition at the Makena Place Property or any nearby property that indicates the presence of Hazardous Materials at the Makena Place Property or the migration of Hazardous Materials from the Makena Place Property.

9. Relocation Of Sewerline System And Easement Area.

Subject to the Relocation Conditions (as this capitalized term is used herein), Grantor shall have the right to any of the following without the consent of the Grantee (collectively the “Relocation Right”): (a) to change the dimensions or uses of the Easement Area; and (b) to remove and relocate the Sewerline to other portions of the Makena Place Property. Grantor shall have the right to exercise the Relocation Right by the delivery of written notice to Grantee (the “Relocation Notice”), but only upon the satisfaction by Grantor of the following conditions (collectively the “Relocation Conditions”): (i) all costs and expenses relating to the Grantor’s exercise of the Relocation Right shall be borne by Grantor; and (ii) the transmission of wastewater from the Makena Surf Apartments and other improvements at the Makena Surf Property under and across the Makena Place Property and to the Pump Station is not impaired or diminished in any way. Upon the delivery by Grantor to Grantees of the Relocation Notice and the satisfaction by Grantor of the Relocation Conditions, Grantee, if requested by Grantor, shall execute an instrument, prepared by Grantor, which amends the description of the Easement Area or the location of the Sewerline. If Grantor so chooses to exercise the Relocation Rights, Grantor shall be responsible for

ensuring that the relocated Sewerline and related improvements meet commercially reasonable standards of care for such construction. Grantor shall obtain commercially reasonable warranties and guarantees from the third parties performing the relocation pursuant to this provision.

10. Construction Of Sewer System In The Easement Area.

With the exception of any “clean out” for the Sewerline which may be at (but not above) the ground surface of the Easement Area, all other portions of the Sewerline shall be buried not less than thirty-six (36) inches below the ground surface of the Easement Area.

Within thirty (30) days after any installation, construction, reconstruction, repair or removal by Grantee of the Sewerline, Grantee shall restore the surface of the Easement Area to its original condition. Grantee shall obtain the prior written consent of Grantor to extend the time for such restoration if restoration within thirty (30) days is not possible, which consent shall not be unreasonably withheld.

11. Grantor Not Liable For Design Or Construction Defects.

Grantee believes that the “developer” (as this quoted term is used in §514B-3, Haw. Rev. Stat.) of the Makena Surf Project caused the preparation of the plans for the construction of the Sewerline in accordance with all government regulations and ensured the safe and sound construction of the Sewerline in accordance with proper construction methods. Grantor and Grantor’s Affiliates shall not be liable to Grantee, Grantee’s Affiliates, or to any third person, for any injury or loss allegedly caused by any design defect in the plans for the construction of the Sewerline, or allegedly caused by the faulty construction of the Sewerline.

12. Termination Of Easement For Default.

In the event of any default in respect of any of the covenants, conditions or restrictions to be observed or performed by the Grantee hereunder, and if such default shall continue for thirty (30) days after written notice thereof is given by the Grantor to the Grantee at the last post office address of the Grantee known to the Grantor, then the Grantor shall have the right to terminate all easement rights granted to the Grantee under this Agreement, and without further notice, the right to enter the Easement Area, to remove the Sewerline, Grantee's Improvements and all other equipment and apparatus installed therein by either the "developer" of the Makena Surf Project or by Grantee, and to have and to hold the same thereafter, as the absolute property of the Grantor, free of any easement rights given under this Agreement.

13. Termination Of Easement For Non-Use.

If the Grantee should completely remove the Sewerline, or portions thereof, from the Easement Area and should for a period of two (2) years fail to reinstall the Sewerline fully in the Easement Area in accordance with the covenants, conditions and restrictions set forth in this Agreement, then the Grantor shall have the right to terminate all easement rights granted to the Grantee under this Agreement, and, without notice, the right to enter the Easement Area and to remove therefrom the Sewerline, the Grantee's Improvements and all other equipment and apparatus, and to have and to hold the same thereafter as the absolute property of the Grantor.

14. Notices.

Except as otherwise specifically provided in this Agreement, all notices, requests, demands, consents and other communications which are required to be given in writing shall be given or served for all purposes by registered or certified mail, return receipt requested, postage prepaid, addressed to Grantor and Grantee, as the case may be, at the address set forth above or at such other post office address as either may from time to time designate by written notice given to or served upon the other party hereto in the manner set forth in this paragraph. Any such notice, request, demand, consent or other communication shall be deemed conclusively to have been given, received or served on the date of such mailing.

15. No Partnership Or Principal And Agent.

The parties do not intend to create a partnership or joint venture between them by the execution of this Agreement. The parties do not intend to create a principal and agent relationship between them by this Agreement. No party has any authority to act as the agent for the other.

16. No Party Deemed To Be Draftsman.

Grantor and Grantee have each had the assistance of their own counsel in the drafting of this Agreement. If an ambiguity should appear in this Agreement, such ambiguity shall not be resolved by interpreting this Agreement against either party as the draftsman. The language of this Agreement shall be interpreted simply according to the fair meaning.

17. Attorney's Fees And Costs In The Event Of Default.

In the event of any default in respect of any term or condition of this Agreement, the party in default shall be liable for, and shall pay, any reasonable attorneys' fees, costs and expenses incurred by the other party as a result of such default, even though such default be cured without the initiation of any suit.

18. Interpretation And Construction.

This Agreement and the respective rights and duties of the parties hereunder shall be construed and interpreted in accordance with the law of the State of Hawaii. No amendment of this Agreement shall be effective unless the same is in writing and executed by all the parties. The headings and marginal notations of this Agreement are for convenience only, and if there be any conflict, the text of this Agreement shall control. The use of any gender shall include all genders. Whenever any words are used herein in the singular, they shall be construed as though they were also used in the plural in all cases where they would so apply, and vice versa. Any reference in this Agreement to money or to payments to be made in money shall mean legal tender of the United States. This Agreement shall be binding upon, and shall inure to the benefit of the parties, their respective heirs, successors and assigns.

19. Counterpart Execution.

The parties may execute this Agreement by signing counterparts. In that event, this Agreement shall take effect, and become a binding instrument, only when all of the counterparts have been signed by the parties. All such counterparts shall be deemed to

constitute but one and the same instrument. Duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

The term "Grantor", wherever used herein, shall mean and shall include the Grantor and its successors and assigns. The term "Grantee", wherever used herein, shall mean and include the Grantee and its permitted successors and assigns.

IN WITNESS WHEREOF, the Grantor and Grantee have executed this instrument the day and year first above written.

GRANTOR:

ASSOCIATION OF APARTMENT OWNERS OF MAKENA PLACE, a Hawaii non-profit corporation

By: Bob Sammons

Bob Sammons
Its President

By: _____

Print Name: _____

Its: _____

IN WITNESS WHEREOF, the Grantor and Grantee have executed this instrument the day and year first above written.

GRANTOR:

ASSOCIATION OF APARTMENT OWNERS
OF MAKENA PLACE, a Hawaii non-profit
corporation

By: _____

Bob Sammons
Its President


By: 

Print Name: BRUCE M. WANTA

Its: SECRETARY / TREASURER

GRANTEE:

ASSOCIATION OF APARTMENT OWNERS OF
MAKENA SURF, an unincorporated association

By: 
Print Name: Mark Joseph
Its: President

By: _____
Print Name: _____
Its: _____

GRANTEE:

ASSOCIATION OF APARTMENT OWNERS OF
MAKENA SURF, an unincorporated association

By:

Print Name: _____

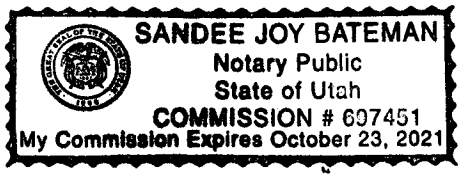
Its: _____

By:  _____

Print Name: NATHAN ISLLOGO

Its: SECRETARY

STATE OF Utah)
COUNTY OF Summit) SS.



On this 22nd day of June, 2020, before me personally appeared Bob Sammons, 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.

S. J. Bateman
Sandee Joy Bateman
Print Name: _____
Notary Public, State of Utah
My commission expires: October 23, 2021

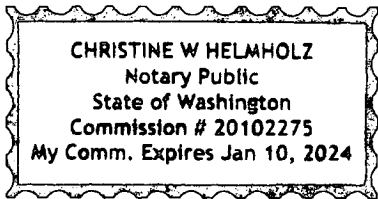
NOTARY CERTIFICATION

Doc. Date: _____ Pages: _____
Notary Name: _____ Circuit Court
Doc. Description: SEWERLINE EASEMENT AGREEMENT

Notary Signature Date: _____

STATE OF Washington)
) ss.
COUNTY OF King)

On this 10th day of August, 2020, before me personally appeared Bruce M. Wanta, 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.



Christine W Helmholtz
Print Name:
Notary Public, State of Washington
My commission expires: January 10, 2024

NOTARY CERTIFICATION

Doc. Date: 8/10/2020

Pages: 41

Notary Name: Christine W Helmholtz _____ Circuit Court

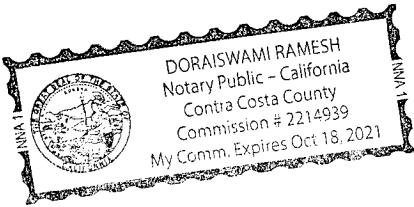
Doc. Description: SEWERLINE EASEMENT AGREEMENT

Christine W Helmholtz
Notary Signature

8/10/2020
Date:

STATE OF California)
COUNTY OF Contra Costa) ss.

On this 19th day of June, 2020, before me personally appeared Mark Joseph, 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.



[Signature]
Print Name: _____
Notary Public, State of CA
My commission expires: 10-18-21

NOTARY CERTIFICATION

Doc. Date: _____ Pages: 27
Notary Name: _____ Circuit Court
Doc. Description: SEWERLINE EASEMENT AGREEMENT
[Signature] _____ Date: 6-19-2020

STATE OF Hawaii)
COUNTY OF Mau) ss.

On this 19th day of June, 2020, before me personally appeared Nathan Kellogg, 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.



[Signature]
Print Name: Elsa De Rego
Notary Public, State of Hawaii
My commission expires: 11/01/2022

NOTARY CERTIFICATION

Doc. Date: undated Pages: 41
Notary Name: Elsa De Rego 2nd Circuit Court

Doc. Description: SEWERLINE EASEMENT AGREEMENT

[Signature] Notary Signature Date: June 19, 2020

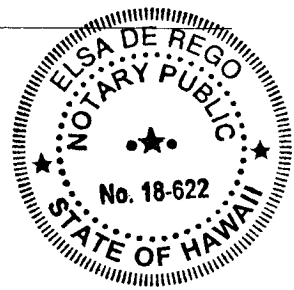


EXHIBIT "A"

All of that certain parcel of land situate at Papaanui, Waipao, Kalihi, Honuaula, Makawao, District of Makawao, Island and County of Maui, State of Hawaii, described as follows:

Lot 10-A-2, area of 4.4427 acres, more or less, as shown on Map 6, filed in the said Office with Land Court Application No. 1846 (amended) of Ulupalakua Ranch, Inc.

Said parcel of land being more particularly described in said Declaration of Condominium Property Regime of Makena Place dated June 13, 1996 (acknowledged June 13, 1997), filed in said Office of the Assistant Registrar as Land Court Document No. 2392911, as amended.

TOGETHER WITH a non-exclusive easement for pedestrian and vehicular access and for utility purposes, effective as of October 3, 1989, over, under and across Lot 10-A-3, area .097 acres, more or less, as shown on Map 6, filed in said Office with Land Court Application No. 1846 of Ulupalakua Ranch, Inc., as granted by ROADWAY EASEMENT AGREEMENT dated December 31, 2013, filed in said Office as Land Court Document No. T-8775193; and subject to the terms and provisions contained therein.

Being the land described in the Transfer Certificates of Title listed in Exhibit "B".

SUBJECT, HOWEVER:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance.
3. The terms and provisions contained in Declaration (Tsunami or Storm Wave District), dated December 1, 1980, filed as Land Court Document No. 1044655.
4. Designation of Easement "7" for access and utility purposes, as shown on Maps 2 and 6, as set forth by Land Court Order No. 63679, filed September 8, 1982.