

REQUEST FOR LEGAL SERVICES

Date: May 24, 2021
From: Yuki Lei K. Sugimura, Chair
Infrastructure and Transportation Committee

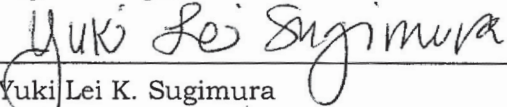
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jennifer Oana, Esq.

Subject: SEWERLINE EASEMENT FOR THE KAIĀULU O KŪKU'IA AFFORDABLE HOUSING PROJECT (LAHAINA) (IT-51)

Background Data: Please review the attached revised proposed resolution.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY
☐ OTHER:

Requestor's signature  Yuki Lei K. Sugimura	Contact Person <u>Laksmi Abraham</u> (Telephone Extension: <u>7659</u>)
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): May 26, 2021
REASON: For posting for June 4, 2021 Council Meeting

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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): Please email response to it.committee@mauicounty.us.

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____ (Rev. 7/03)

it:ltr:051acc01:lma

Attachment

Resolution

No. _____

APPROVING THE GRANT OF A SEWERLINE EASEMENT LOCATED AT KAPUNAKEA STREET, LĀHAINĀ, TMK (2) 4-5-035:037, RELATED TO THE KAIĀULU O KŪKULIA AFFORDABLE HOUSING PROJECT

WHEREAS, the County of Maui is the fee owner of real property located in Wahikuli, District of Lāhainā, Island and County of Maui, known as Kapunakea Street and designated as Tax Map Key (2) 4-5-035:037 (hereinafter "Property"); and

WHEREAS, Hawaii Housing Finance and Development Corporation ("HHFDC") is the fee owner of a parcel of land of approximately 393.5 acres north of the Keawe Street Extension at the Villages of Leiali'i, Lāhainā, designated as Tax Map Key (2)4-5-021:003 ("HHFDC Property"); and

WHEREAS, HHFDC has or will convey a 75-year leasehold interest in an approximate 28.5-acre portion of the HHFDC Property, described as Lot 5-A, Subdivision File 4.1018 to A0703 West Maui, L.P., a Hawaii limited partnership ("Grantee"), for purposes of constructing the leasehold development of Kaiāulu o Kūku'ia, formerly known as the Keawe Street Apartments, a multifamily rental housing project of approximately 200 units, affordable to households at 60 percent and below the U.S. Department of Housing and Urban Development area median income ("Kaiāulu Project"); and

WHEREAS, the Grantee desires to connect the Kaiāulu Project to the County's sewer system, requiring the construction of a private sewerline through the County's Property, which requires an easement, the terms and conditions of which are set forth in the proposed Sewerline Easement, attached as Exhibit "1"; and

WHEREAS, under Section 3.44.020.A, Maui County Code ("MCC"), the Council may authorize the disposition of the easement by resolution; and

WHEREAS, under Section 3.44.030.A, MCC, disposition of real property shall be made at public auction unless the Council finds that it is in the public interest to dispose of the real property in another manner

Resolution No. _____

and adopts a resolution to that effect, approved by two-thirds of its members; and

WHEREAS, under Section 3.44.070.A, the Council may waive the requirement of an appraisal by resolution; now, therefore,

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

1. That the Council finds that the grant of the Sewerline Easement, under the terms and conditions as set forth in Exhibit "1," is in the public interest and waives the requirements for obtaining an appraisal and for disposition by public auction;
2. That the Council authorizes the grant of the Sewerline Easement under the terms and conditions as set forth in Exhibit "1"; and
3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Environmental Management, the Director of Housing and Human Concerns, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel
County of Maui

it:misc:051areso01

Resolution

No. _____

APPROVING THE GRANT OF A SEWERLINE EASEMENT LOCATED AT KAPUNAKEA STREET, L~~Ā~~AHAIN~~Ā~~A, TMK (2) 4-5-035:037, RELATED TO THE KAI~~Ā~~AULU O KŪKŪ'IA AFFORDABLE HOUSING PROJECT

WHEREAS, the ~~COUNTY OF MAUI~~County of Maui is the fee owner of real property located in Wahikuli, District of L~~ā~~ahain~~ā~~a, Island and County of Maui, known as Kapunakea Street and designated as Tax Map Key-~~No.~~ (2) 4-5-035:037 (hereinafter "Property"); and

WHEREAS, Hawaii Housing Finance and Development Corporation ("HHFDC") is the fee owner of a parcel of land of approximately 393.5 acres north of the Keawe Street Extension at the Villages of Leiali'~~i~~, L~~ā~~ahain~~ā~~a, designated as Tax Map Key-~~No.~~ (2)4-5-021:003 ("HHFDC Property"); and

WHEREAS, HHFDC has or will convey a 75-year leasehold interest in an approximate 28.5~~-~~acre portion of the HHFDC Property, described as Lot 5-A, Subdivision File-~~No.~~ -4.1018 to A0703 ~~WEST MAUI~~West Maui, L.P., a Hawaii limited partnership ("Grantee"), for purposes of constructing the leasehold development of Kai~~ā~~aulu o Kūku'ia, formerly known as the Keawe Street Apartments, a multifamily rental housing project of approximately 200 units, affordable to households at 60 percent and below the U.S. Department of Housing and Urban Development area median income ("Kai~~ā~~aulu Project"); and

WHEREAS, the Grantee desires to connect the Kai~~ā~~aulu Project to the County's sewer system, requiring the construction of a private sewerline through the County's Property, which requires an easement, the terms and conditions of which are set forth in the proposed Sewerline Easement, attached as Exhibit "1"; and

WHEREAS, ~~pursuant to~~Section 3.44.020.A, Maui County Code ("MCC"), the Council may authorize the disposition of the easement by resolution; and

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Resolution No. _____

manner and adopts a resolution to that effect, approved by two-thirds of its members; and

WHEREAS, ~~pursuant to~~under Section 3.44.070.A, the Council may waive the requirement of an appraisal by resolution; now, therefore,

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

1. That the Council finds that the grant of the Sewerline Easement, under the terms and conditions as set forth in Exhibit "1," is in the public interest and waives the requirements for obtaining an appraisal and for disposition by public auction; ~~and~~
2. That the Council authorizes the grant of the Sewerline Easement under the terms and conditions as set forth in Exhibit "1"; ~~and~~ and
3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Environmental Management, the Director of Housing and Human Concerns, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel
County of Maui

it:misc:051areso01

LAND COURT

REGULAR SYSTEM

Return by Mail to:

COUNTY OF MAUI
Department of Finance
200 South High Street
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT:

SEWERLINE EASEMENT

PARTIES TO DOCUMENT:

GRANTOR: County of Maui
200 South High Street
Wailuku, Hawaii 96793

GRANTEE: A0703 West Maui, L.P.
2000 East Fourth Street, Suite 220
Santa Ana, California 92705

TAX MAP KEY(S): (2) 4-5-035:037 (por.) , (2)4-5-021:003 TOTAL NUMBER OF PAGES: 34

Exhibit" 1 "

SEWERLINE EASEMENT

THIS GRANT OF EASEMENT IN GROSS ("Agreement") is made this ____ day of _____, 20__ by and between 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 "GRANTOR") and A0703 WEST MAUI, L.P., a Hawaii limited partnership, whose address is 2000 E. Fourth St., Suite 20, Santa Ana, California 92705, (hereinafter referred to as the "GRANTEE").

WITNESSETH:

WHEREAS, GRANTOR is the fee owner of real property located in Wahikuli, District of Lahaina, Island and County of Maui, known as Kapunakea Street and designated as Tax Map Key No. (2) 4-5-035:037 (hereinafter "Property").

WHEREAS, Hawaii Housing Finance and Development Corporation ("HHFDC") is the fee owner of a parcel of land of approximately 393.5 acres north of Keawe Street Extension at the Villages of Leialii, Lahaina, Maui, Hawaii, designated as Tax Map Key No. (2)4-5-021:003 ("HHFDC Property").

WHEREAS, HHFDC has or will convey a 75-year leasehold interest in an approximate 28.5 acre portion of Tax Map Key No. (2)4-5-021:003, described as Lot 5-A, Subdivision File No. 4.1018 ("Lot 5-A") to GRANTEE for purposes of constructing the leasehold development of Kaiaulu o Kūku'ia, formerly known as the Keawe Street Apartments, a multifamily rental housing project of approximately 200 units (including managers' units), affordable to households at 60 percent and below the U.S. Department of Housing and Urban Development area median income ("Kaiaulu Project"), as shown on Exhibit D, attached hereto and made a part hereof.

WHEREAS, GRANTOR and HHFDC, on or about April 15, 2020, entered into a Memorandum of Understanding ("MOU") attached hereto as Exhibit A and made a part hereof, which established their respective roles and responsibilities for the connection of the Kaiaulu Project to the GRANTOR's public sewer system.

WHEREAS, connection of the Kaiaulu Project to the GRANTOR's public sewer system requires a private sewerline to be constructed from Lot 5-A, through private property designated as Tax Map Key No. (2)4-5-011:011 ("Private Kapunakea Property"). The Parties do not intend any obligation or benefit to any third party, including the owner of the Private Kapunakea Property.

NOW, THEREFORE, That the GRANTOR, in consideration 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 easement in gross for the limited purpose of building, constructing, reconstructing, rebuilding, repairing, operating, maintaining, relocating, or removing an underground sewerline ("Project"), said sewerline to be located entirely underground and within that certain area of land near the south-central portion of the Property, containing an area of approximately 1,183 square feet ("Easement Area"), more particularly described as Easement S-1 in Exhibit B and delineated on Exhibit C, both of which are attached hereto and made parts hereof, TOGETHER WITH the

rights of ingress and egress to and from the Easement Area for purposes directly related to the rights hereunder granted.

TO HAVE AND TO HOLD the easements rights unto the GRANTEE, its successors and assigns, SUBJECT, HOWEVER, to the following terms, conditions, and covenants, which shall be binding upon the GRANTOR, GRANTEE, and their respective successors and assigns:

1. Easement Created. The GRANTOR, effective as of the Effective Date, grants, sells, bargains, and conveys to the GRANTEE and as a non-exclusive easement in gross for the right to construct, reconstruct, install, inspect, maintain, replace, remove and use underground sewer pipeline and utility lines, including such underground conduits, pipes, manholes, service boxes, wires, cables, and fixtures, and appurtenances necessary to any and all thereof, as GRANTEE deems necessary, within the Easement Area for the sole purpose of providing sewer service to the Kaiaulu Project, provided that the GRANTEE obtains the GRANTOR's prior written approval for the plans and specifications for construction of the Project and any subsequent alterations and repairs thereto.

2. MOU. The GRANTEE shall comply with all the terms and conditions set forth in the MOU.

3. Location of Project. The GRANTEE's sewerline shall be located entirely underground and as close as reasonably practicable to the boundary lines of the Grantor's right-of-way for the Property, as approved by GRANTOR.

4. Work Permit. The GRANTEE shall be solely responsible for all costs and expenses incurred in connection with the Project and the maintenance of the Easement Area, including but not limited to, all design, planning, engineering, construction, alteration, and maintenance costs and expenses. The GRANTEE, or anyone acting on behalf of GRANTEE, shall obtain a permit from the GRANTOR for any construction, alteration, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work for or related to the Project on, within, under, over or across the Easement Area prior to commencing such work. Without limiting the foregoing or any other provision contained herein, the GRANTEE shall comply with any and all other requirements of the GRANTOR relating to any construction, alteration, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work for or related to the Project, and any required permits, including, but not limited to, any permits and/or approvals that may be required by federal, state, county, local or other laws or rules applicable to the proposed construction, installation, maintenance, repair, removal, replacement, reconstruction and upkeep work for or related to the Project on, within, under, over or across the Easement Area prior to commencing such work except to perform emergency repair or maintenance ("Emergency Work"). The GRANTEE may enter the Easement Area to perform Emergency Work without first obtaining such permit(s), provided that the GRANTEE notifies the GRANTOR of the location and type of emergency not later than one business day after the Emergency Work has commenced and provided that the GRANTEE obtains any required permits as soon as reasonably possible thereafter. "Emergency Work" shall mean immediate repair or maintenance work needed to protect public health, safety, welfare, or the environment as reasonably determined by the GRANTEE. In any event and without limiting any other provision contained herein, the GRANTEE shall release, indemnify, defend, and hold harmless the GRANTOR and its officers and employees from and against all claims, demands, liabilities, suits, actions, judgments, costs and expenses (including attorneys' fees) for loss, injury, death, or damage, including, without limitation, claims for property damage, personal injury, loss or death

of persons; to the extent that such damage, injury, loss, or death is caused by the GRANTEE, or its employees, agents, or contractors, performing any Emergency Work.

5. **Liability.** GRANTEE shall require its contractors and subcontractors to assume sole liability for, and shall require its contractors to indemnify, defend, and hold harmless the GRANTOR, HHFDC, and the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury, or death arising out of any act or omission of GRANTEE, its contractors or subcontractors under this Agreement. This paragraph shall survive the termination of this Agreement.

6. **Insurance.** Grantee, at its cost and expense, shall maintain at all times Commercial General Liability, Automobile, and Pollution Liability Insurance policies in full force and effect throughout the term of this Agreement, with the following minimum policy limits and coverage, with insurance company(s) licensed to do business in the State of Hawaii with a minimum insurer financial strength rating of no less than A (excellent) from A.M. Best, and financial size category of no less than VII, or otherwise acceptable to Grantor:

Minimum Policy Limits: Grantee's commercial general liability, automobile liability, including products and completed operations coverage, and automobile liability insurance, and pollution liability shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations performed under this Agreement.

Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the Grantee, does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.

The Commercial General Liability Insurance, Automobile Insurance, and Pollution Liability policies shall contain the following five provisions:

- a. It is agreed that any insurance maintained by the Grantor or State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
- b. The Grantor, the HHFDC and the State of Hawaii are added as additional insured parties with respect to operations performed on the property under this Agreement.
- c. If a general aggregate limit is used, the general aggregate limit shall apply separately to this Agreement.
- d. Insurance shall include a cross liability or severability of interest clause.
- e. The Grantee shall immediately provide written notice to the Grantor should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Agreement and on the Easement Area, all operations performed

incidentally, directly or indirectly connected with all operations to be performed under this Agreement and on the premises, including operations performed outside the work area and all change order work.

Grantee agrees to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit the Grantee to enter into a pre-loss agreement to waive subrogation without an endorsement, the Grantee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Grantee enter into such an agreement on a pre-loss basis.

Grantee agrees to deposit with Grantor, on or before the Effective Date of this Agreement, certificates of insurance necessary to satisfy Grantor that the insurance provisions of this Agreement have been complied with. Grantee further agrees to keep such insurance in effect and current certificates of insurance on deposit with Grantor during the entire term of this Agreement. The certificates of insurance shall refer to this Agreement.

Grantor shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this Agreement. If, in the reasonable opinion of Grantor, the insurance provisions in this Agreement do not provide adequate protection for Grantor, Grantor may require the Grantee obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Grantor's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.

Grantor shall notify the Grantee in writing of any changes in the insurance requirements desired by Grantor. If the Grantee does not deposit copies of insurance policies with Grantor incorporating such changes requested by Grantor within thirty (30) days of receipt of such notice, this Agreement shall be in default without further notice to the Grantee and Grantor shall be entitled to all legal remedies, including termination of this Agreement, and the Grantee shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, Grantee shall have the right to contest Grantor's request.

The procuring of the required policy or policies of insurance shall not be construed to limit the Grantee's liability under this Agreement nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding the policy or policies of insurance, the Grantee shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Agreement to the extent the Grantee is liable therefor under this Agreement.

All rights or claims of subrogation against the State of Hawaii and Grantor, their officers, employees, and agents are waived. Grantee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Agreement, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

7. Work Completion. Upon the completion of any work performed on, within, under, over or across the Easement Area by the GRANTEE, the GRANTEE shall promptly remove therefrom all equipment and unused or surplus materials, if any. The GRANTEE shall restore the

Easement Area and any other affected areas to a condition as near as reasonably possible to the condition of the Easement Area and any other affected areas prior to the commencement of the work ("Restoration Work") satisfactory to the GRANTOR in its sole discretion. In addition, the GRANTEE shall provide all as-built drawings of all work completed, including any revisions to the metes and bounds documents, of the Project, for the GRANTOR's acceptance within six (6) months of the GRANTEE's final acceptance of the GRANTEE's contractor's work. The GRANTEE shall warranty the Restoration Work for a period of not less than the longer of one (1) year or the warranty period from the GRANTEE's contractor from the date of final inspection and acceptance by the GRANTOR. Such warranty shall insure that the GRANTEE shall be responsible for any failure of the Restoration Work, including, but not limited to, any potholes occurring in and along the restoration area.

8. Maintenance. The GRANTEE shall, at its sole cost and expense, keep the Easement Area and the Project in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all repairs to the Project, and shall not make, permit, or suffer any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Easement Area.

9. Repair. The GRANTEE shall not damage, undermine, or otherwise destroy any portion of Maui County ("County") property, including, without limitation, any roadway facilities or improvements or facilities of other roadway tenants or other permitted users of the roadway situated on or near the Easement Area or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and underground utility systems. The GRANTEE shall, at its sole cost and expense, repair, restore, and reconstruct that portion of said County property so damaged, undermined, or destroyed, including any and all affected facilities, improvements, equipment, and appurtenances. All repairs, restoration, and reconstruction shall be completed by the GRANTEE immediately to the existing, or better, condition and shall be inspected and approved by the GRANTOR in its sole discretion.

10. No Obstruction. The GRANTEE shall not construct, replace, repair or maintain any landscaping or any portion of the Project (including any staging and/or temporary storing of equipment and materials) on, within, under, over or across the Easement Area in such a manner as to: (a) unnecessarily obstruct traffic; (b) obstruct, in any way whatsoever, the sight lines and distances and view corridors along the Roadway; (c) otherwise constitute a hazard to users of the Roadway, as determined by the GRANTOR in its sole discretion; (d) obstruct County roadway operations; and/or (e) obstruct operations of roadway tenants or other permitted users of the roadway on the Property or near the Easement Area.

11. Reservation of Rights. The GRANTOR reserves unto itself the full use and enjoyment of the Easement Area and the right to grant to others rights and privileges for any and all purposes affecting the Easement Area, all without charge by and without the consent of the GRANTEE, provided that such use by the GRANTOR and/or third parties does not unreasonably interfere with the GRANTEE's rights to use the Easement Area under this Agreement. The GRANTEE shall take steps necessary to ensure that the GRANTEE's exercise of the rights and privileges granted hereunder does not cause any substantial interference with the GRANTOR's operations in or near the Easement Area. The GRANTOR shall not hold the GRANTEE liable for loss, injury, death, or damage including, without limitation, claims for property damage, personal injury, loss or death of persons, to the extent that such damage, injury, loss, or death is caused by the GRANTOR or those other than the GRANTEE to whom the GRANTOR has granted such rights and privileges described in this Paragraph 11.

12. GRANTOR Work Within or Affecting the Easement Area. If the GRANTOR decides to perform work of any kind, on, within, under, over, across, near, or affecting the Easement Area, the GRANTOR will coordinate such work with the GRANTEE. The GRANTEE shall not prevent the GRANTOR from performing such work, provided, however, that the GRANTOR will take certain protective measures to assure that such work does not unreasonably interfere with the GRANTEE's use of the Easement Area as described herein. At the GRANTOR's sole option, the GRANTEE, at the GRANTEE's sole cost, except as may otherwise be required by law, shall relocate the Project to the extent the Project conflicts with plans of a GRANTOR project.

13. Term and Termination. This Easement shall be effective on the last to occur of the execution of the Easement by the County, following approval by the Maui County Council, or the Grantee's execution of the 75-year lease agreement with HHFDC, and shall terminate on the earlier of:

- a. The termination of the lease agreement between HHFDC and Grantee.
- b. Failure by Grantee to commence construction of the Project within five (5) years of the date of the MOU, as described in the MOU.
- c. Disconnection of the Kaiaulu Project from the County sewer system and connection to the planned Future Leali'i Sewage Treatment Facilities, as described in the MOU.
- d. State or federal requirements, or court order, that limit the inflow to the Lahaina Wastewater Reclamation Facility such that the Project inflow cannot be accommodated.
- e. Upon termination or cancellation of this Agreement, the GRANTEE shall, at the GRANTEE's sole cost and expense, abandon in place the Project and any improvements, equipment, facilities, components and appurtenances relating thereto, with such closure/capping methods as approved by the GRANTOR.

14. If not otherwise terminated or cancelled, this Agreement may be cancelled in whole or in part at any time by the mutual written agreement of the parties hereto. Any termination or cancellation of this Agreement, in whole or in part, shall not relieve the GRANTEE of its obligations to release, indemnify, defend and/or hold harmless the GRANTOR as provided herein and including, but not limited to, Paragraphs 16 (Indemnity) and 17 (Release and Indemnity) herein with respect to any such claims, demands, liabilities, suits, actions, judgments, costs and expenses for loss, injury, death or damage arising prior to such termination or cancellation of all or a portion of this Agreement. This provision shall survive the expiration or earlier termination of this Agreement.

15. Removal Upon Termination. In the event the GRANTEE shall at any time completely remove the sewerline from the Easement Area and for a period of twelve (12) months thereafter fail to reinstall the sewerline, the GRANTEE shall, at the GRANTOR's request, forthwith execute and deliver to 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 granted under this Agreement.

16. Indemnity. The GRANTEE shall at all times with respect to the Project and the Easement Area use due care for public safety. It is strictly understood that the GRANTOR shall in no way be held liable for any claims, damages, causes of action or suits resulting from any acts or omissions of the GRANTEE. The GRANTEE shall hold harmless, indemnify, and defend the GRANTOR and GRANTEE, their officers and employees, from and against all claims, demands, liabilities, suits, actions, judgments, costs and expenses (including attorneys' fees) for loss, injury, death or damage, including, without limitation, claims for property damage, personal injury, or loss or death of persons, whenever such damage, injury, loss or death arises out of, is connected with or related to (a) this Agreement or enforcement of the Agreement (whether or not suit is brought therefore); (b) the design, construction, repair, renovation, or defects of the Easement Area, or improvements thereon and/or the use, occupation, or operation of the Easement Area or improvements thereon; occurrences or incidents on, within, under, over or across the Easement Area or the Project when caused by acts or omissions of the GRANTEE, (c) any failure on the part of the GRANTEE to use due care or otherwise perform in accordance with the terms and conditions of this Agreement, and/or (d) any act or omission of the GRANTEE and/or the GRANTEE'S use and occupancy of the Easement Area. This Paragraph 16 shall survive the expiration or earlier termination of this Agreement.

17. Release and Indemnity. In addition to and without limiting the provisions of Paragraph 16 (Indemnity) and 18 (Litigation), the GRANTEE hereby agrees to release, indemnify, defend, and hold harmless the GRANTOR, and the GRANTOR's directors, officers, agents, elected officials, boards, and employees, and their respective successors and assigns, from any liability of any kind, including, but not limited to, any liability for any damages, penalties, fines, judgments, or assessments (including attorneys' fees) that may be imposed or obtained by any person, agency, or governmental authority by reason of any Hazardous Substance that may be present by or as a result of the GRANTEE's use of the Easement Area or the Project by whatever means on, in, or under, the Easement Area, including, but not limited to, any fines or penalties assessed against the GRANTOR for the GRANTEE's non-compliance with any Environmental Laws. The GRANTEE understands and agrees that any claims for damages, penalties, fines, judgments, or assessments that may be assessed against the GRANTEE or the GRANTOR by any person or governmental authority based on any violation of any Environmental Laws by the GRANTEE concerning the Easement Area or the Project shall be paid in full, complied with, and in every way satisfied by the GRANTEE within the required time, and not by the GRANTOR. In the event both the GRANTOR and the GRANTEE shall be liable for any environmental cleanup or remediation of the Easement Area as a result of any act or omission by the GRANTEE, the GRANTEE shall release, indemnify, defend, and hold harmless the GRANTOR, and the County's directors, officers, agents, elected officials, boards, and employees, in accordance with the terms of this subsection, unless the GRANTOR shall have been shown to have actually caused the condition complained of. This Paragraph 19 shall survive the expiration or earlier termination of this Agreement.

18. Litigation. If the GRANTOR shall be made a party to any litigation commenced by or against the GRANTEE (other than condemnation proceedings), 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 and costs; 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.

19. GRANTOR's Right to Act. In the event the GRANTEE fails for any reason to comply with any of its duties under this Agreement, including, but not limited to, compliance with

any Environmental Laws, within the time set for doing so, the GRANTOR shall have the right, but not the obligation, in its sole discretion, to perform those duties or cause them to be performed. The GRANTEE hereby grants access to the Easement Area and the Project at all reasonable hours to the GRANTOR, its agents and anyone designated by the GRANTOR, in order to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the GRANTOR in performing said acts or duties shall be the sole responsibility of the GRANTEE and the GRANTEE hereby agrees to immediately pay to the GRANTOR all of such costs and expenses incurred by the GRANTOR in performing said acts or duties. This obligation shall extend to any costs and expenses incident to enforcement of the GRANTOR's right to act, including litigation costs, attorney fees, and the costs and fees for collection of said costs, expenses, or liability.

20. Compliance with Laws. Without limiting any provision in this Agreement, the GRANTEE, at all times during the term of this Agreement, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all federal, state, and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force regarding the Easement Area.

21. No liens. The GRANTEE will 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 and all expenses resulting therefrom, including but not limited to GRANTOR's attorney's fees and costs.

22. Condemnation. In the event condemnation proceedings shall be initiated against the Easement Area by the GRANTOR or any other authority with the power of eminent domain, the GRANTEE acknowledges that GRANTEE shall not be entitled to nor will assert any claim for compensation arising from the rights granted by this agreement or GRANTEE's sewerline.

23. As-is Condition; No Warranty. The GRANTOR does not warrant the condition of the Easement Area. The GRANTEE accept the Easement Area in the condition it is in at the commencement of this easement, and the GRANTEE 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).

24. Default and Cure. If the GRANTEE, or any of them, fail to observe or perform any of the terms or conditions provided herein to be observed or performed by the GRANTEE, 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 terminate this easement as follows:

- a. At any time after a breach shall have occurred, the GRANTOR shall notify GRANTEE in writing of its intention to terminate this easement. If GRANTEE within ninety (90) days from receipt of the notice of intention to terminate, shall undertake to cure the default and shall with due diligence thereafter promptly cure the default, then GRANTOR shall not have grounds to terminate this easement on account of such default. If the GRANTEE, within ninety (90) days from receipt of the notice of intention to terminate, shall not undertake to cure the default or, having

undertaken to cure the default, shall not cure the default promptly thereafter, then GRANTOR shall have the right to apply to the Second Circuit Court of the County of Maui or other court of competent jurisdiction for an order declaring this easement terminated and of no further force and effect, and upon receiving such an order from the Court, the GRANTOR shall be entitled to remove GRANTEE's sewerline from the Easement Area.

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

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

26. Assignment. The GRANTEE's right under this Agreement shall not be sold, assigned, conveyed, leased, subleased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the GRANTOR which consent may be withheld by the GRANTOR in its sole discretion. In giving any such consent, the GRANTOR need not release the GRANTEE from any liabilities or obligations hereunder.

27. Grantor, Grantee, and Lessee. That the terms "GRANTEE" wherever used herein, shall be held to mean and include the undersigned GRANTEE, and their respective 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.

28. Entire Agreement. This written agreement represents the entire agreement of the parties hereto. This agreement may be amended only by written amendment executed by all of the undersigned parties.

29. Recordation. This agreement shall be recorded at the Bureau of Conveyances of the County of Hawaii at GRANTEE's expense and upon such recording, GRANTEE's covenants herein shall constitute obligations that shall run with GRANTEE's lands described above and shall be the responsibility of GRANTEES and all future owners of GRANTEE's lands.

30. No Third Party Beneficiaries. No third party beneficiaries are intended by this Agreement, and the terms and provisions of this Agreement shall not give rise to any right in third parties to enforce the provisions of this Agreement.

31. 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.

32. No Drafter. The GRANTEE and the GRANTOR agree that no party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against any party as the drafter of this Agreement.

33. Counterparts. 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.

[SIGNATURE PAGE FOLLOWS.]

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


GRANTOR:

COUNTY OF MAUI


By MICHAEL P. VICTORINO
Its Mayor

GRANTEE:

A0703 WEST MAUI, L.P.
By: FP Holdings LLC

By: 
David H. Bigley
Its: Manager

REVIEWED AND APPROVED:


ERIC A. NAKAGAWA
Director of Environmental Management


ROWENA DAGDAG-ANDAYA
Director of Public Works

APPROVED AS TO FORM
AND LEGALITY:


RICHELLE M. THOMSON
Deputy Corporation Counsel
LF2020-0723

ACKNOWLEDGMENT

.....

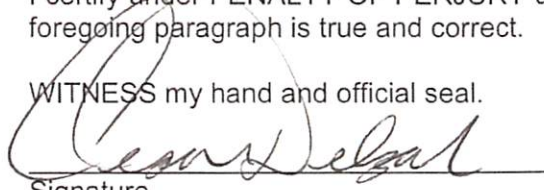
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

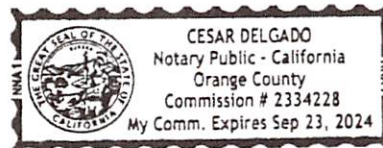
State of California
County of ORANGE ss.

On February 4, 2021 before me, Cesar Delgado, Notary Public, personally appeared David H. Bigley, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature



(seal)

COUNTY OF _____)
_____) SS.

On this _____ day of _____, 20____, before me personally appeared _____, 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]

Notary Public, County of _____

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: <u>SEWERLINE EASEMENT</u>	

Notary Signature: _____	
Date: _____	

[Stamp or Seal]

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this ____ day of _____, 20____, before me personally appeared MICHAEL P. VICTORINO, 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 County 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 the Charter of the County of Maui; and the said MICHAEL P. VICTORINO 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]

Notary Public, County of _____

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: <u>34</u>
Notary Name: _____	Judicial Circuit: _____
Doc. Description: <u>SEWERLINE EASEMENT</u>	
_____ _____ _____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

Exhibit A

(Memorandum of Understanding)

Exhibit B

(Legal Description of easement area)

Exhibit C

(Map of easement area and Project Site)

Exhibit D

(Legal Description of Project Site)

Exhibit A

(Memorandum of Understanding)

Attached

MEMORANDUM OF UNDERSTANDING
SEWER CONNECTION FOR
KEAWE STREET APARTMENTS

THIS MEMORANDUM OF UNDERSTANDING, effective as of April 15, 2020 ("MOU"), made by and between the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii ("HHFDC"), doing business at 677 Queen Street, Suite 300, Honolulu, Hawaii, 96813, and the COUNTY OF MAUI, a municipal corporation of the State of Hawaii ("County"), doing business at 200 South High Street, Wailuku, Hawaii, 96793.

WITNESSETH:

WHEREAS, HHFDC owns fee simple title to a parcel of land of approximately 436 acres north of Keawe Street Extension at the Villages of Leiali'i, Lahaina, Maui, Hawaii, Tax Map Key No. (2) 4-5-021: 003 ("Parcel 003").

WHEREAS, after a Request for Proposal process, on January 10, 2019, HHFDC approved Ikaika Ohana ("Ikaika") as the leasehold developer of the Keawe Street Apartments (the "Project"), an affordable, multifamily residential housing project of up to 200 units. The Project will be located on approximately 28.5 acres at Keawe Street Extension on Parcel 003 substantially as shown on Exhibit A attached hereto and hereby incorporated by reference. The Project is proposed to consist of two-, three-, and four-bedroom apartments. The Project will be restricted (excluding units for managers, social services, and maintenance) to families earning no more than 80 percent or below the U.S. Department of Housing and Urban Development area median income ("AMI"), as approved by HHFDC (the "Ceiling"). A further restriction will exist whereby the average, for all units, cannot exceed 60 percent of AMI (the "Average"). The actual restriction for the units may be less than the Ceiling and Average as approved by Ikaika and HHFDC. The Project must also comply with the provisions of a regulatory agreement approved by HHFDC in connection with obtaining a tax credit allocation.

WHEREAS, Ikaika is desirous of connecting the Project to the County of Maui sewer system, at Project cost, by one of two options as approved by the County conceptually described as follows ("Connection Project"):

- A. Option 1 – Kapunakea Street, see Exhibit B-1 attached hereto and hereby incorporated by reference
 - 1. Construct a sewer line (design subject to County approval) from the Project over private property at Tax Map Key No. (2) 4-5-011: 011 ("Private Kapunakea Property") and property owned by the County of Maui at Tax Map Key No. (2) 4-5-035: 037 ("County Kapunakea Property") for

- connection to the 8" County sewer line in Kapunakea Street at Kapunakea Street and Nahele Place;
2. The grantee of the sewer easement over the Private Kapunakea Property will be HHFDC or its designee, and a sewer easement over the County Kapunakea Property will be required and requires the approval of the Maui County Council prior to commencement of the construction;
 3. Redirect the sewer flow from the Kapunakea Street sewer line at or prior to existing Sewer Manhole LA04XA1300 to the 27" sewer main in Honoapiilani Highway to or after existing Sewer Manhole LA03XB0600 (or as otherwise approved by the County), or, as necessary, construct a new sewer line on the mauka (east) side of Honoapiilani Highway from Kapunakea Street to Wastewater Pump Station No. 3 at Tax Map Key No. (2) 4-5-030: 015 and 016; or
- B. Option 2 – Fleming Road, see Exhibit B-2 attached hereto and hereby incorporated by reference
1. Construct a wastewater pump station and sewer line from the Project over Parcel 003 to Fleming Road and connect to the existing sewer manhole at the intersection of Kahoma Street/Hamau Place and Ainakea Road as shown on Exhibit B-2;
- C. Provide CCTV of the utilized sewer lines and possible replacement or rehabilitation as required by the County; and
- D. All costs of the Connection Project shall be borne by the Project;

WHEREAS, the County is agreeable to allow the Connection Project for the connection of the Project to the County sewer system in accordance with the terms of this MOU;

WHEREAS, HHFDC and the County wish to enter into this MOU to define their respective roles and responsibilities for the connection of the Project to the County sewer system;

NOW, THEREFORE, the parties hereby agree as follows:

- I. County Obligations. The County agrees to the following:
 - A. Allow the Project to connect to the County sewer system in accordance with plans and specifications approved by the County for the Connection Project until the next project at the Villages of Leiali'i¹ is developed ("Next Project"), at which time development of the Next Project and all future projects at the Villages of Leiali'i shall include development of their own wastewater treatment facility, or a common wastewater treatment facility for the treatment

¹ The Villages of Leiali'i consists of the following Tax Map Key parcels:

Phase A:

(2) 4-5-021: 003
 (2) 4-5-021: 021
 (2) 4-5-021: 013
 (2) 4-5-028: 070

Phase B:

(2) 4-5-021: 022 (portion)
 (2) 4-5-021: 004 (portion)
 (2) 4-5-021: 005 (portion)

and disposal of wastewater generated at the Villages of Leiali'i ("Future Leiali'i Sewage Treatment Facilities"), and at which time the Project shall be disconnected from the County sewer system and connected to such Future Leiali'i Sewage Treatment Facilities; and

- B. If the Future Leiali'i Sewage Treatment Facilities also serve areas outside the Villages of Leiali'i that the County then serves or could serve, the County may accept dedication and operation of the Future Leiali'i Sewage Treatment Facilities, upon terms and conditions agreeable to the County and HHFDC.

II. HHFDC Obligations. HHFDC agrees to the following:

- A. Develop or require the development of the Connection Project at Project cost;
- B. Develop or require the development of the Future Leiali'i Sewage Treatment Facilities with the development of the Next Project and develop or require the connection of the Next Project and all future projects at the Villages of Leiali'i to the Future Leiali'i Sewage Treatment Facilities; and
- C. Disconnect or require the disconnection of the Project from the County sewer system (per disconnection plan approved by the County) and connect or require the connection of the Project to the Future Leiali'i Sewage Treatment Facilities.

III. Deadline for Commencement of Construction. The Project shall commence construction within five (5) years of the date of this MOU. This MOU shall be null and void if this condition is not met, and no funds will be returned to HHFDC nor credit given toward any future allocation requests.

IV. Termination. This MOU shall terminate upon the earliest to occur of the following:

- A. Failure to commence construction by the deadline described in Section III of this MOU; or
- B. Disconnection of the Project from the County sewer system; or
- C. State or federal requirements, by permit or legal action, that limit the inflow to the Lahaina Wastewater Treatment Facility such that the Project inflow cannot be accommodated; or
- D. County Council disapproval of the easement required for Option 1 or failure of the parties to reach agreement on the terms of said easement, described in the Recitals; or
- E. Mutual agreement of all parties.

Upon termination of this MOU, the HHFDC and the County shall be released from any further obligations hereunder.

V. Amendments, Waiver. This MOU can only be changed by an instrument in writing signed by HHFDC and the County. The terms of this MOU may not be waived, modified, or in any way changed by implication, through conduct, correspondence, or otherwise, unless such waiver, modification, or change shall be specifically agreed to in writing by HHFDC and the County. Any waiver in

whole or in part to any of the terms and conditions hereunder shall be specific and not general. Each waiver shall only apply to specific conditions and circumstances.

- VI. Binding Effect of Agreement. This MOU shall be binding upon and inure to the benefit of HHFDC and the County, and their respective successors and assigns.
- VII. Gender and Number. The use of any pronoun in reference to HHFDC and the County shall be construed to mean the singular or plural, the masculine, feminine or neuter, as the instrument and context may require.
- VIII. No Party Deemed Drafter. The parties agree that neither HHFDC nor the County shall be deemed to be the drafter of this MOU and in the event this MOU is ever construed by a court of law, such court shall not construe this MOU or any provision hereof against any party as the drafter of this MOU.
- IX. Counterparts. This MOU may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one MOU.
- X. Invalidity of Provisions. If any provision of this MOU as applied to any party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way effect any other provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this MOU as a whole.
- XI. Applicable Law. This MOU shall be interpreted in accordance with the laws of the State of Hawaii as such laws are construed and amended from time to time.
- XII. Notices. Any written notice required to be given by any party to this MOU shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The parties are responsible for notifying each other in writing of any change of address.

Notice to HHFDC shall be addressed to:

Executive Director
Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

Notice to the County shall be addressed to:

**Mayor
County of Maui
200 South High Street
Wailuku, Hawaii 96793**

**With copy to:
Director
Department of Environmental Management
200 S. High Street
Wailuku, Hawaii 96793**

[The remainder of this page is blank. The next page is a signature page.]

IN WITNESS THEREOF, the undersigned have executed these presents as of the day and year first written above.


Approved as to Form:


County Attorney General
Representing HHFDC
3-5-20

Hawaii Housing Finance and
Development Corporation

By 
Denise Iseri-Matsubara
Interim Executive Director
3-10-20

Approved as to Form and Legality:


Corporation Counsel
County of Maui

County of Maui

By 
Michael P. Victorino
Mayor

APPROVAL RECOMMENDED:

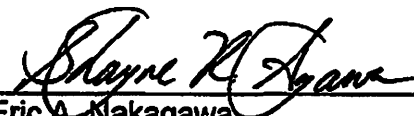

Eric A. Nakagawa
Director of Environmental Management

EXHIBIT A

Project Site Map

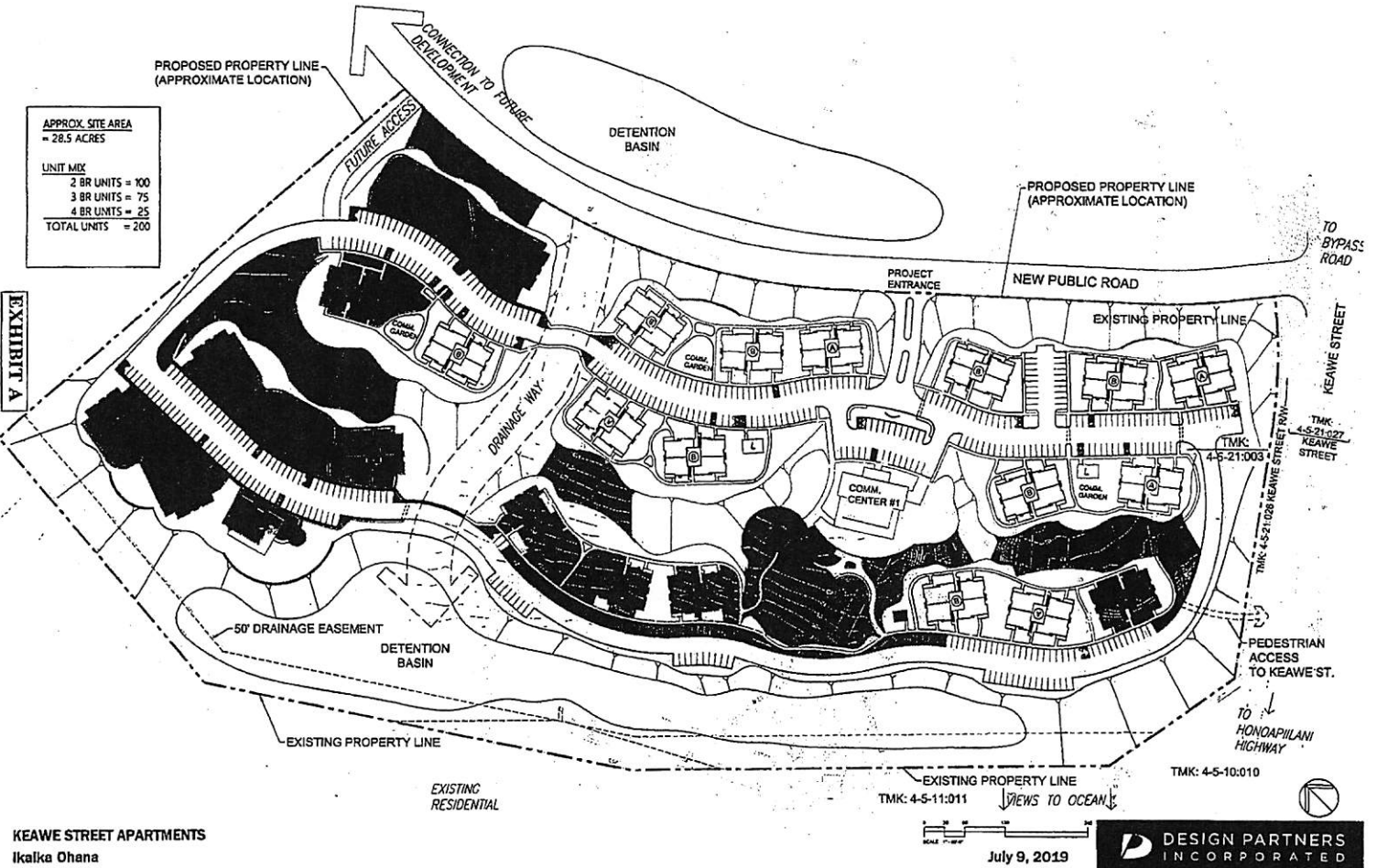
EXHIBIT B-1

Connection Project – Option 1

EXHIBIT B-2

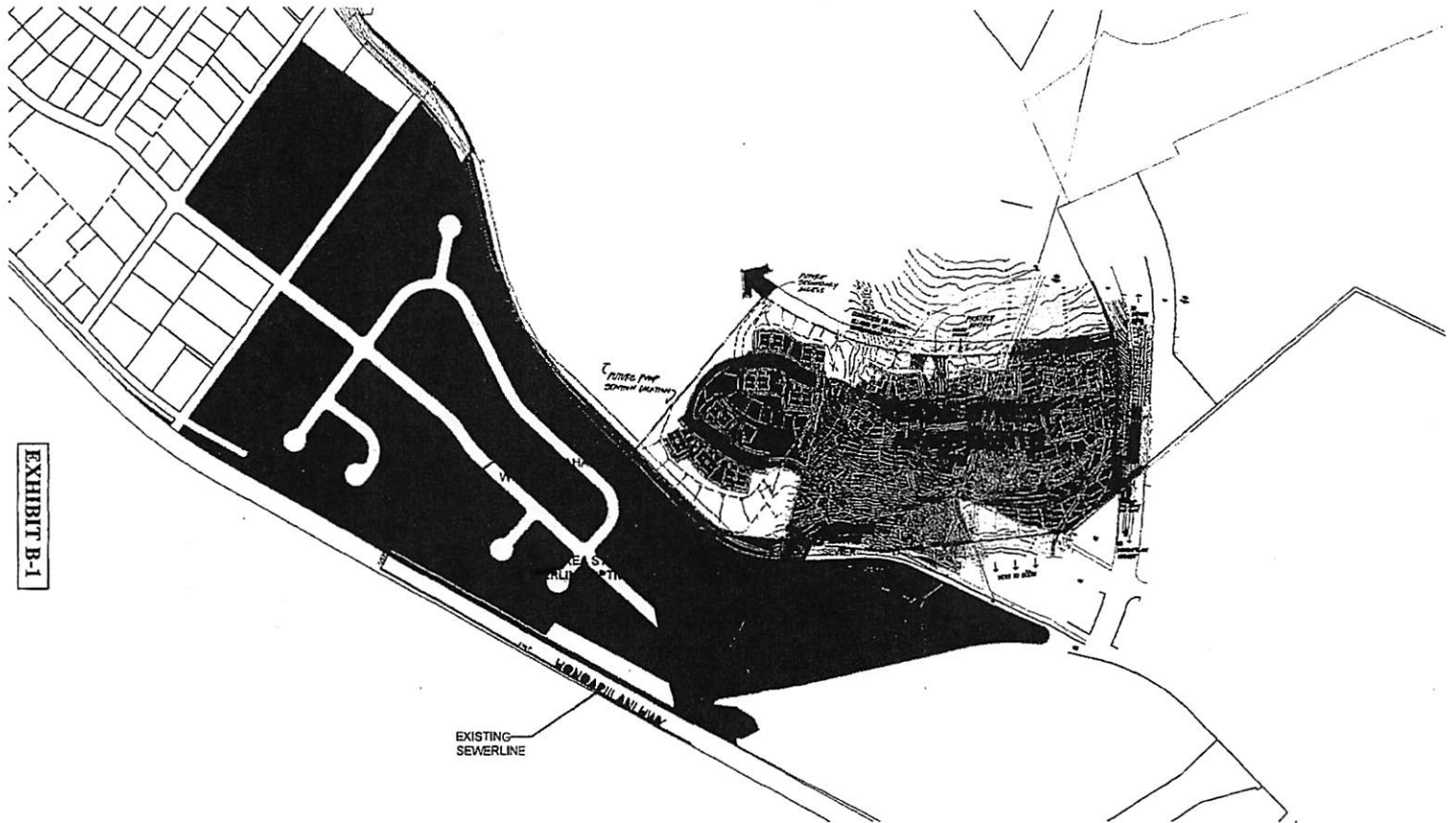
Connection Project – Option 2

EXHIBIT A



KEAWE STREET APARTMENTS
Ikalika Ohana

EXHIBIT B-1



OFFSITE WASTEWATER IMPROVEMENTS - OPTION 1

NOT TO SCALE

KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALI'I
Affordable Family Rental Housing Project

JUNE 20, 2019

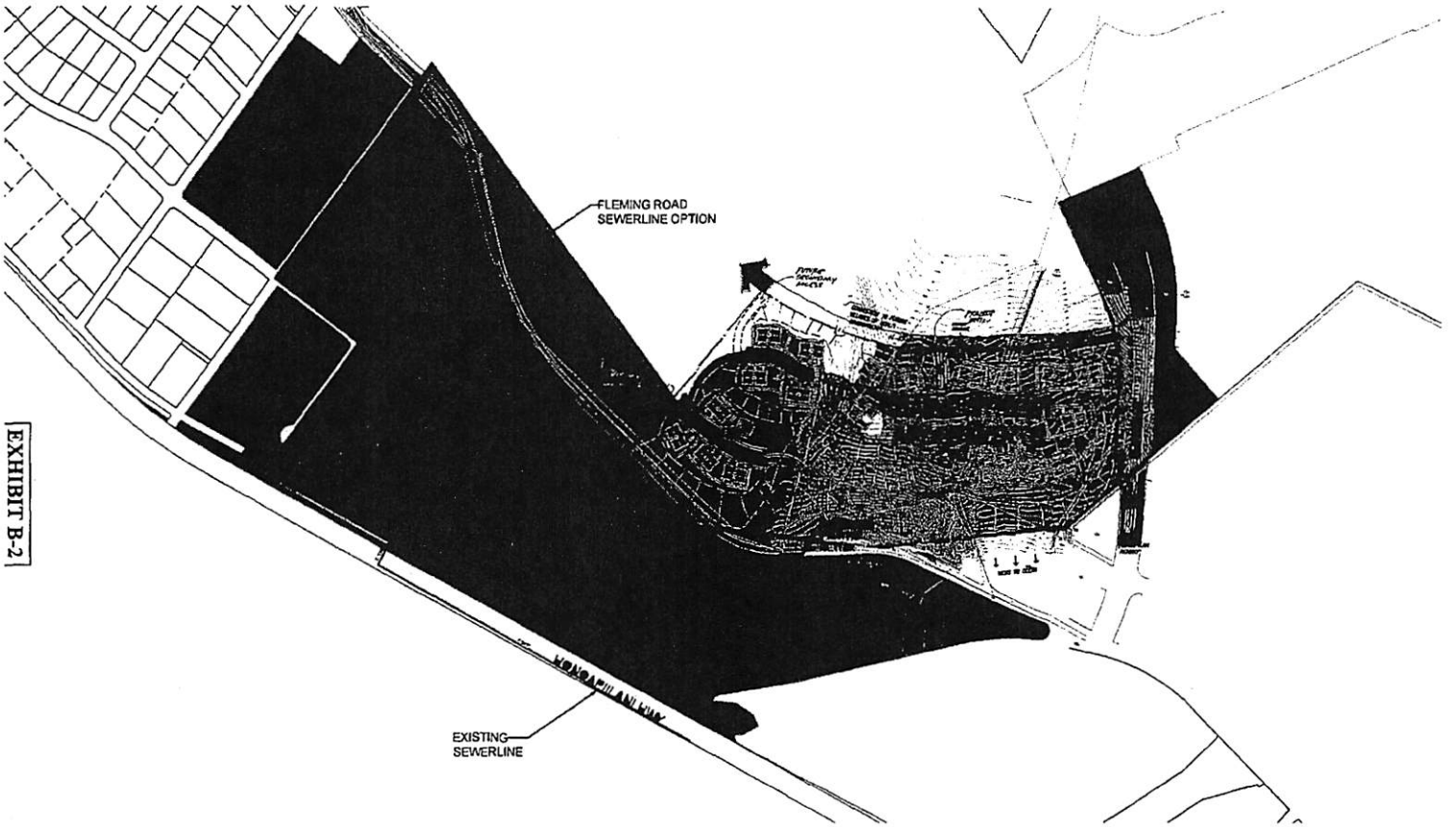


EXHIBIT B-2

OFFSITE WASTEWATER IMPROVEMENTS - OPTION 2

NOT TO SCALE

KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALI'I
Affordable Family Rental Housing Project

JUNE 20, 2019

Exhibit B

(Legal Description of Easement Area)

Attached

DESCRIPTION

EASEMENT S-1

Affecting Lot 39 of the Upper Kapunakea Houselots No. 2 (File Plan 1752), being also a portion of Land Patent 8306, Land Commission Award 11216, Apana 16 to M. Kekauonohi, situated at Kapunakea, Lahaina, Island and County of Maui, State of Hawaii.

Beginning at the Southwest corner of this easement, on the Easterly side of Kapunakea Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAINA" being:

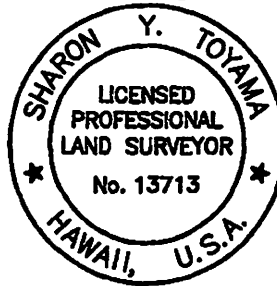
2,931.68 feet South

4,480.07 feet West

and running by azimuths measured clockwise from True South:

1. 164° 50' 15.00 feet along the Easterly side of Kapunakea Street, being also the remainder of Land Patent 8306, Land Commission Award 11216, Apana 16 to M. Kekauonohi;
2. 254° 50' 74.20 feet along the remainder of Lot 39 of the Upper Kapunakea Houselots No. 2 (File Plan 1752), being also the remainder of Land Patent 8306, Land Commission Award 11216, Apana 16 to M. Kekauonohi;
3. 313° 00' 17.66 feet along Lot 4 of the Hawaii Omori Mauka Subdivision, being also the remainder of Land Patent 8306, Land Commission Award 11216, Apana 16 to M. Kekauonohi;
4. 74° 50' 83.51 feet along the remainder of Lot 39 of the Upper Kapunakea Houselots No. 2 (File Plan 1752), being also the remainder of Land Patent 8306, Land Commission Award 11216, Apana 16 to M. Kekauonohi to the point of beginning and containing an area of 1,183 Square Feet.

This work was prepared by me
or under my supervision.



FUKUMOTO ENGINEERING, INC.

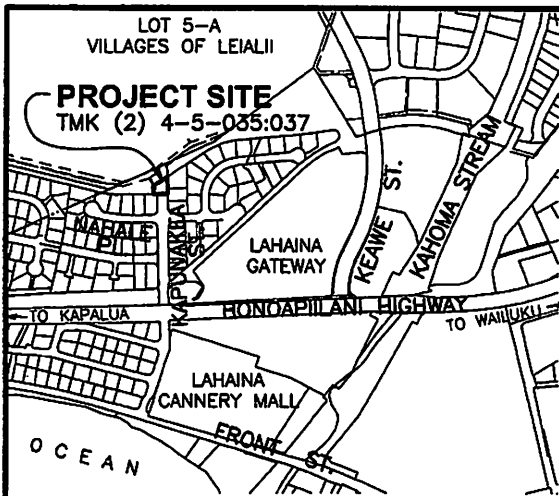
1721 Wili Pa Loop, Suite 203
Wailuku, Hawaii 96793
March 27, 2020

DPII2

Sharon Y. Toyama

Sharon Y. Toyama
Licensed Professional Land Surveyor
Certificate Number 13713
License Expires: 4/30/20

Exhibit C
(Map of Easement Area)
Attached



VICINITY MAP

GRAPHIC SCALE IN FEET

NORTH 0 500 1000 2000

MAP SHOWING EASEMENT S-1

AFFECTING LOT 39 OF UPPER KAPUNAKEA HOUSELOTS NO. 2 (FILE PLAN 1752), BEING ALSO A PORTION OF LAND PATENT 8306, LAND COMMISSION AWARD 11216, APANA 16 TO M. KEKAUONOHI

KAPUNAKEA, LAHAINA, MAUI, HAWAII

SCALE: 1 IN.=30 FT.

DATE: FEBRUARY 12, 2021

PREPARED FOR:

HAWAII HOUSING FINANCE AND
DEV. CORPORATION (HHFDC)
STATE OF HAWAII
677 QUEEN STREET
HONOLULU, HAWAII 96813

PREPARED BY:

FUKUMOTO ENGINEERING, INC.
1721 WILI PA LOOP, SUITE 203
WAILUKU, HAWAII 96793

OWNER:

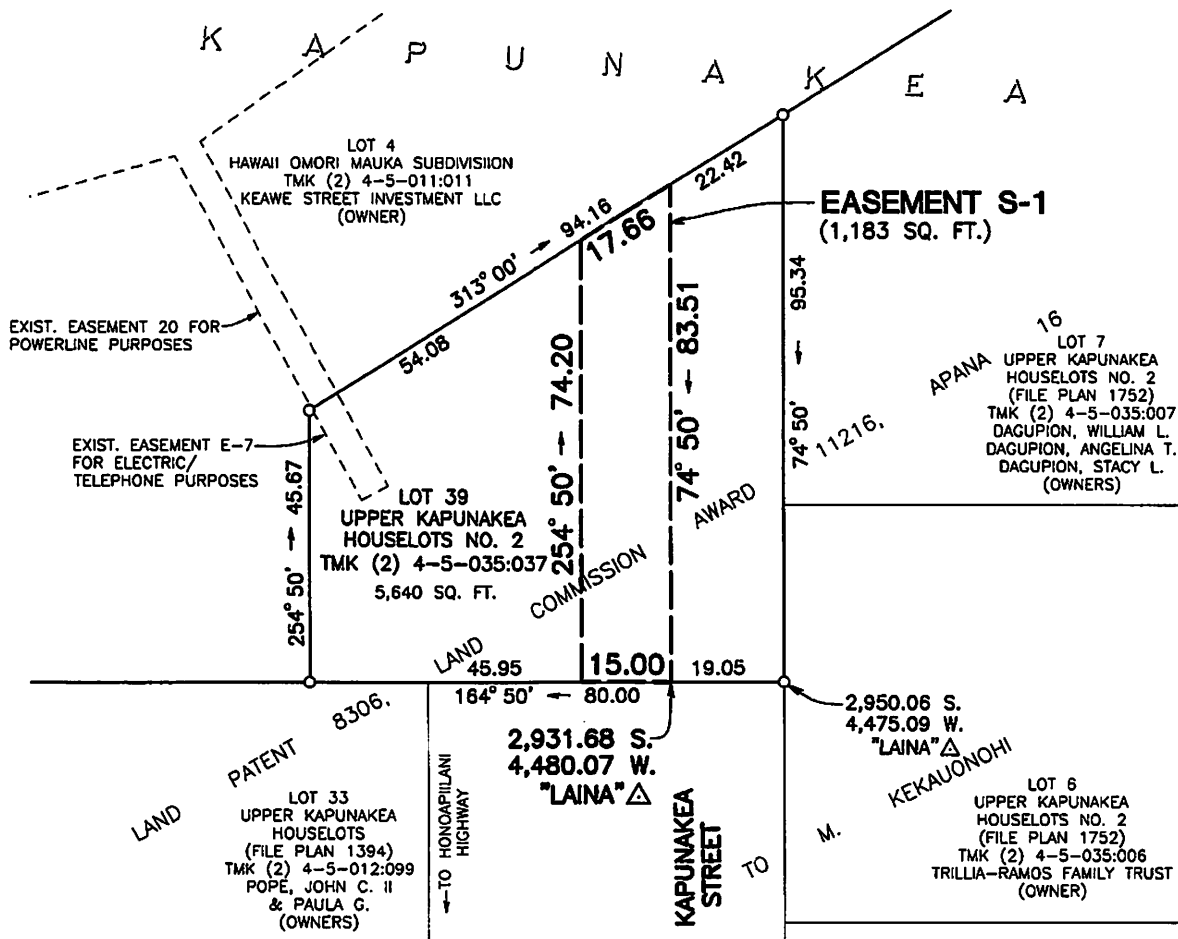
COUNTY OF MAUI

PARCEL ADDRESS:

KEAWE STREET
LAHAINA, HAWAII 96761

NOTES:

1. ALL AZIMUTHS AND RECORD COORDINATES REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "LAINA"Δ.
2. OWNERS OF ADJOINING PARCELS ARE FROM THE COUNTY REAL PROPERTY TAX DIVISION RECORDS.
3. EASEMENT S-1 (1,183 SQ. FT.) IS 15 FT. WIDE EASEMENT FOR SEWERLINE PURPOSES AFFECTING LOT 39 OF THE UPPER KAPUNAKEA HOUSELOTS NO. 2 (FILE PLAN 1752) IN FAVOR OF LOT 5-A OF THE VILLAGES OF LEIALII.



EASEMENT S-1

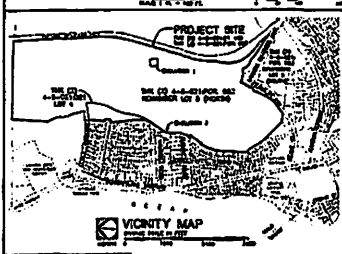
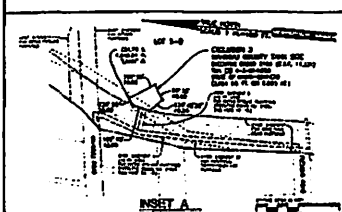
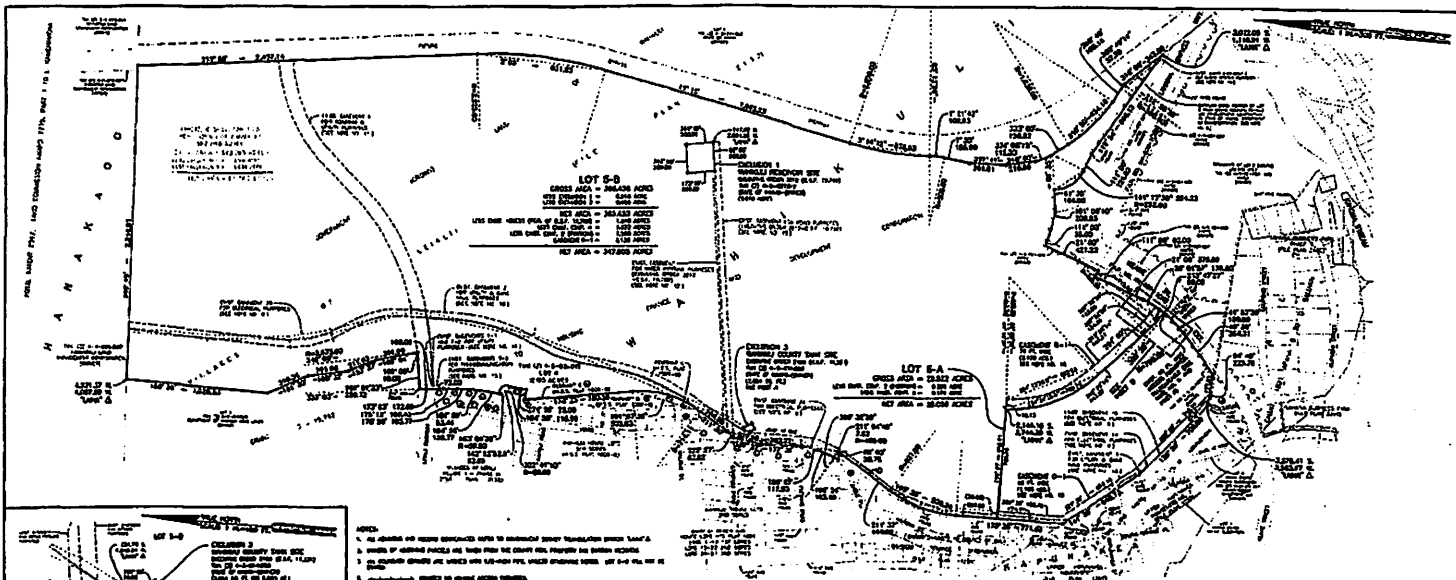
GRAPHIC SCALE IN FEET

NORTH 0 15 30 60

TAX MAP KEY (2) 4-5-035:037

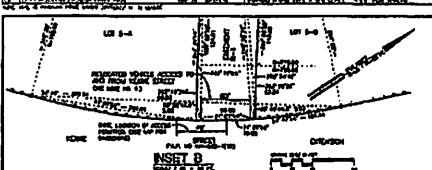
Exhibit D
(Subdivision File No. 4.1018)

Attached



1. ALL RIGHTS AND INTERESTS ARE HEREBY CONVEYED TO THE DEVELOPER...
2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS...
3. THE DEVELOPER SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES...
4. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL SURVEYS...
5. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL RECORDING FEES...
6. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL LEGAL FEES...
7. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL ENGINEERING FEES...
8. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL ARCHITECTURAL FEES...
9. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL LANDSCAPE ARCHITECTURAL FEES...
10. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL UTILITY FEES...
11. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL ENVIRONMENTAL FEES...
12. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL HISTORIC PRESERVATION FEES...
13. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL CULTURAL RESOURCE FEES...
14. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL PALEONTOLOGICAL FEES...
15. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL ARCHAEOLOGICAL FEES...
16. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL ANTHROPOLOGICAL FEES...
17. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL ETHNOHISTORICAL FEES...
18. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL ETHNOBOTANICAL FEES...
19. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL ETHNOZOOLOGICAL FEES...
20. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE COST OF ALL ETHNOLINGUISTIC FEES...

NO.	DESCRIPTION	AMOUNT	TOTAL
1	LOT 5-B	10.00	10.00
2	LOT 5-A	10.00	10.00
3	LOT 5-C	10.00	10.00
4	LOT 5-D	10.00	10.00
5	LOT 5-E	10.00	10.00
6	LOT 5-F	10.00	10.00
7	LOT 5-G	10.00	10.00
8	LOT 5-H	10.00	10.00
9	LOT 5-I	10.00	10.00
10	LOT 5-J	10.00	10.00
11	LOT 5-K	10.00	10.00
12	LOT 5-L	10.00	10.00
13	LOT 5-M	10.00	10.00
14	LOT 5-N	10.00	10.00
15	LOT 5-O	10.00	10.00
16	LOT 5-P	10.00	10.00
17	LOT 5-Q	10.00	10.00
18	LOT 5-R	10.00	10.00
19	LOT 5-S	10.00	10.00
20	LOT 5-T	10.00	10.00



VILLAGES OF LEALI

CONSOLIDATION OF THE REMAINDER OF LOT 5 (NORTH) INTO LOT 5-A AND LOT 5-B AND DESIGNATION OF EASEMENT R-1 AND EASEMENT D-1

WINDSOR, LANARK, MAIR, HOBBS

DATE: 10/10/10
BY: [Signature]
FOR: [Signature]

SCALE: 1" = 100' FT.
NORTH: [Arrow pointing up]

PREPARED BY: [Signature]
CHECKED BY: [Signature]
DATE: 10/10/10

PROJECT: [Signature]
DATE: 10/10/10

FILE NO. 10-10-10