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LETTER OF TRANSMITTAL

TO: Daniel Orodener
Executive Officer
Land Use Commission
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96804-2359

DATE: October 4, 2012

RE: Docket No. A97-721

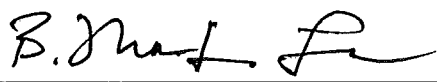
Mailed Hand Delivered

THE FOLLOWING IS (ARE) TRANSMITTED HEREWITH:

<u>COPIES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	09/07/12	Amended and Restated Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46330782 (Certified Copy)

<input type="checkbox"/> For Your Information	<input type="checkbox"/> For Review and Comment
<input checked="" type="checkbox"/> For Your Files	<input type="checkbox"/> For Necessary Action
<input type="checkbox"/> Per Your Request	<input type="checkbox"/> For Signature and Return (Black Ink)
<input type="checkbox"/> Per Our Conversation	<input checked="" type="checkbox"/> See Remarks Below

REMARKS: The enclosed certified recorded copy of the Amended and Restated Declaration of Conditions fulfills Condition No. 22 of the Order Granting with Modification Movant's Motion for Sixth Amendment to the Findings of Fact, Conclusions of Law, and Decision and Order, Filed on February 19, 1998 and for Release of Certain Conditions.

By 
B. Martin Luna

Enclosure(s)

March

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

September 7, 2012 1:00 PM

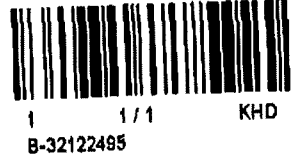
Doc No(s) A-46330782



I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances.

Nick Ann Thompson

Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii



/s/ NICKI ANN THOMPSON
REGISTRAR

LAND COURT

148 REGULAR SYSTEM

Return By Mail Pick-Up To:

CARLSMITH BALL LLP
One Main Plaza, Suite 400
2200 Main Street
Wailuku, Maui, Hawaii 96793

Attention: B. Martin Luna
Telephone: (808) 242-4535

TITLE OF DOCUMENT:

AMENDED AND RESTATED DECLARATION OF CONDITIONS
APPLICABLE TO AN AMENDMENT OF
DISTRICT BOUNDARY FROM AGRICULTURAL TO URBAN

PARTIES TO DOCUMENT:

DECLARANT: ATC MAKENA N GOLF LLC
ATC MAKENA S GOLF LLC
ATC MAKENA LAND SF1 LLC
ATC MAKENA LAND MF1 LLC
ATC MAKENA LAND MF2 LLC
ATC MAKENA LAND MF3 LLC
ATC MAKENA LAND C1 LLC
ATC MAKENA UI LLC
ATC MAKENA LAND B1 LLC
ATC MAKENA LAND MF4 LLC
ATC MAKENA LAND SF2 LLC
ATC MAKENA LAND AH1 LLC
Two Manhattanville Road, Suite 203
Purchase, New York 10577

TAX MAP KEY(S): (2) 2-1-005:083, 084, 085 and 108 (por.);
2-1-007:004; and 2-1-008:090 (por.)

(This document consists of 10 pages.)

**AMENDED AND RESTATED DECLARATION OF CONDITIONS
APPLICABLE TO AN AMENDMENT OF
DISTRICT BOUNDARY FROM AGRICULTURAL TO URBAN**

THIS AMENDED AND RESTATED DECLARATION OF CONDITIONS
APPLICABLE TO AN AMENDMENT OF DISTRICT BOUNDARY FROM
AGRICULTURAL TO URBAN (hereinafter called the "Declaration") is made this 7th
day of SEPTEMBER, 2012, by ATC MAKENA N GOLF LLC, ATC MAKENA S
GOLF LLC, ATC MAKENA LAND SF1 LLC, ATC MAKENA LAND MF1 LLC, ATC
MAKENA LAND MF2 LLC, ATC MAKENA LAND MF3 LLC, ATC MAKENA LAND
C1 LLC, ATC MAKENA UI LLC, ATC MAKENA LAND B1 LLC, ATC MAKENA
LAND MF4 LLC, ATC MAKENA LAND SF2 LLC, and ATC MAKENA LAND AH1 LLC,
all Delaware limited liability companies, all whose mailing address is Two Manhattanville
Road, Suite 203, Purchase, New York 10577, as Petitioner in State of Hawaii Land Use
Commission Docket No. A97-721 (hereinafter called the "Declarant" or "Petitioner").

WITNESSETH:

WHEREAS, the State of Hawaii Land Use Commission (hereinafter called the
"Commission"), by Findings of Fact, Conclusions of Law, and Decision and Order filed on
February 19, 1998 (hereinafter "Decision and Order"), in the aforementioned Docket
A97-721, amended the State Land Use district boundaries and reclassified approximately
145.943 acres of those certain parcels of real property situate at Makena, District of
Makawao, Island and County of Maui, State of Hawaii, as shown on the Map attached hereto
as Exhibit "A" and by reference made a part hereof ("LUC Reclassified Property"), and
identified as Tax Map Key Nos. (2) 2-1-005:083, 084, 085, portion of 108, (2) 2-1-007:004;

and (2) 2-1-008:portion of 090, from the State Land Use Agricultural District to the State Land Use Urban District, subject to certain conditions enumerated therein; and

WHEREAS, Declarant is the current owner of portions of the LUC Reclassified Property, specifically identified as Tax Map Key No. (2) 2-1-005:108 and TMK (2) 2-1-008:090, comprised of approximately 489.432 acres and 350.940 acres, respectively; and

WHEREAS, Declarant's successor in interest recorded that certain Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban dated April 17, 1998, in the Bureau of Conveyances of the State of Hawaii as Document No. 98-054982, as amended by First Amendment of Declaration of Conditions dated July 12, 2000, recorded as Document No. 2000-107512 (the "Original Declaration, as amended"); and

WHEREAS, the Commission, by Order Granting with Modification Movant's Motion for Sixth Amendment to the Findings of Fact, Conclusions of Law, and Decision and Order, Filed on February 19, 1998 and for Release of Certain Conditions, Filed on August 27, 2012 (the "August 27, 2012 Order"), in the aforementioned Docket A97-721, (a) approved the amendment to Condition Number 12 of this Commission's Order Granting Receiver's Motion For Fifth Amendment To The Findings Of Fact, Conclusions Of Law, And Decision And Order, Filed On February 19, 1998, dated May 10, 2010, (b) amended Condition Number 22 of the Decision and Order, and (c) released Condition Numbers 4, 15 and 21 enumerated in the Decision and Order; and

WHEREAS, this Declaration is intended to and shall replace and supersede the Original Declaration, as amended, in its entirety;

NOW, THEREFORE, Declarant hereby declares that the LUC Reclassified Property of 145.943 acres, shown on the Map attached as Exhibit "A", shall be subject to the

following conditions imposed by the Commission in Docket No. A97-721, which have been renumbered sequentially after the release of Conditions Number 4, 15 and 21:

1. Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawai'i in accordance with applicable laws, rules, and regulations of the County of Maui. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County of Maui.

2. Petitioner shall coordinate with the County of Maui Board of Water Supply to incorporate the proposed project into the County Water Use and Development Plan for the area. Prior to the granting of the first discretionary permit for the single-family and multi-family residential development described in paragraph 20 of the Decision and Order or the hotel described in paragraph 21 of the Decision and Order and by or before one year from the issuance date of this Decision and Order, Petitioner shall furnish the Commission with a letter from the County of Maui Board of Water Supply confirming that (a) the potable water allocation that will be credited to Petitioner will be available to and sufficient for the proposed project as it is described in the Petition, (b) the availability of potable water will not be an obstacle or impediment to the development of the proposed project as described in the Petition and (c) the proposed project as it is described in the Petition has been incorporated into the County Water Use and Development Plan for the area and that this plan will prevent the continued overpumping of the sustainable yield of the 'Iao aquifer.

3. Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project in accordance with the applicable laws, rules and regulations of the County of Maui, and consistent with the County of Maui water use and development plan.

4. Petitioner shall contribute to the development, funding, and/or construction of school facilities, on a pro rata basis for the residential developments in the proposed project, as determined by and to the satisfaction of the State Department of Education ("DOE"). Terms of the contribution shall be agreed upon by Petitioner and DOE prior to Petitioner acquiring county rezoning or prior to Petitioner applying for building permits if county rezoning is not required.

5. Petitioner shall participate in the pro rata funding and construction of adequate civil defense measures as determined by the State of Hawai'i and County of Maui civil defense agencies.

6. Should any human burials or any historic sites such as artifacts, charcoal deposits, stone platforms, pavings, or walls be found, Petitioner shall stop work in the immediate vicinity and contact SHPD. The significance of these finds shall then be determined and approved by SHPD, and an acceptable mitigation plan shall be approved by SHPD. SHPD must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, Hawai'i Revised Statutes.

7. Petitioner shall follow the State DLNR recommendations for Petition Areas 1, 2 and 3, for archaeological data recovery and preservation. An archaeological data recovery plan (scope of work) must be approved by SHPD. That plan then must be successfully executed (to be verified in writing by the SHPD), prior to any grading, clearing, grubbing or other land alteration in these areas. In Petition Area 1, three significant historic sites (1969, 2563, 2569) are committed to preservation. A preservation plan must be approved by SHPD. This plan, or minimally its interim protection plan phase, must be

successfully executed (to be verified in writing by the SHPD), prior to any grading, clearing, grubbing or other land alteration in these areas.

8. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health and County of Maui.

9. Petitioner shall initiate and fund a nearshore water quality monitoring program. The monitoring program shall be approved by the State Department of Health in consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Services, and the State Division of Aquatic Resources, DLNR. Petitioner shall coordinate this consultation process with the concurrence of the State Department of Health. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the State Department of Health in consultation with the above mentioned agencies.

10. Petitioner shall submit a Traffic Impact Analysis Report (TIAR) for review and approval by the State Department of Transportation and the County of Maui.

11. Petitioner shall participate in the pro rata funding and construction of local and regional transportation improvements and programs, including dedication of rights of way as determined by the State Department of Transportation ("DOT") and the County of Maui. Agreement between Petitioner and DOT as to the level of funding and participation shall be obtained within fourteen (14) years from June 1, 2000.

12. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of the appropriate State of Hawai'i and County of Maui agencies.

13. The Petition Areas shall be developed in accordance with the Kihei-Makena Community Plan.

14. Petitioner shall fund, design and construct all necessary traffic improvements necessitated by development of the Petition Areas as required by the State Department of Transportation and the County of Maui's Department of Public Works and Waste Management.

15. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in a reversion of the Property to its former classification, a change to a more appropriate classification, or other reasonable remedy as determined by the Commission.

16. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

17. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

18. The Commission may fully or partially release or amend the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

19. Petitioner shall record the conditions imposed herein by the Commission and every amendment thereto with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.

The limitations, restrictions, covenants and conditions of this Declaration shall run with the land of the Property, and continue and remain in full force and effect at all times with respect to the Property included in this Declaration until such time that the State Land Use Commission removes or releases the conditions relating to the subject Property established through its Decision and Order, as amended.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on the day and year first above written.

DECLARANT:

ATC MAKENA N GOLF LLC,
ATC MAKENA S GOLF LLC,
ATC MAKENA LAND SF1 LLC,
ATC MAKENA LAND MF1 LLC,
ATC MAKENA LAND MF2 LLC,
ATC MAKENA LAND MF3 LLC,
ATC MAKENA LAND C1 LLC,
ATC MAKENA U1 LLC,
ATC MAKENA LAND B1 LLC,
ATC MAKENA LAND MF4 LLC,
ATC MAKENA LAND SF2 LLC, and
ATC MAKENA LAND AH1 LLC, all
Delaware limited liability companies

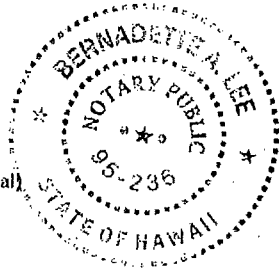
By


Name: Sean Hehir

Its: Authorized Signatory

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 7th day of September, 2012, before me personally appeared SEAN HEHIR, to me personally known/proved to me on the basis of satisfactory evidence, 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.



(Notary Stamp or Seal)

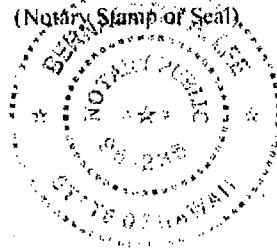
Bernadette A. Lee

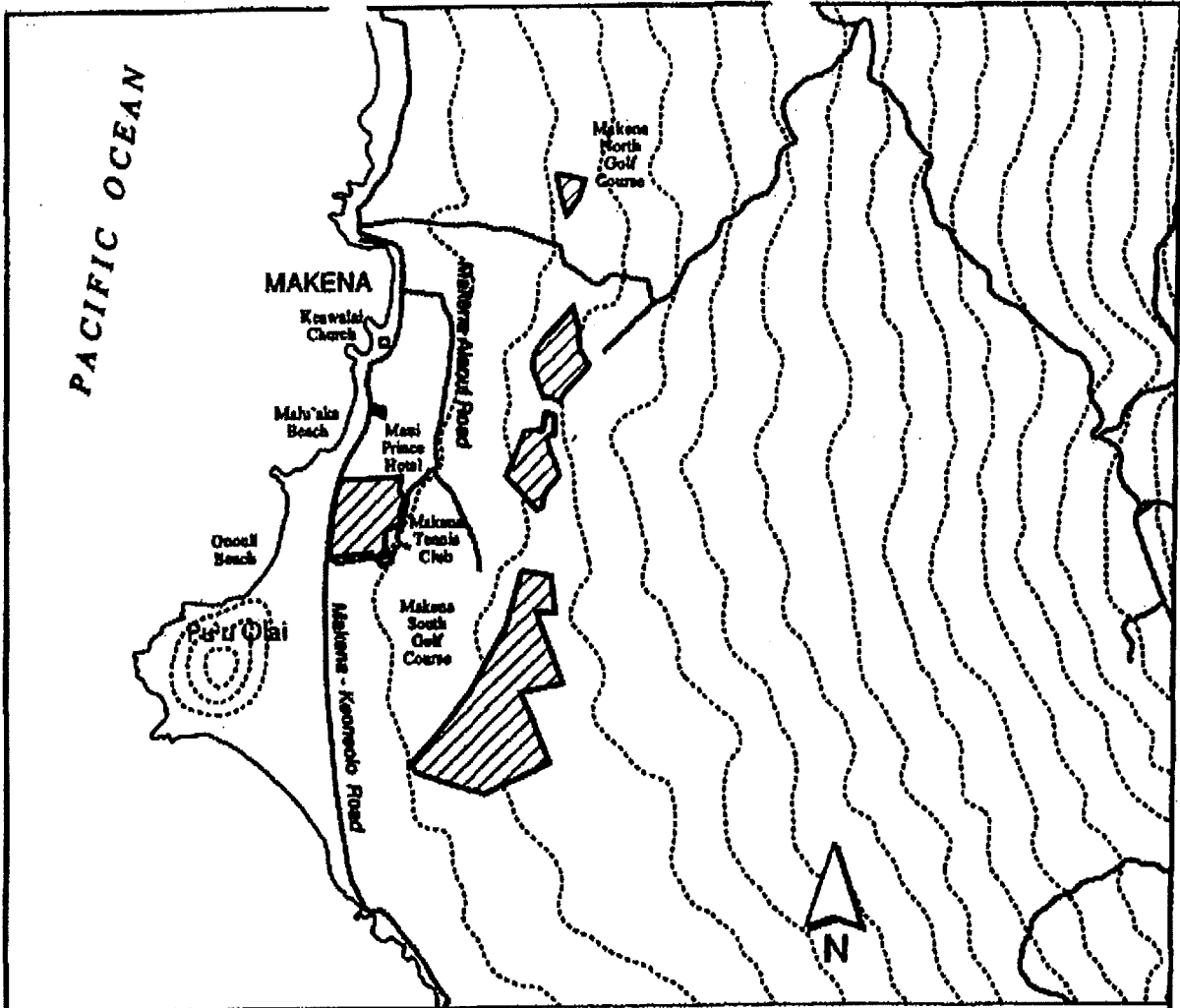
Name: BERNADETTE A. LEE

Notary Public, State of Hawaii

My commission expires: 6/29/2015

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>AMENDED AND RESTATED DECLARATION OF CONDITIONS APPLICABLE TO AN AMENDMENT OF DISTRICT BOUNDARY FROM AGRICULTURAL TO URBAN</u>
Document Date:	<u>September 7, 2012</u>
No. of Pages:	<u>10</u>
Jurisdiction (in which notarial act is performed):	<u>First</u> Circuit
Printed Name of Notary	<u>BERNADETTE A. LEE</u>
Signature of Notary	<u>Bernadette A. Lee</u> 9-7-2012
	Certification Date





A97-721 / MAKENA RESORT
CORP.,
A Hawa'i Corporation

LOCATION MAP

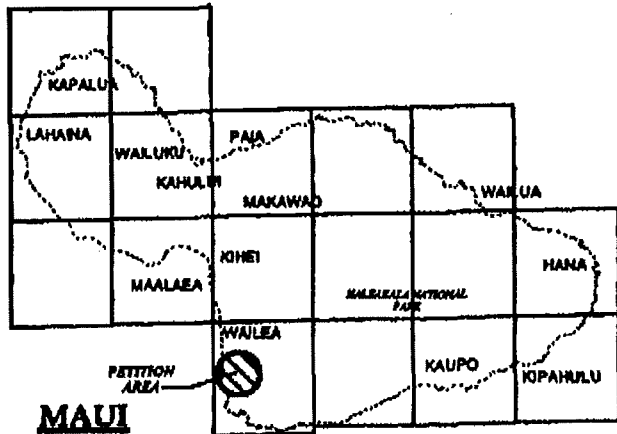
TAX MAP KEY NO.: 2-1-05: 83, 84,
85, & por. 108; 2-1-07: 4; &
2-1-08: por. 90

Makena, Maui, Hawa'i



APPROVED AREA

EXHIBIT " A "



INCEES