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R-176 STATE OF HAWAII
BUREAU OF CONVEYANCES
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/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

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✓ LAND COURT SYSTEM REGULAR SYSTEM R/S

Return by Mail (✓) Pickup () To:

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

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Lynn Sueda

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NON-EXCLUSIVE, PERPETUAL EASEMENT FOR ROADWAY PURPOSES FOR MAKILA PLANTATION - PHASE II

KAI HELE KU (LOT B-2)

This Easement is dated this 20th day of January, 2004 and is executed by LAUNIUKO ASSOCIATES 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 LAND CO., LLC, a Hawaii limited liability company whose principal place of business is 33 Lono Avenue, Suite 450, Kahului, Hawaii 96732 (the "Developer-Grantee") and MAKILA PLANTATION HOMEOWNERS' ASSOCIATION, INC., a Hawaii non-profit corporation, whose principal place of business is 33 Lono Avenue, Suite 450, Kahului, Hawaii 96732 (the "Association-Grantee").

RECITALS: Grantor is the owner of the road lot located at Launiupoko, Lahaina, Maui, Hawaii described on Exhibit "A" attached hereto and made part hereof (the "Easement Area"). Developer-Grantee is the owner of certain lands being developed on both sides of the roadway, described as Lot 5 of the Launiupoko Large Lot Subdivision 2, which Developer-Grantee has subdivided into Makila Plantation Subdivision - Phase II, a 24-lot agricultural subdivision (the "Subdivision") including Lots numbered 1 through 24, inclusive, on File Plan 2364 recorded in the State of Hawaii Bureau of Conveyances. The Association-Grantee is the homeowners' association established to hold, manage, maintain and deal with the common areas of the Subdivision.

Reference is made to the Non-Exclusive Perpetual Easement for Roadway Purposes - Kai Hele Ku, executed by Grantor in favor of Mahanalu Nui Homeowners' Association, Inc., dated June 14, 1999, recorded in the State of Hawaii Bureau of Conveyances as Document No. 99-102456 (the "Prior Grant"). The Prior Grant (a) reserves to Grantor the right to grant to others the use and benefit of the Easement Area, without the necessity of any consent or joinder of Mahanalu Nui Homeowners' Association, Inc. or its members, and (b) requires as a condition of each subsequent grant by Grantor to other users, that such other users shall be obligated to bear a fair, proportionate share of certain costs. The Prior Grant also authorizes the Grantor to assign to any third party Grantor's reserved right to grant easement rights to others over the Easement Area.

Reference is made to the Makila Plantation Declaration of Covenants, Conditions and Restrictions, dated as of May 10, 2002, executed by Grantee and to be recorded in the State of Hawaii Bureau of Conveyances as Document No. 2002-088749, as amended by Amended and Restated Makila Plantation Declaration of Covenants, Conditions and Restrictions dated September 16, 2003, recorded in said Bureau as Document No. 2003-227086 and as further amended (collectively, the "Declaration"), which establishes non-exclusive easement rights over the Easement Area as part of the "common areas" of the Subdivision.

The purpose of this Easement is to establish and confirm the rights and obligations of Developer-Grantee, the Association-Grantee and the owners of all lots in the Subdivision in and to the Easement Area.

EASEMENT. For valuable consideration Grantor hereby grants and conveys to the Developer-Grantee and to the Association-Grantee (for the use and benefit of all lots in the Subdivision as a common area of the Subdivision) a non-exclusive perpetual easement over the Easement Area for vehicular and pedestrian access together with the right to construct, operate, maintain, repair and replace wires, lines, pipes and other appurtenances for utility services to the Subdivision. In

addition, the Developer-Grantee shall have the right to grant and confirm such easement rights over the Easement Area to and for the benefit of the individual owners and occupants of all lots within the Subdivision, said grant to be by way of one or more separate grants of easement or by easements granted and confirmed in the deeds of the individual subdivided lots in the Subdivision. The use of the Easement Area by said owners and occupants shall be subject to the Declaration.

Said easement and rights shall be subject to the following terms and conditions:

1. Sharing of Costs. The Association-Grantee shall pay to the Mahanalua Nui Homeowners' Association, Inc. (the "Mahanalua Nui Association"), as and when invoiced by the Mahanalua Nui Association a fair, proportionate share of all costs and expenses of owning, operating, maintaining, repairing and replacing the road, utilities and landscaping within the Easement Area, the Association-Grantee's share thereof being a fraction, the numerator of which shall be the total number of lots within the Subdivision (excluding road lots and separate utility areas) and the denominator of which shall be the sum of all lots within Mahanalua Nui Association plus all lots within the Association-Grantee. The total number of lots in each Association shall include any additional lots which shall have been established in the future by resubdivision.

In the event any dispute or disagreement arises between the Mahanalua Nui Association and the Association-Grantee concerning the calculation, assessment or collection of such costs, either Association may submit the matter to binding arbitration in Wailuku, Hawaii, under the Commercial Arbitration Rules of the American Arbitration Association.

The Association-Grantee shall assess and collect its share of said costs as a common expense of all lots in the Subdivision and said assessments shall be enforceable through the lien and collection rights established for the Association-Grantee by the Declaration and other project documents.

Association-Grantee's said obligation to pay its share of said costs shall commence at the earlier of (a) such time as the Developer-Grantee shall determine, by written notice to the Mahanalua Nui Association that development of the internal roads and subdivision infrastructure within the Subdivision has been substantially complete, the governing body of the Association-Grantee is organized and operational, and that the Association-Grantee has commenced the process of assessing and collecting monthly common expense fees from the lot owners in the Subdivision; or (b) two years from the date of recording of this Easement in the State of Hawaii Bureau of Conveyances.

2. Nuisances from Agricultural and Development Operations. Neither Grantor, 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 the 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.


3. Irrevocability. This easement is irrevocable.

4. Binding Effect. All the terms and conditions of this easement shall inure to the benefit of, and shall be binding upon, Grantor and each Grantee and their respective heirs, personal representatives, successors in interest and assigns. This easement shall be appurtenant to and for the benefit of the Subdivision and shall run with the land. The terms "Grantor", "Developer-Grantee" and "Association-Grantee" herein shall include their respective successors in interest.

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


Executed the day and year first above written.

LAUNIUPOKO ASSOCIATES LLC

By: 
Peter K. Martin
Its: Member


"Grantor"

MAKILA LAND CO., LLC

By: 
Peter K. Martin
Its: President

"Developer-Grantee"

MAKILA PLANTATION HOMEOWNERS'
ASSOCIATION, INC.

By: 
Peter K. Martin
Its: President

"Association-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.

Janine J. Moore
Notary (Public) State of Hawaii
Printed Name: Kristi 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.

Janine J. Moore
Notary (Public) State of Hawaii
Printed Name: Kristi Lynn E.S. Neoka
My Commission Expires: May 1, 2005

STATE OF HAWAII)
)
COUNTY OF MAUI)

SS.

On this 28th 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.

Kristi Lynn E.S. Neoka

Notary Public, State of Hawaii

Printed Name: Kristi Lynn E.S. Neoka

My Commission Expires May 1, 2005

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EXHIBIT "A"
MAHANALUA NUI SUBDIVISION

LOT "B-2"

Being a portion of
R.P. 1358, L.C. AV. 82 to Thomas Phillips.

Situated at Launiupoko, Lahaina, Island of Maui, Hawaii.

Beginning at the Southeast corner of this easement, on the West side of Lot "A-1", Mahanalua Nui Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAUNIUPOKO" being 1,714.45 feet North and 2,461.47 feet West, and running by azimuths measured clockwise from true South:

1. 73° 01' 2,741.95 feet along Lot "B-1", Mahanalua Nui Subdivision;

2. 103° 40' 30" 540.51 feet;
Thence, along same on a curve to the right, with a radius of 530.00 feet, the chord azimuth and distance being:

3. 97° 08' 30" 568.21 feet;
Thence, along same on a curve to the left, with a radius of 470.00 feet, the chord azimuth and distance being:

4. 59° 57' 00" 120.37 feet along same;

5. 15° 02' 22" 42.36 feet;
Thence, along same on a curve to the left, with a radius of 30.00 feet, the chord azimuth and distance being:

6. 150° 07' 44" 25.42 feet along the East side of Honoapiilani Highway, F.A.P. No. F-030-1(1);

Thence, along same on a curve to the left, with a radius of 11,499.16 feet, the chord azimuth and distance being:

7. 149° 53' 38" 94.33 feet;

Thence, along Lot "B-1", Mahanalua Nui Subdivision, on a curve to the left, with a radius of 30.00 feet, the chord azimuth and distance being:

8. 284° 48' 16" 42.32 feet;

9. 239° 57' 00" 120.38 feet along same;

Thence, along same on a curve to the right, with a radius of 530.00 feet, the chord azimuth and distance being:

10. 277° 08' 30" 640.75 feet;

Thence, along same on a curve to the left, with a radius of 470.00 feet, the chord azimuth and distance being:

11. 283° 40' 30" 479.32 feet;

12. 253° 01' 00" 2,763.88 feet along same;

13. 3° 05' 50" 63.88 feet along Lot "A-1", Mahanalua Nui Subdivision, to the point of beginning and containing an area of 5.639 acres.

Subject, however to Easement 2 (60 feet wide) for Access and Utility Purposes over the above described parcel in favor of Lot "B-1" of Mahanalua Nui Subdivision.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Designation of Easement "2" (60 feet wide) for access and utility purposes, as shown on survey map prepared by Masumi Fukushima, licensed professional land surveyor, with Austin, Tsutsumi & Associates, Inc., dated October 13, 1997.
3. Rights of others who may have easement or access rights in said parcel(s).
4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : SUBDIVISION AGREEMENT (AGRICULTURAL USE)

DATED : June 18, 1992
RECORDED : Document No. 92-103494
PARTIES : PIONEER MILL COMPANY, LIMITED, and the COUNTY OF MAUI, through its Department of Public Works, a body politic and corporate, and a political subdivision of the State of Hawaii

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT

DATED : September 29, 1992
RECORDED : Document No. 92-164418
PARTIES : PIONEER MILL COMPANY, LIMITED, a Hawaii corporation, and the DEPARTMENT OF WATER SUPPLY of the County of Maui

6. GRANT
TO : MAUI ELECTRIC COMPANY, LIMITED

DATED : December 22, 1995
RECORDED : Document No. 95-168464
GRANTING : a perpetual right and easement to build, construct, rebuild, repair, maintain and operate pole and wire lines and underground power lines, etc., as may be necessary for the transmission of electricity

7. Declaration of Covenants, Reservations and Restrictions dated as of November 28, 1997, recorded as Document No. 97-164433.

8. The terms, provisions, covenants, easements and reservations as contained in the following:

DECLARATION OF COVENANTS, RESERVATIONS AND RESTRICTIONS

Dated: November 28, 1997
Document No. 97-166433

but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

9. **DEED AND RESERVATION OF RIGHTS**

Dated: November 28, 1997
Document No. 97-166434

but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

10. The terms, provisions, covenants, easements and reservations as contained in the following:

DECLARATION OF RESTRICTIVE COVENANTS

Dated: November 25, 1998
Document No. 98-186637

but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

11. **SUBDIVISION AGREEMENT (AGRICULTURAL USE)**

By and Between: LAUNUPOKO ASSOCIATES, LLC, a Hawaii limited liability company, "Owner", and COUNTY OF MAUI, through its Department of Public Works and Waste Management, a body politic and corporate, and a political subdivision of the State of Hawaii

Dated: April 8, 1999
Document No. 99-071686

12. SUBDIVISION AGREEMENT (AGRICULTURAL USE)

By and Between: LAUNUPOKO ASSOCIATES, LLC, a Hawaii limited liability company, "Owner", and COUNTY OF MAUI, through its Department of Public Works and Waste Management, a body politic and corporate, and a political subdivision of the State of Hawaii

Dated: April 8, 1999
Document No. 99-071687

Being the same property conveyed to Grantor by Deed of Pioneer Mill Company, Limited, dated November 28, 1997, recorded in the State of Hawaii Bureau of Conveyances as Document No. 97-166435.

End of Exhibit "A"