



R-175 STATE OF HAWAII  
 BUREAU OF CONVEYANCES  
 RECORDED  
 JAN 26, 2004 08:01 AM  
 Doc No(s) 2004-015491



/s/ CARL T. WATANABE  
 REGISTRAR OF CONVEYANCES

20 1/3 Z2

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail  Pickup ( ) To:

**MANCINI, WELCH & GEIGER (TM)**  
**33 LONO AVENUE, SUITE 470**  
**KAHULUI, HI 96732**

**R150**  
**Te: 200338791-P**  
**Lynn Sueda**

TDW/72388.4

Total No. of Pages: 17

TMK (2) 4-7-1:2 (por.)  
 (2) 4-7-4:4 (por.)

GRANT OF NON-EXCLUSIVE EASEMENTS FOR  
 DRAINAGE, ACCESS AND UTILITIES FOR MAKILA  
 PLANTATION - PHASE II AND AMENDMENT OF EXISTING GRANT

This Easement is dated as of this 20<sup>th</sup> day of January, 2004, and is executed by MAKILA LAND CO., LLC, a Hawaii limited liability company, the principal place of business of which is 33 Lono Avenue, Suite 450, Kahului, Hawaii 96732 ("Grantor") in favor of MAKILA PLANTATION HOMEOWNERS' ASSOCIATION, INC., a Hawaii non-profit corporation, the principal place of business of which is 33 Lono Avenue, Suite 450, Kahului, Hawaii 96732 ("Grantee").

RECITALS: Grantor is the owner of Lots 4 and 6 of the Launiupoko Large Lot Subdivision 2, LUCA File No. 4.837, as shown on the Subdivision Plan dated August 3, 2002, revised through November 18, 2002, prepared by Reed M.

Ariyoshi of Warren S. Unemori Engineering, Inc. (the "Large Lot Subdivision Plan"). There exists on said Lots the following easements:

- a. On Lot 6: Easement C, described on Exhibit 1 hereto;
- b. On Lot 4: Easement D through G, described on Exhibits 2 through 5, respectively;

Grantor is also the owner and developer of the Makila Plantation Subdivision - Phase II (the "Phase II Subdivision") being developed on Lot 5 as shown on the Large Lot Subdivision Plan, consisting of 24 agricultural lots, 5 road lots and 2 greenway lots and appurtenances, all as shown on the Plan entitled "Makila Plantation - Phase II", dated September 30, 2003, revised August 13, 2003, prepared by Reed M. Ariyoshi, of Warren S. Unemori Engineering, Inc. recorded in the State of Hawaii Bureau of Conveyances as File Plan No. 2364 (the "Phase II Subdivision Plan"). There exists in the Phase II Subdivision Easements D-1 through D-9, inclusive, and Easement G-1.

Grantor is also the owner and developer of Makila Plantation Subdivision which abuts a portion of the Phase II Subdivision on the south. Said subdivision and the Phase II Subdivision are collectively called "Makila". Reference is made to the Grant of Non-Exclusive Easements for Waterline, Drainage, Access, Utilities, Greenway and Landscaping for Makila Plantation, dated May 10, 2002, recorded in the State of Hawaii Bureau of Conveyances as Document No. 2002-088746 (the "Existing Declaration").

Grantee is the homeowners' association formed for the purpose of managing and administering all common areas within Makila.

The purpose of this easement is to establish non-exclusive perpetual easements subject to and upon all of the terms and conditions set forth below. The area of each easement as shown on the Exhibits hereto is herein referred to as an "Easement Area".

AMENDMENT: The Existing Declaration is hereby amended by including the Phase II Subdivision in the term "Subdivision" therein, for all purposes including but not limited to the use of Greenway Easements P, Q and R.

EASEMENTS. For valuable consideration, Grantor hereby grants and conveys to the Grantee, non-exclusive, perpetual easements over each of the Easement Areas for the following purposes:

(a) The purpose of Easement C shall be for the right of pedestrian and vehicular ingress and egress and for the installation, maintenance, operation, repair and replacement of wires and lines for water service, electricity, telephone, cable TV and other utilities; and

(b) The purpose of each of Easements D, E, F, G, and H and Easements D-1 through D-9, inclusive shall be to maintain, operate, repair and replace swales, culverts, basins and other improvements for the purpose of holding, conducting, maintaining and disbursing the drainage of storm water run-off.

(c) Easements over Lots 25 and 26 and Easement G-1 for greenways and open space for recreational use by owners of all lots in Makila and their guests and by the public or others as Grantor and Grantee may determine.

Said easements are hereby granted subject to all of the following terms and conditions:

1. Costs. All costs and expenses related to the operation, maintenance, repair and replacement of facilities within each Easement Area by the Grantee shall be borne by the Grantee as a common expense of Makila and at no expense to Grantor. Grantee will pay as and when due all real estate taxes and assessments which shall become due with respect to all improvements within each Easement Area.
2. Covenants. Grantee at all times in connection with all uses and actions within each Easement Area shall: (a) observe and perform all applicable laws, rules and regulations; (b) maintain Grantee's facilities within the Easement Area in good, reasonable, and useable condition; and (c) maintain general, extended coverage liability insurance with respect to Grantee's facilities within the Easement Area, in commercially reasonable amounts, naming Grantor as additional insured.
3. Grant of Use of Easement Areas to Others. Each easement herein is non-exclusive and Grantee recognizes that Grantor shall have the right to use and grant to others the right to use the Easement Area for their own purposes, without the necessity of any consent or joinder of Grantee or its members; provided, that uses thereof by the Grantee and Grantee's members and their tenants, guests, licensees, and visitors shall not thereby be obstructed or unreasonably interfered with.

Upon any such grant to others, Grantor shall notify Grantee in writing. As a condition of each such grant to such other users, such other users shall be obligated to bear a fair, proportionate share of all costs and expenses of owning, operating, maintaining, repairing, and replacing Grantees' facilities within each Easement Area, based on a reasonable formula calculated to reflect proportionate use, benefit and burden. In the event of any disagreement as to whether any such formula shall be reasonable, the matter shall be submitted at the option of either Grantor or Grantee to binding arbitration in Wailuku, Hawaii under the Commercial Arbitration Rules of the American Arbitration Association.

Grantor may assign to any third-party Grantor's reserved right to grant easement rights to others over the Easement Area.

4. Nuisances from Agricultural and Development Operations. Neither Declarant, nor Pioneer Mill Co., Limited, nor any affiliates or successors in interest of either shall be liable for injury, loss, or damage which may occur or arise within or in connection with the use of any Easement Area, and which shall result from nuisances such as noise, dust, smoke, soot, ash, odor, or other adverse conditions of any kind created by agricultural activities, development activities, drainage, construction or similar activities on land adjacent to or in the vicinity of the Easement Area.

Reference is made to the Hawaii Right to Farm Act, Hawaii Revised Statutes, Chapter 165, establishing certain limitations on claims against farmers based on certain nuisances from agricultural operations.

5. Irrevocability. This easement is irrevocable.

6. Binding Effect. All the terms and conditions of this easement shall inure to the benefit of, and shall be binding upon, Grantor and Grantee and their respective heirs, personal representatives, successors in interest and assigns, and including all members of Grantee and their tenants, guests, licensees, and invitees. This easement shall be appurtenant to and for the benefit of Makila and shall run with the land. The terms "Grantor" and "Grantee" herein shall include their respective successors in interest.


7. Governing Law. This easement shall be governed by and construed under the laws of the State of Hawaii.

8. Act 5 As An Overriding Rule. On July 8, 2003, Act 5 was enacted by the Legislature of the State of Hawaii, which invalidates all restrictions on "agricultural uses and activities as defined in Sections 205-2(d) and 205-4.5(a) [of

Hawaii Revised Statutes] on lands classified as agricultural." All restrictions, rules and regulations contained in this instrument shall be subject to Act 5 as an overriding rule and shall control in the event of any conflict between this instrument and Act 5. If it shall be determined that any restriction contained herein shall violate Act 5 said restriction shall be deemed void, anything in this instrument to the contrary notwithstanding. The determination as to whether a violation exists shall be binding upon all owners and occupants of all Properties when made by any administrative agency having jurisdiction, any arbitrator, Grantee's legal counsel or any regulatory body or court of law having jurisdiction.


Executed the day and year first above written.

MAKILA LAND CO., LLC

By:   
Peter K. Martin  
Its: President

"Grantor"

MAKILA PLANTATION HOMEOWNERS'  
ASSOCIATION, INC.

By:   
Peter K. Martin  
Its: President

"Grantee"

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 20th day of January, 2004, before me personally appeared PETER K. MARTIN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

*Kevin James Neoka*  
Notary Public, State of Hawaii  
Printed Name: Kevin Lynn E.S. Neoka  
My Commission Expires: May 1, 2005

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 20th day of January, 2004, before me personally appeared PETER K. MARTIN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

*Kevin James Neoka*  
Notary Public, State of Hawaii  
Printed Name: Kevin Lynn E.S. Neoka  
My Commission Expires: May 1, 2005

EXHIBIT "1"

**Launiupoko (Large-Lot) Subdivision No. 2  
Description of Easement C  
(Utility Easement)**

A Utility Easement C in favor of Makila Homeowners Association, over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 6 of Launiupoko (Large-Lot) Subdivision No. 2 and being more particularly described as follows:

Beginning at a point at the most westerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAUNIUPOKO" being 7,022.40 feet North and 5,379.19 feet West and running by azimuths measured clockwise from True South:

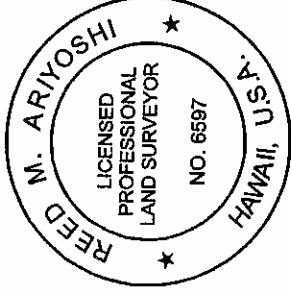
- |     |      |     |             |  |
|-----|------|-----|-------------|--|
| 1.  | 215° | 30' | 60.12 feet  | along the remainder of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also along Lot 5 of Launiupoko (Large-Lot) Subdivision No. 2;                              |
| 2.  | 302° | 00' | 33.82 feet  | over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 6 of Launiupoko (Large-Lot) Subdivision No. 2; |
| 3.  | 257° | 00' | 89.56 feet  | over and across same;  |
| 4.  | 234° | 30' | 89.85 feet  | over and across same;  |
| 5.  | 279° | 30' | 80.52 feet  | over and across same;  |
| 6.  | 313° | 30' | 277.96 feet | over and across same;  |
| 7.  | 303° | 30' | 188.82 feet | over and across same;  |
| 8.  | 309° | 30' | 244.90 feet | over and across same;  |
| 9.  | 287° | 00' | 153.61 feet | over and across same;  |
| 10. | 332° | 00' | 141.35 feet | over and across same;  |
| 11. | 319° | 30' | 156.69 feet | over and across same;  |

12. 33° 00' 163.92 feet along the remainder of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also along Lot 19 of Makila Plantation;
13. 139° 30' 62.58 feet over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 6 of Launiupoko (Large-Lot) Subdivision No. 2;
14. 213° 00' 101.34 feet over and across same;
15. 139° 30' 118.45 feet over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 6 of Launiupoko (Large-Lot) Subdivision No. 2 and along the remainder of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also along Lot 5 of Launiupoko (Large-Lot) Subdivision No. 2;
16. 152° 00' 123.06 feet along the remainder of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also along Lot 5 of Launiupoko (Large-Lot) Subdivision No. 2;
17. 107° 00' 140.70 feet along same;
18. 129° 30' 253.69 feet along same;
19. 123° 30' 190.93 feet along same;
20. 133° 30' 264.87 feet along same;
21. 99° 30' 37.32 feet along same;
22. 54° 30' 76.93 feet along same;
23. 77° 00' 126.35 feet along same;



24. 122° 00'

62.34 feet along same to the point of beginning and containing an Area of 2.147 Acres, more or less.



*Fred M. Ariyoshi* 12/4/03  
Licensed Professional Land Surveyor  
Certificate No. 6597

END OF EXHIBIT "1"

EXHIBIT "2"

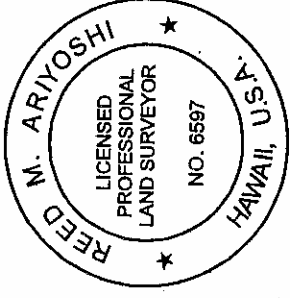
**Launiupoko (Large-Lot) Subdivision No. 2**  
**Description of Easement D**  
**(Drainage Easement)**

A Drainage Easement D in favor of Makila Homeowners Association, over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 4 of Launiupoko (Large-Lot) Subdivision No. 2 and being more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAUNIUPOKO" being 6,290.28 feet North and 6,424.80 feet West and running by azimuths measured clockwise from True South:

1. Thence along the remainder of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also along Lot 5 of Launiupoko (Large-Lot) Subdivision No. 2 on a curve to the left with the point of curvature azimuth from the radial point being:  $30^{\circ} 34' 02''$ , and the point of tangency azimuth from the radial point being:  $27^{\circ} 10'$ , having a radius of 2,894.79 feet, the chord azimuth and distance being:  $298^{\circ} 52' 01''$  171.78 feet;
2.  $38^{\circ} 37' 13''$  160.05 feet over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 4 of Launiupoko (Large-Lot) Subdivision No. 2;
3.  $104^{\circ} 31' 06''$  220.35 feet over and across same;

4. 226° 49' 11" 223.21 feet over and across same to the point of beginning and containing an Area of 0.785 Acres, more or less.



Reed M. Ariyoshi 12/4/03  
Licensed Professional Land Surveyor  
Certificate No. 6597

END OF EXHIBIT "2"

EXHIBIT "3"

**Launiupoko (Large-Lot) Subdivision No. 2  
Description of Easement E  
(Drainage Easement)**

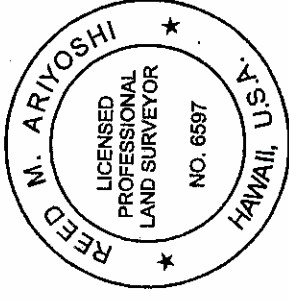
A Drainage Easement E in favor of Makila Homeowners Association, over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 4 of Launiupoko (Large-Lot) Subdivision No. 2 and being more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAUNIUPOKO" being 6,077.45 feet North and 5,990.47 feet West and running by azimuths measured clockwise from True South:

1. 293° 30' 20.06 feet along the remainder of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also along Lot 5 of Launiupoko (Large-Lot) Subdivision No. 2;
2. 23° 30' 34.00 feet over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 4 of Launiupoko (Large-Lot) Subdivision No. 2;
3. 113° 30' 20.06 feet over and across same;

4. 203° 30'

34.00 feet over and across same to the point of beginning and containing an Area of 0.016 Acres, more or less.



*Reed M. Ariyoshi* 12/4/03  
\_\_\_\_\_  
Licensed Professional Land Surveyor  
Certificate No. 6597

END OF EXHIBIT "3"

EXHIBIT "4"

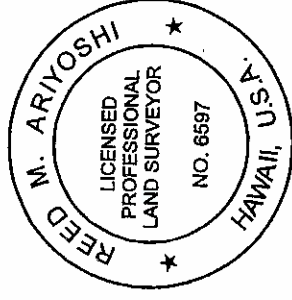
**Launiupoko (Large-Lot) Subdivision No. 2  
Description of Easement F  
(Drainage Easement)**

A Drainage Easement F in favor of Makila Homeowners Association, over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 4 of Launiupoko (Large-Lot) Subdivision No. 2 and being more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAUNIUPOKO" being 5,393.72 feet North and 5,784.34 feet West and running by azimuths measured clockwise from True South:

1. Thence along the remainder of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also along Lot 5 of Launiupoko (Large-Lot) Subdivision No. 2 on a curve to the right with the point of curvature azimuth from the radial point being: 211° 57' 37", and the point of tangency azimuth from the radial point being: 212° 22' 03", having a radius of 2,834.79 feet, the chord azimuth and distance being: 302° 09' 50" 20.15 feet;
2. 32° 15' 59" 33.94 feet over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 4 of Launiupoko (Large-Lot) Subdivision No. 2;
3. 121° 55' 06" 20.03 feet over and across same;

4. 212° 03' 41" 34.02 feet over and across same to the point of beginning and containing an Area of 0.016 Acres, more or less.



Fred M. Ariyoshi 12/4/03  
Licensed Professional Land Surveyor  
Certificate No. 6597

END OF EXHIBIT "4"

EXHIBIT "5"

**Launiupoko (Large-Lot) Subdivision No. 2  
Description of Easement G  
(Drainage Easement)**

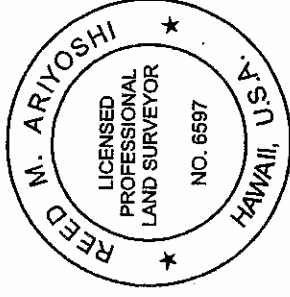
A Drainage Easement G in favor of Makila Homeowners Association, over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 4 of Launiupoko (Large-Lot) Subdivision No. 2 and being more particularly described as follows:

Beginning at a point at the northeasterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAUNIUPOKO" being 5,357.45 feet North and 4,954.75 feet West and running by azimuths measured clockwise from True South:

1. 330° 00' 26.28 feet along the remainder of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also along Lot 5 of Launiupoko (Large-Lot) Subdivision No. 2;
2. 73° 26' 38" 57.41 feet over and across a portion of R.P. 1358, L.C. Aw. 82 to Thomas Phillips, being also over and across a portion of Lot 4 of Launiupoko (Large-Lot) Subdivision No. 2;
3. 163° 26' 38" 25.56 feet over and across same;



4. 253° 26' 38" 51.30 feet over and across same to the point of beginning and containing an Area of 0.032 Acres, more or less.



Fred M. Ariyoshi 1014102  
Licensed Professional Land Surveyor  
Certificate No. 6597

END OF EXHIBIT "5"