

REQUEST FOR LEGAL SERVICES

RECEIVED
CORPORATION COUNSEL

Date: May 10, 2018

From: Elle Cochran, Chair

Infrastructure and Environmental Management Committee

2018 MAY 10 PM 2:15

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Patrick K. Wong, Esq.

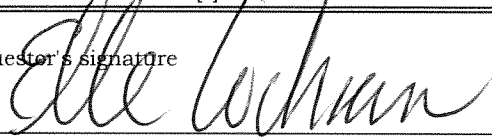
Subject: **GRANT OF NON-EXCLUSIVE EASEMENT FOR PRIVATE WATERLINE TMK: (2) 2-8-005:004, KAIAPA PLACE (IEM-62)**

Background Data: Please see attached for markup version of resolution, incorporating non-substantive revisions. Please incorporate suggested revisions and, if appropriate, approve as to form and legality. Provide a signed hard copy with your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY

OTHER:

RECEIVED
OFFICE OF THE
COUNTY COUNCIL
2018 MAY 10 PM 3:55

Requestor's signature  Elle Cochran	Contact Person <u>Maggie Clark</u> (Telephone Extension: <u>7661</u>)
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- ROUTINE (WITHIN 15 WORKING DAYS)
- PRIORITY (WITHIN 10 WORKING DAYS)
- RUSH (WITHIN 5 WORKING DAYS)
- URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): May 11, 2018

REASON: For distribution at Committee meeting on May 14, 2018

FOR CORPORATION COUNSEL'S RESPONSE


ASSIGNED TO: <u>DAE</u>	ASSIGNMENT NO. <u>2017-11092</u>	BY: <u>MAA</u>
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date 5.10.18

By 

(Rev. 7/03)

iem:ltr:065acc01

Attachment

Resolution

No. _____

AUTHORIZING THE GRANTING OF A NON-EXCLUSIVE EASEMENT ON
COUNTY OF MAUI REAL PROPERTY SITUATED AT HAIKU, MAUI,
HAWAI'I TO MISHNA ORION FOR PRIVATE UNDERGROUND
WATERLINE PURPOSES

WHEREAS, the County of Maui ("County") is the owner of those certain rights-of-way and roadways referred to as Kaiapa Place and Kaupakalua Road, situated in Haiku, Island and County of Maui, State of Hawai'i ("County's Property"); and

WHEREAS, MISHNA ORION ("Grantee") wishes to provide a private waterline for use in connection with her parcel of real property, located at Haiku, Island and County of Maui, State of Hawai'i, designated as Tax Map Key No. (2) 2-8-005:004 ("Grantee's Property"); and

WHEREAS, Grantee wishes to be granted a non-exclusive, perpetual easement as an appurtenance to and in favor of Grantee's Property, and any subdivision of that parcel, to build, construct, reconstruct, rebuild, repair and maintain a private underground waterline and appurtenant equipment for Grantee's exclusive use over, under, along and through portions of Kaiapa Place and Kaupakalua Road, containing an area of approximately 2,773 square feet, as more particularly described in Exhibit "A" and depicted on the map designated as Exhibit "B" to the Grant of Non-

Resolution No. _____

Exclusive Easement For Private Waterline, attached hereto as Exhibit "1"
("Grant of Non-Exclusive Easement") and made a part hereof; and

WHEREAS, pursuant to Section 3.44.020 of the Maui County Code,
the County Council may grant easements by resolution; and

WHEREAS, the County desires to grant an easement under, across,
over and through the Easement Area, identified as Easement "W" in the
attached Grant of Non-Exclusive Easement, in favor of the Grantee; now,
therefore,

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

1. That it does hereby grant an easement to the Grantee, in
accordance with the terms and conditions of the Grant of Non-Exclusive
Easement; and

2. That it does hereby authorize the Mayor of the County of Maui,
or the Mayor's duly authorized representative, to execute all necessary
documents in connection with the granting of the easement, including the
Grant of Non-Exclusive Easement; and

3. That certified copies of this Resolution be transmitted to the
Grantee, the Mayor, and the Director of Public Works.

APPROVED AS TO FORM
AND LEGALITY:



DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui

2017-0092/2017-1101

IEM-62 2018-05-10 Resolution

EXHIBIT "1"

LAND COURT

REGULAR SYSTEM

AFTER RECORDING RETURN VIA MAIL Pick Up To:

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS, SUITE 410
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

TITLE OF DOCUMENT:

GRANT OF NON-EXCLUSIVE EASEMENT FOR PRIVATE WATERLINE

PARTIES TO THE DOCUMENT:

GRANTOR: COUNTY OF MAUI, a political subdivision and body corporate
of the State of Hawaii, whose mailing address is 200 South High
Street, Wailuku, Hawaii 96793.

GRANTEE: MISHNA ORION
PO Box 791432
Paia, HI 96779

GRANT OF NON-EXCLUSIVE EASEMENT FOR PRIVATE WATERLINE

THIS INDENTURE is made this _____ day of _____, 20____, by and between the **COUNTY OF MAUI**, a political subdivision and body corporate of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as “GRANTOR,” and **MISHNA ORION**, whose address is PO Box 791432, Paia, Hawaii 96779, hereinafter referred to as “GRANTEE,”

WITNESSETH

That the GRANTOR, inconsideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to it paid by the GRANTEE, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the GRANTEE, its successors and assigns, subject to the terms and conditions set forth in this agreement, a non-exclusive, perpetual easement as an appurtenance to and in favor of that certain parcel of real property situate at Haiku, Island and County of Maui, State of Hawaii, designated as Maui Tax Map Key No. (2) 2-8-005:004, and any subdivision of that parcel (hereinafter referred to as the “BENEFITTED PROPERTY”), to build, construct, reconstruct, rebuild, repair and maintain a private underground waterline and appurtenant equipment for GRANTEE’S exclusive use over, under, along and through Kaiapa Place, described as Easement “W” on Exhibit “A” attached hereto and made a part hereof (hereinafter referred to as the “Easement Area”), and as shown on the map attached hereto as Exhibit “B” and made a part hereof.

The foregoing is made upon the following terms, conditions, restrictions and provisions, which shall be binding upon the parties hereto:

1. The GRANTEE’S private waterline shall be located within the Easement Area. The GRANTEE shall be solely responsible for making repairs to said waterline, whether said waterline be damaged by the public or by equipment belonging to the GRANTEE or the GRANTOR, but the GRANTEE shall not be precluded from seeking

damages or obtaining recourses from parties, other than the County of Maui, or its employees, agents or assigns, whose negligence causes such damages. The relocation of said waterline, due to future County improvements, shall be undertaken by the GRANTEE, and at no cost to the GRANTOR. It shall be the responsibility of the GRANTEE to obtain permission from the State of Hawaii wherever said waterline crosses State property.

2. The GRANTEE shall pay, at its sole expense, for all costs of constructing, relocating, maintaining, operating, repairing, replacing, or removing the GRANTEE'S private waterline under, along and through the Easement Area, and the GRANTEE shall defend, indemnify and hold harmless the GRANTOR from any and all such costs, including but not limited to attorney's fees, other than for damages caused by GRANTOR'S sole negligence or willful misconduct.

3. After the installation of the GRANTEE'S private waterline, or after any subsequent relocation, removal, maintenance, replacement, repair or work thereon has been completed, the Easement Area and the roadway, to the extent the roadway shall be disturbed, shall be restored by the GRANTEE to its original or better condition, to the satisfaction of the GRANTOR.

4. The GRANTEE shall defend, indemnify and hold harmless the GRANTOR and the GRANTOR'S officers, employees, agents, successors and assigns, against any and all claims for property damage, personal injury, or wrongful death by whomsoever suffered or brought, arising in any manner whatsoever, directly or indirectly, from the GRANTEE'S private waterline or its placement, construction, reconstruction, maintenance, operation, repair, replacement, removal or relocation, except as may have been caused by GRANTOR'S sole negligence or willful misconduct.

5. The GRANTEE shall defend, indemnify and hold harmless the GRANTOR and the GRANTOR'S officers, employees, agents, successors and assigns, from and against any and all damage to GRANTEE'S private waterline resulting from the public's use of the Easement Area, as a public roadway or from the GRANTEE'S use, construction and maintenance of the Easement Area, or from the GRANTOR'S construction, reconstruction, maintenance, operation, repair or removal of any waterline, sewer line or any other improvements in the Easement Area.

6. Within ninety (90) days after written notice from the GRANTOR to the

GRANTEE requesting GRANTEE to relocate its private waterline to a different location, the GRANTEE shall relocate its private waterline to another area, to be designated by the GRANTOR; PROVIDED, HOWEVER, upon the GRANTEE'S receipt of the relocation notice from the GRANTOR, the GRANTEE may choose to completely remove its private waterline and terminate its rights under this agreement as provided in paragraph 16.

7. The GRANTEE shall not commit, suffer, or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the Easement Area, or any part thereof.

8. The GRANTEE shall comply with the requirements of all county, municipal, state and federal authorities and observe all county, municipal, state and federal laws now in force or which may hereinafter be in force pertaining to the Easement Area or GRANTEE'S private waterline.

9. The GRANTEE shall not commit or suffer any act or neglect whereby the Easement Area or any improvement thereon shall become subject to any attachment, lien, charge, or encumbrance whatsoever, and shall defend, indemnify and hold harmless the GRANTOR from and against all attachments, liens, charges and encumbrances caused by any act or omission of the GRANTEE, its officers, employees or agents, and all expenses resulting therefrom, including but not limited to GRANTOR'S attorney's fees and costs.

10. The GRANTEE shall defend, indemnify and hold harmless the GRANTOR from and against any claim or demand for loss, liability or damage, including but not limited to claims for property damage, personal injury or death resulting from the granting of this easement or the GRANTEE'S private waterline or its placement, construction, maintenance, operation, repair, replacement, removal or relocation, or arising out of any accident in the Easement Area occasioned by any act or nuisance made or suffered by the GRANTEE within the Easement Area, or growing out of or caused by any failure on the part of the GRANTEE to maintain the Easement Area in a safe condition, or by any act or omission of the GRANTEE, and from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the GRANTEE'S *non-observance or non-performance* of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state,

municipal or county governments applicable to the Easement Area or GRANTEE'S private waterline.

11. If the GRANTOR shall be made a party to any litigation commenced by or against the GRANTEE (other than condemnation proceedings) having to do with the construction, maintenance, operation, repair, replacement, removal or relocation of the waterline, the GRANTEE shall pay all costs and expenses incurred by or imposed on the GRANTOR, including but not limited to GRANTOR'S attorney's fees; furthermore, the GRANTEE shall pay all costs and expenses, including but not limited to attorney's fees, which may be incurred by or paid by the GRANTOR in enforcing the covenants and agreements of this easement.

12. In consideration for the granting of this easement, the GRANTEE shall procure, at its own cost and expense, and shall maintain during the entire period of this easement, a policy or policies of comprehensive public liability insurance, in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), insuring and defending the GRANTOR against all claims for personal injury and/or death against which the GRANTEE is responsible to defend, indemnify or hold harmless the GRANTOR under the terms of this agreement, and in an amount of at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for all claims of property damage against which the GRANTEE is responsible to defend, indemnify or hold harmless the GRANTOR under the terms of this agreement. The GRANTEE shall furnish the GRANTOR with a certificate showing said policy or policies to be initially in force and shall furnish a like certificate upon each renewal of the policy or policies, each certificate to contain or be accompanied by an assurance of the insurer to notify the GRANTOR of any intention to cancel said policy or policies at least sixty (60) days prior to actual cancellation. The procuring of this policy of policies shall not release or relieve the GRANTEE of its responsibility under this agreement or limit the amount of the GRANTEE'S liability under this agreement. The notice to cancel shall be sent to the GRANTOR at least sixty (60) days prior to the date of cancellation.

13. The GRANTEE shall, at its own expense, from time to time and at all times during the term hereof, substantially repair, maintain and keep in good and safe repair, order and condition, reasonable wear and tear excepted, the GRANTEE'S private waterline within the Easement Area.

14. In the event condemnation proceedings shall be initiated against the Easement Area by any authority with jurisdiction, the GRANTEE hereby acknowledges that the GRANTEE shall not be entitled to nor will the GRANTEE assert any claim for compensation arising from the rights granted by the agreement or GRANTEE'S private waterline.

15. The GRANTOR does not warrant the conditions of the Easement Area. The GRANTEE accepts the Easement Area in the condition it is in at the commencement of this agreement, 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, including, without limitation, any dangerous conditions (latent or patent).

16. In the event that the GRANTEE shall at any time completely remove the private waterline from the Easement Area and for a period of twelve (12) consecutive months thereafter fail to reinstall the waterline, the GRANTEE shall, at the GRANTOR'S request, forthwith execute and deliver to the GRANTOR an instrument suitable for recordation in the appropriate registry office of the State of Hawaii as shall be sufficient to evidence the termination and surrender of the easement rights granted under this agreement.

17. This agreement shall be construed and governed by the laws of the State of Hawaii.

18. The term "GRANTEE" wherever used herein shall be held to mean and include the undersigned GRANTEE, and its personal representatives, devisees, heirs, successors and assigns; the term "GRANTOR" wherever used herein shall be held to mean the County of Maui, its officers, employees, agents, successors and assigns; and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective personal representatives, devisees, heirs, successors and assigns.

19. This written agreement represents the entire agreement of the parties hereto. This agreement may be amended only by written amendment executed by both GRANTOR and GRANTEE.

20. This agreement shall be recorded at the Bureau of Conveyances of the State of Hawaii at the GRANTEE'S expense. Upon such recording, the GRANTEE'S rights,

benefits and burdens herein shall constitute rights, benefits and obligations which shall run with the GRANTEE'S land described above and shall accrue to the benefit of and be the responsibility of the GRANTEE and all future owners of the BENEFITTED PROPERTY, and the burden on the Easement Area shall be a covenant running with the GRANTOR'S land in favor of the BENEFITTED PROPERTY.

21. If the GRANTEE fails to observe or perform any of the terms and conditions provided herein to be observed or performed by the GRANTEE, including but not limited to failing to maintain the insurance for the GRANTOR described above, then an essential condition of this agreement shall be conclusively presumed to have been breached and the GRANTEE shall be deemed to be in default and GRANTOR can cancel this agreement as follows:

At any time after a breach shall have occurred, the GRANTOR shall notify the GRANTEE in writing of its intention to cancel this agreement. If, within sixty (60) days of the notice of intention to cancel being mailed by the GRANTOR to the GRANTEE, the GRANTEE shall undertake to cure the default and shall with due diligence thereafter promptly cure the default, then the GRANTOR shall not have grounds to cancel this agreement on account of such default. If, within sixty (60) days of the notice of intention to cancel being mailed by the GRANTOR to the GRANTEE, the GRANTEE shall not undertake to cure the default or, having undertaken to cure the default, shall not cure the default promptly thereafter, then the GRANTOR shall have the right to apply to the Second Circuit Court of the State of Hawaii or other court of competent jurisdiction for an order declaring this agreement cancelled and of no further force and effect, and upon receiving such an order from the Court, the GRANTOR shall be entitled to remove the GRANTEE'S private waterline from the Easement Area.

Nothing in this paragraph 21 shall be construed to limit or preclude the GRANTOR from exercising any other available remedy at law or in equity with respect to the GRANTEE'S breach of the terms of this agreement.

22. This agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

TO HAVE AND TO HOLD the same unto the GRANTEE and its personal representatives, devisees, heirs, successors and assigns, subject to the terms and conditions hereinabove set forth.

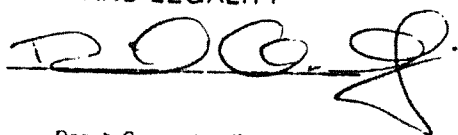
[This space intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on this _____ day of _____, 20_____.

GRANTOR:
COUNTY OF MAUI


By _____
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY



Deputy Corporation Counsel
County of Maui

GRANTEE:



MISHNA ORION
Owner

State of Hawaii)
) ss.
County of _____)

On this _____ day of _____, 20_____, before me personally appeared **ALAN M. ARAKAWA**, proved to me, who, being by me duly sworn or affirmed, did say that such persons 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.

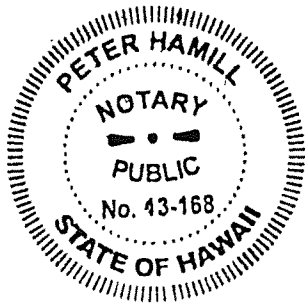
Name: _____

Notary Public, State of Hawaii

My commission expires: _____

State of Hawaii)
County of Mau) ss.

On this 29th day of November, 2017, before me personally appeared **MISHNA ORION**, proved to me, who, being by me duly sworn or affirmed, did say that such persons 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]
Name: Peter Hamill

Notary Public, State of Hawaii

My commission expires: 5/12/2021

Doc. Date: 11/29/17 # Pages: 17
Peter Hamill 2nd Circuit
Doc. Description Grant of Non-
Exclusive Easement for
Private Waterline
[Signature] 11/29/17
Notary Signature Date

NOTARY CERTIFICATION

Exhibit “A”

Exhibit A
LAND DESCRIPTION

EASEMENT "W" (2,773 sq. ft. 6-foot wide, right angle measurement) for water line, affecting Kaiapa Place road [TMK: (2) 2-8-001-999] and Kaupakalua Road in favor of Lot 85 [TMK: (2) 2-8-005:004] Partition of Hui Kuai Aina o Peahi (aka Peahi Hui Partition). Land situated on the northern side of Kaupakalua Road, at Hamakualoa, Maui, Hawaii.

Beginning at the southwest corner of this easement, lying in the Kaupakalua Road right of way and being 359°27'30" and 15.07 feet from the southeast corner of Lot 89 [TMK: (2) 2-8-004:008] of the Peahi Hui Partition, the coordinates of said point of beginning are based on record information and referred to Government Survey Triangulation Station "KAPUAI", being: 1,515.87 North and 185.37 East. Thence running by azimuths measured clockwise from True South:

- | | | | |
|---|--------------|-------------|---|
| 1 | 179° 27' 30" | 462.19 feet | along Lots 89, 88, 87, 86 and partially along Lot 85 of Peahi Hui Partition and the boundary of Kaiapa Place road; thence, leaving the boundary of said Lot 85, |
| 2 | 269° 27' 30" | 6.00 feet | along the remainder of Kaiapa Place road; thence, |
| 3 | 359° 27' 30" | 462.19 feet | along the remainder of Kaiapa Place road, and the remainder of Kaupakalua Road; thence, |
| 4 | 89° 27' 30" | 6.00 feet | along the remainder of Kaupakalua Road to the Point Of Beginning , containing an area of 2,773 square feet. |

I prepared this description on July 14, 2017.

CDE ENGINEERING
Raymond B. Turner
Registered Professional Land Surveyor
State of Hawaii Certificate No. 10914 (Expires April 30, 2018)
State of Hawaii Land Court Surveyor #302

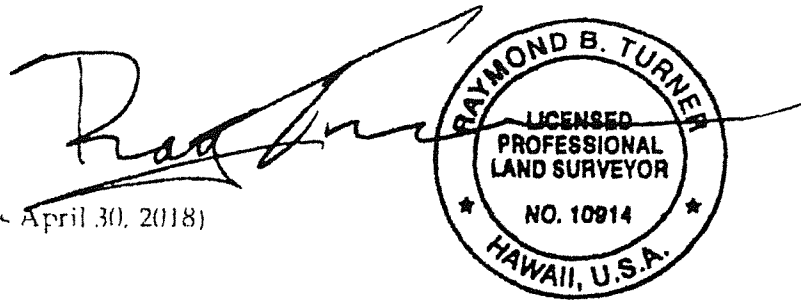
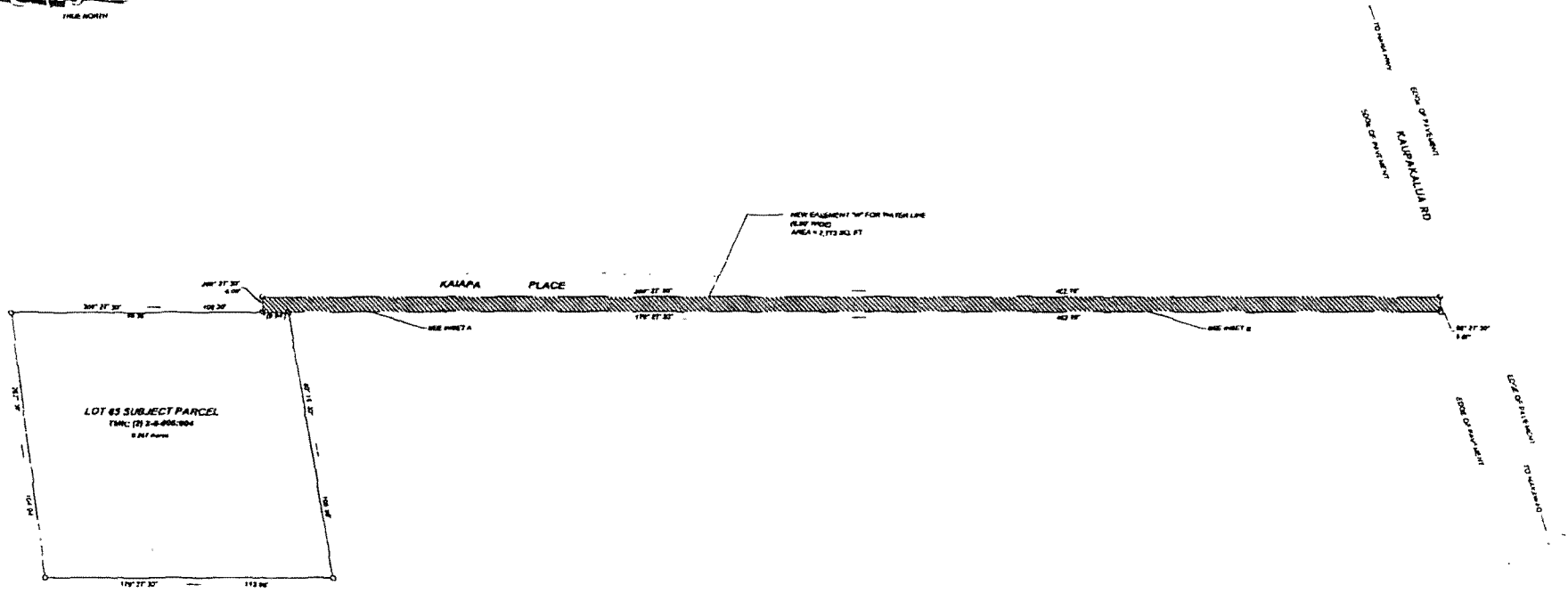
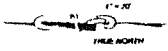


Exhibit “B”

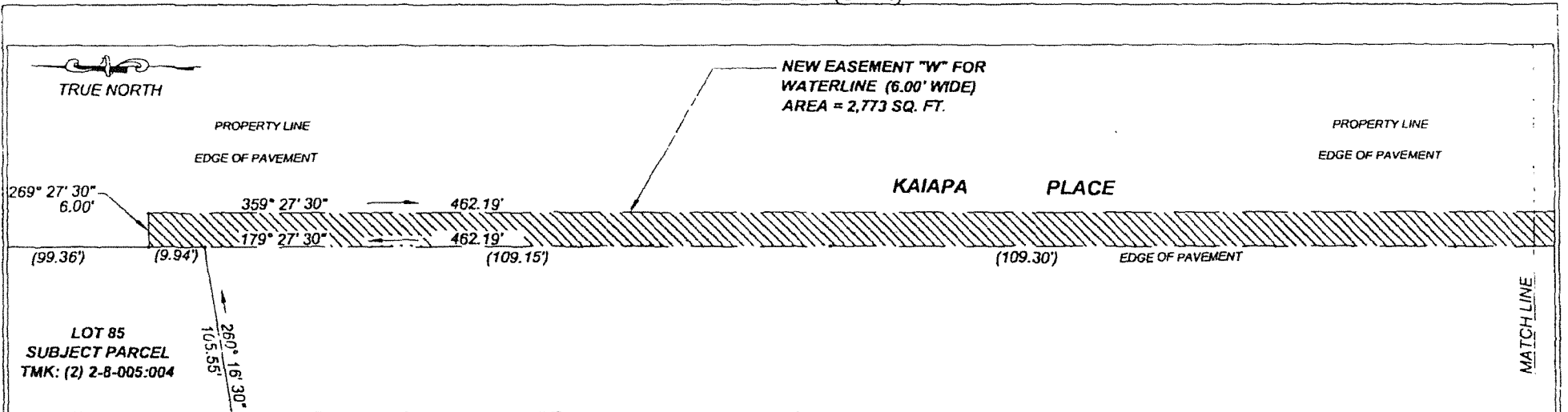
EXHIBIT "B"



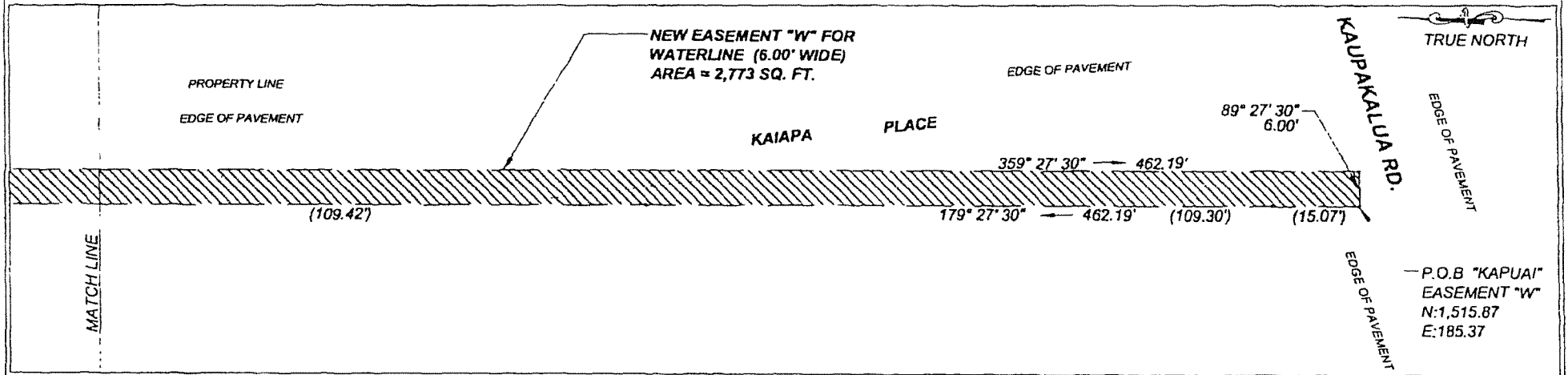
- NOTES
- EXISTING WATER METER SERVICING SUBJECT PROPERTY IS CURRENTLY LOCATED ON KAWAIAKULUA ROAD. WATERLINE IS LOCATED IN AN EASEMENT ACROSS PRIVATE PROPERTY FROM KAWAIAKULUA ROAD TO THE SUBJECT PROPERTY.
 - PARCEL BOUNDARIES SHALL BE STAKED BY A LICENSED SURVEYOR, CERTIFIED BY THE STATE OF HAWAII, BEFORE START OF CONSTRUCTION.

		CDF Engineering LLC <small>175 KAWAIAKULUA RD, SUITE 200, HONOLULU, HI 96815 Phone: (808) 941-2400</small>	
		NEW WATER LATERAL EASEMENT "W"	
<small>DATE</small>	<small>SCALE</small>	1" = 30'	SITE PLAN
<small>PROJECT NO.</small>	<small>DATE</small>	<small>BY</small>	<small>SCALE</small>
<small>06-23-2017</small>	<small>06-23-2017</small>	<small>06-23-2017</small>	<small>1" = 30'</small>

EXHIBIT "B" (cont.)



INSET A
(SCALE: 1" = 8')



INSET B
(SCALE: 1" = 8')

		CDF Engineering LLC <small>175 East 2100, Westport, HI 90741 Phone: (808) 931-2000</small>	
		NEW WATER LATERAL EASEMENT "W"	
SCALE: 1" = 8'		SHEET: SITE PLAN INSETS	TOTAL SHEETS: 2
<small>DATE: 06-22-2017</small>		<small>TITLE: (2) 2-8-005:004</small>	