

ALAN M. ARAKAWA
Mayor



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OFFICE OF THE MAYOR

DANILO F. AGSALOG
Director

MARK R. WALKER
Deputy Director


COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

September 20, 2017

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Elle Cochran
Chair, Infrastructure and Environmental Management Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Mayor Date

Dear Chair Cochran:


SUBJECT: WATERLINE EASEMENT – EASEMENT 4
(TMK (2) 4-3-001:033) (IEM – 17)

Pursuant to your request dated September 19, 2017, the following is enclosed:

1. Copy of Waterline Easement (Easement “4”)

Should you have any questions, please do not hesitate to contact my office at x7844.

Sincerely,


for **DANILO F. AGSALOG**
Director of Finance

Xc: Dave Taylor, Water Supply Director

310



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

February 02, 2017 8:01 AM

Doc No(s) A-62420383



1 1/1 ICL
8-32941320

/s/ LESLIE T. KOBATA
REGISTRAR

LAND COURT

REGULAR SYSTEM

Return by Mail ☒ Pick-Up ☐

TO:

COUNTY OF MAUI

Department of Water Supply

Engineering Division

200 South High Street, 5th Floor

Wailuku, Maui, Hawaii 96793

TITLE GUARANTY OF HAWAII HAS
FILED THIS DOCUMENT FOR RECORD
AS AN ACCOMMODATION ONLY. THIS
DOCUMENT HAS NOT BEEN
REVIEWED OR IN ANY WAY EXAMINED
AS TO ITS EFFECT ON REAL PROPERTY.

TG: 485791C

TITLE OF DOCUMENT:

WATERLINE EASEMENT
EASEMENT "4"

PARTIES TO DOCUMENT:

GRANTOR: BACH BUILDERS & DEVELOPERS, L.L.C.
11650 South State Street, Suite 300
Draper, Utah 84020

GRANTEE: COUNTY OF MAUI
200 South High Street
Wailuku, Maui, Hawaii 96793

TAX MAP KEY NO: (2) 4-3-001:033

Total No. of Pages 11

**WATERLINE EASEMENT
(Easement "4")**

THIS GRANT is made this 28th day of January, 2017, by and between BACH BUILDERS & DEVELOPERS, L.L.C., a Utah limited liability company, whose address is 11650 South State Street, Suite 300, Draper, Utah 84020 (hereinafter referred to as 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 (hereinafter referred to as the "Grantee").

W I T N E S S E T H:

That the Grantor, pursuant to Section 3.44.015(F)(2), Maui County Code, and in consideration of the sum of TEN DOLLARS (\$10.00) paid to the Grantor by the Grantee, and other valuable consideration, the receipt whereof is hereby acknowledged, and subject to the terms, conditions, and covenants contained herein, does hereby grant, bargain, and convey unto the Grantee, its successors and assigns, a perpetual, nonexclusive easement over, under, across and through those portions of that certain real property situate at Lahaina, Maui, Hawaii, and designated as Tax Map Key No. (2) 4-3-001:033, (the "Property"), as more particularly described in Exhibit "A" and shown on Exhibit "B", both attached hereto and made a part hereof, hereinafter referred to as the "Easement Area".

The easement granted hereunder shall be for access to water meter and for waterline purposes, including the right to construct, reconstruct, install, maintain, operate, repair, replace, and remove water pipelines and related facilities, including other equipment and appurtenances necessary or expedient for the proper maintenance, operation or repair of such water meter or pipelines (collectively, the "Water System Improvements") installed within said easement in connection with the construction of the West Maui Village Water Improvement Project.

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 for or specified by the Grantor for such purposes, as reasonably required in connection with the rights granted herein.

AND, the Grantor hereby covenants with the Grantee that the Grantor is lawfully seized in fee simple of the described real property and that the Grantor has good right to convey the same as aforesaid; that the property is free and clear of all encumbrances affecting Grantor's conveyance described herein, and the Grantor will warrant and defend the same unto the Grantee, forever, against the lawful claims and demands of all persons.

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. Use and Restoration of Premises. Upon and in connection with performing any maintenance or repair work of the Water System Improvements in the Easement Area, the Grantee shall restore the surface of the Easement Area damaged in the performance of said maintenance or repair work to its original condition to the extent such restoration is reasonably possible.

Notwithstanding the foregoing, when the pavement within any portion of the Easement Area shall be excavated or removed by the Grantee in connection with the repair or maintenance of the Water System Improvements, the Grantee shall be obligated to restore the surface of the pavement only by "cold patch" method. Any final surfacing of the pavement by any more costly method shall be performed by the Grantor at the Grantor's expense.

2. 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 constructing and maintaining roadways within the Easement Area or from laying, constructing, operating, maintaining, repairing, or removing its own water pipelines, conduits or drains, or other utilities or facilities on or below the surface of the Easement Area, provided that such uses and water pipelines, conduits, drains or other utilities or facilities do not 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 Water System Improvements or other appurtenances in the Easement Area and shall defend, indemnify and hold harmless the Grantee from and against any and all damage, including loss to person or property, and damage to the Grantee's water pipelines, meters, fire hydrants, or other appurtenances in the Easement Area, resulting or arising from Grantor's improvements to or activities within the Easement Area, from the 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 water pipelines, conduits, drains, or other utilities or facilities in the Easement Area.

3. 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 section 1 above.

4. Indemnity.

(a) The Grantee shall indemnify and hold harmless the Grantor, its successors and assigns, from and against all claims for property damage, personal injury, or wrongful death arising out of or in connection with the intentional, reckless or negligent act or omission of the Grantee, its agents, employees, contractors and servants, or from or in connection with the exercise by the Grantee of the rights and privileges granted herein, but only to the extent that the Grantee's liability for such damage, loss or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the Grantee, and further, to the extent the payment for such damage, loss or injury is permitted by law and approved by the Maui County Council, pursuant to Chapter 3.16, Maui County Code, as amended.

(b) The Grantor shall indemnify and hold harmless the Grantee, its directors, officers, employees, contractors, agents, successors and assigns, from and against all claims for property damage, personal injury, or wrongful death when such damage, injury or death proximately results from or arises out of the intentional, reckless or negligent act or omission of the Grantor, or of any person for whose acts or omissions Grantor shall be legally responsible, and will reimburse the Grantee for any judgments, costs, and expenses, including reasonable attorney's fees, incurred in connection with the defense of any such claim, or incurred by the Grantee in enforcing this Grant.

5. Damage to Water System Improvements. The Grantor, regardless of any prior approval granted by the Director of the Department of Water Supply 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 Water System Improvements when and to the extent such damages result from or arise out of the intentional, reckless or negligent act or omission of the Grantor, or of any person for whose acts or omissions Grantor shall be legally responsible, and shall reimburse the Grantee for costs and expenses, including reasonable attorney's fees, incurred by the Grantee in enforcing this provision.

6. Non-Exclusive Easement. The right and easement granted herein are nonexclusive, 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.

7. 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.

8. Definitions. When more than one person is involved in the grant of this indenture and the covenants herein contained, the term "Grantor" and "Grantee" and related verbs and pronouns in the singular shall include the plural. Where appropriate, the masculine gender shall be deemed to include the feminine or neuter genders. The term "Grantor" wherever used herein shall be held to mean and include the Grantor, its successors and assigns, and the term "Grantee", wherever used herein shall be held to mean and include the Grantee, its successors and permitted assigns. This instrument shall be binding upon and shall inure to the benefit of the Grantor and its successors and assigns, and the Grantee and its successors and permitted assigns.

9. 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]

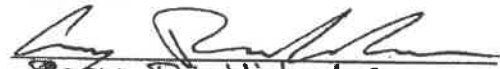
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the day and year first written above.

GRANTOR:

BACH BUILDERS & DEVELOPERS, L.L.C.

By BACH CORPORATION
Its Member

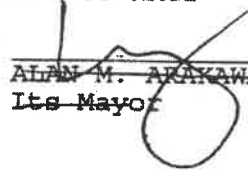
By


Cory Rindlishbacher
Its President Elect

GRANTEE:


COUNTY OF MAUI

By

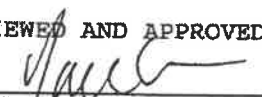

ALAN M. ARAKAWA
Its Mayor

KEITH A. REGAN
ACTING MAYOR, COUNTY OF MAUI


APPROVED:


DAVID S. TAYLOR, P.E.
Director of Water Supply

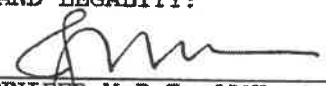
REVIEWED AND APPROVED:


DAVID C. GOODE
Director of Public Works

ACCEPTED:


DANILO F. AGSALOG
Director of Finance

APPROVED AS TO FORM
AND LEGALITY:

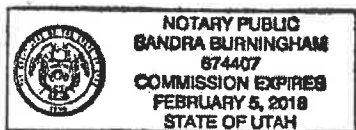

JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui

STATE OF Utah
COUNTY OF Salt Lake SS.

On this 11 day of March, 2016 before me personally appeared Cory Pindlish 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.

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

[Stamp or Seal]



Sandra Burningham
Notary Public, State of Utah

Print Name: Sandra Burningham
My Commission Expires: 02/05/18

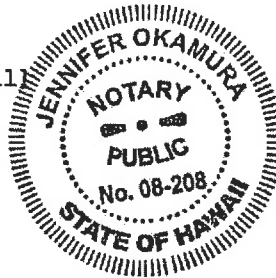
STATE OF Hawaii)
)
COUNTY OF Maui)

SS.

On this 12th day of August, 2016, before me personally appeared David S. Taylor, 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.

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

[Stamp or Seal]

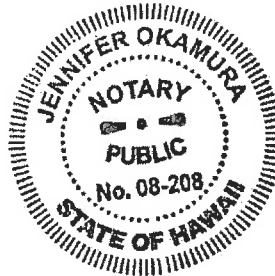


Jennifer Okamura
Notary Public, State of Hawaii

Print Name: Jennifer Okamura

My Commission Expires: June 29, 2020

Pages: _____
Doc. Description: Second Circuit
Notary Signature: _____ Date: _____
NOTARY CERTIFICATION



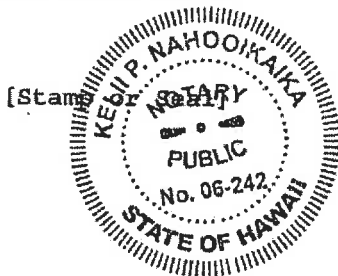
Undated at _____
Doc. Date: time of filing # Pages: 11
Jennifer Okamura Second Circuit
Doc. Description: Waterline Easement
Easement "4"

Jennifer Okamura 8/12/2016
Notary Signature Date
NOTARY CERTIFICATION

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 25th day of January, 2017, before me personally appeared ALAN M. ADAYAMA, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said ALAN M. ADAYAMA 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.



Keli P. Nahookaika
Notary Public, State of Hawaii
Print Name: KELI P. NAHOOIKA KA
My commission expires: 4.30.16

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>1-25-17</u>	# Pages:	<u>9</u>
Notary Name:	<u>KELI P. NAHOOIKA KA</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>Waterline easement</u>		
Notary Signature:	<u>Keli P. Nahookaika</u>		
Date:	<u>1-25-17</u>		

A circular notary seal for Keli P. Nahookaika, Notary Public, No. 06-242, State of Hawaii. The seal is stamped over the signature line.

EXHIBIT "A"

Description of the Easement Area

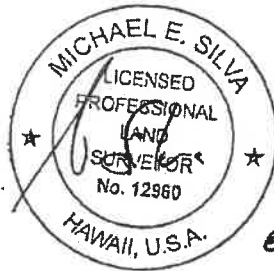
Being a portion of Allotment 54 of the Mailepai Hui Partition situated at Alaeloa, Lahaina, Island and County of Maui, State of Hawaii.

Beginning at the Northeast corner of this easement and the Southeasterly side of Hui Road "C" of the Mailepai Hui Partition, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being:

19,918.50 feet North
5,622.81 feet West

and running by azimuths measured clockwise from True South:

- | | | | |
|----|----------|--------|---|
| 1. | 3° 00' | 218.57 | feet along the remainder of Allotment 54 of Mailepai Hui Partition; |
| 2. | 137° 30' | 84.12 | feet along Lot 6 Maui Preparatory Academy Subdivision, being also along Royal Patent 1863, Land Commission Award 5524, Apana 3 to L. Konia; |
| 3. | 183° 00' | 127.48 | feet along the remainder of Allotment 54 of the Mailepai Hui Partition; |
| 4. | 244° 50' | 68.06 | feet along the Southeastly side of Hui Road "C" of the Mailepai Hui Partition to the point of beginning and containing an area of 10,381 Square Feet. |



EXP. 4/30/2018

EXHIBIT "B"

