

R-297

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUL 03, 2008 08:01 AM

Doc No(s) 2008-107894



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

24 1/2 28

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION. RETURN BY MAIL (X) PICK-UP ()

SOUTHWEST 7, LLC
123 MADISON STREET
#103
DENVER, CO 80206
ATTN: MARK POSTER, ESQ

TG: 200730745 --S
TGE: A7-101-5087
ANN L KURIHARA

RLS
①

TITLE OF DOCUMENT:

MORTGAGE

PARTIES TO DOCUMENT:

Mortgagor: HALE MUA PROPERTIES, LLC,
a Hawaii limited liability company

Mortgagee: SOUTHWEST 7, LLC,
a Colorado limited liability company

T.M.K. NO. (II) 3-3-002: 031

THIS DOCUMENT CONTAINS 24 PAGES.

Mortgage (v1)

MORTGAGE

THIS MORTGAGE, made this 3rd day of July, 2008, by and between HALE MUA PROPERTIES, LLC, a Hawaii limited liability company, whose mailing address is 1888 Kalakaua Avenue, #3002, Honolulu, Hawaii 96815, hereinafter called the "Mortgagor"; and SOUTHWEST 7, LLC, a Colorado limited liability company, whose mailing address is c/o: SREI Financial, LLC, 123 Madison Street, #103, Denver, CO 80206, hereinafter called the "Mortgagee";

WITNESSETH:

That the Mortgagor, in consideration of the sum of TEN MILLION, SIX-HUNDRED TWELVE THOUSAND, NINE HUNDRED EIGHTY AND NO/100 DOLLARS (\$10,612,980.00), to Mortgagor, loaned and advanced by the Mortgagee, the receipt of which is hereby acknowledged and in order to secure the repayment thereof according to the Promissory Note of even date herewith, and also in consideration of any other sum or sums that may hereafter be advanced or paid to or on account of or become owing by the Mortgagor to the Mortgagee, do hereby grant, bargain, sell, assign, convey, and deliver unto the Mortgagee, all of the property described in Exhibit "A", attached hereto and by reference incorporated herein; and together with the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Mortgagor, both at law and in equity, therein and thereto; subject to the encumbrances listed in Exhibit "B" ("Encumbrances") and the Mortgagor hereby releases and waives all rights under and by virtue of any homestead, stay, appraisement or exemption laws which may now exist or hereafter be enacted.

TO HAVE AND TO HOLD the same, unto the Mortgagee, forever, as to all property conveyed in fee simple, if any, and, as to the leasehold interest in real property, if any, for the unexpired residue of the term of said lease; SUBJECT, However, to the Encumbrances.

AND, the Mortgagor hereby covenants to and with the Mortgagee as follows:

(a) That the Mortgagor is the owner in fee simple of the hereinafter described property (or has such other estate as has been stated herein);

(b) That said property is free from all encumbrances, except as listed in Exhibit "B";

(c) That the Mortgagor has good right to grant and convey, or assign, the same unto the Mortgagee, as aforesaid;

(d) That the Mortgagee shall quietly enjoy and possess the same if any default be made herein; and

(e) The Mortgagor will, and the Mortgagor's heirs, personal representatives and assigns shall, warrant and defend the same unto the Mortgagee against the claims and demands of all persons, forever, except as aforesaid.

PROVIDED, HOWEVER, that if the Mortgagor shall pay to the Mortgagee the sum of TEN MILLION, SIX-HUNDRED TWELVE THOUSAND, NINE HUNDRED EIGHTY AND NO/100 DOLLARS (\$10,612,980.00), with interest at the rate of THIRTEEN & ½ Percent (13.5%) per annum, according to the terms of that certain Promissory Note in that amount dated JUL - 3 2008, the terms of which Note are incorporated herein by reference and made a part hereof, and shall discharge any and all obligations hereunder that are now or may hereafter be or become owing directly or contingently by the Mortgagor to the Mortgagee on any

and every account, whether or not the same have matured, of which obligations the books of the Mortgagee shall be prima facie evidence and which obligations it is agreed by these presents are and shall be secured as an additional charge against all property hereby mortgaged; and shall observe and perform all of the covenants and agreements herein contained on the part of the Mortgagor to be observed and performed and shall pay the costs of release, THEN THIS MORTGAGE SHALL BE VOID.

BUT UPON FAILURE to pay said principal when due, or upon the breach of any covenant or agreement hereof or in any promissory note or terms of any other obligation hereby secured, or if the Mortgagor's interest in the real property covered by this Mortgage is a leasehold estate and the Mortgagor fails to observe and perform any covenant or agreement contained in the lease, then, and in any of such events, the whole amount of all indebtedness owing by or chargeable to the Mortgagor under any provision of the Mortgage or intended to be secured hereby on any and every account, shall, at the option of the Mortgagee and without notice, at once become due and payable, and with or without foreclosure, the Mortgagee shall have the immediate right to receive and collect all rents, income and profits from the property hereby mortgaged, due and accrued or to become due, and said rents and profits are hereby assigned to the Mortgagee, and the Mortgagee is hereby irrevocably appointed the attorney-in-fact of the Mortgagor; in the name of the Mortgagor or in the Mortgagee's own name; to demand, sue for, collect, recover and receive all such rents and profits, and to compromise and settle claims for rents or profits upon such terms and conditions as to the Mortgagee may seem proper, and to enter into, renew or terminate leases or tenancies; and the Mortgagee may foreclose this Mortgage by suit in equity with the immediate right to a receivership upon ex parte

order and without bond, pending foreclosure, or as now provided by law, by entry and possession, or (with or without entry and possession) may sell said property or any part thereof either as a whole or in parcels, together with all improvements that may be upon the property so sold, at private sale or public auction, and may, in the Mortgagee's own name or as attorney-in-fact of the Mortgagor, for such purposes hereby irrevocably appointed, effectually convey the property so sold to the purchaser or purchasers absolutely and forever, and in the case of a lease, for the remainder of the term thereof; and any foreclosure shall forever bar the Mortgagor and all persons claiming under the Mortgagor from all right, title and interest in said property at law and in equity; and out of the proceeds of any foreclosure sale the Mortgagees may deduct all costs and expenses of sale, foreclosure, and/or suit, including a reasonable attorney's fee; may pay and discharge any prior lien on said property and/or advances made by the Mortgagee for the benefit or protection thereof or connected with this Mortgage and retain or be awarded all sums then payable by or chargeable to the Mortgagor on every account, rendering to the Mortgagor the surplus, if any. If such proceeds shall be insufficient to discharge the same in full, the Mortgagee may have any other legal recourse against the Mortgagor for the deficiency. The Mortgagee may be the purchaser at any foreclosure sale, and no other purchaser shall be answerable for the application of the purchase money.

The Mortgagee shall have the right to enforce one or more remedies hereunder or any remedy the Mortgagee may have successively or concurrently.

The Mortgagee shall have the right, and is hereby expressly authorized to make application of, any payments made to the Mortgagee and of any rents, income and profits

collected by the Mortgagee upon the obligations and liabilities of the Mortgagor to the Mortgagee other than the mortgage note hereinabove referred to.

The Mortgagor, for the consideration aforesaid, hereby further covenant to and with the Mortgagee, as follows:

(1) To pay the Mortgagee all installments of principal and interest payable by the terms of the above-described mortgage note and all other sums that may hereafter be or become owing by the Mortgagor to the Mortgagee as provided herein in lawful money of the United States of America.

(2) To pay before they become delinquent all ground rents, taxes, assessments, and charges of every type or nature that may be levied, assessed, imposed or become a charge upon the mortgaged property or any part thereof or upon the Mortgage or the interest of the Mortgagee hereunder or upon any note or debt secured hereby, notwithstanding any law heretofore or hereafter enacted imposing payment of the whole or any part thereof upon the Mortgagee; and that in default of any such payment or upon failure to observe or perform any covenant or condition of this Mortgage, the Mortgagee may make any advances and incur attorney's fees that the Mortgagee may deem proper or necessary to protect the property or this Mortgage and the rights of the Mortgagee hereunder and recover any such advances made and all expenses including attorney's fees paid or incurred by the Mortgagee, though any such charges be invalid, upon demand, and the same shall be secured hereby.

(3) To observe and perform all of the terms, covenants and conditions contained in the lease demising the real property covered by this Mortgage and on the part of the lessee therein named to be observed and performed if the Mortgagor's interest in such real

property is a leasehold estate, and to indemnify the Mortgagee against any claims, costs and counsel fees or other loss arising from a breach of this covenant.

(4) To keep the mortgaged property in good condition and repair and comply with all laws, rules and regulations made by Government authority applicable thereto and not to commit or permit any strip or waste of said premises, to keep the same free from statutory liens of every kind and do or permit or suffer to be done thereto nothing that may, in any way, impair or weaken the security hereby created; and to permit the Mortgagee to enter and inspect the premises and make any repairs which the Mortgagee deems proper, the cost thereof to constitute an advance under the provisions of this Mortgage.

(5) And the Mortgagor will keep the improvements now existing or hereafter erected on the mortgaged property insured as may be required from time to time by the Mortgagee against loss by fire and other hazards, casualties and contingencies in such amounts and for such periods as the Mortgagee may require, and will pay promptly when due any premiums on such insurance, unless provision for payment of such premiums has been otherwise herein provided for. The Mortgagor shall possess all rights of designation of the insurance company in which such insurance is to be carried as are conferred upon the Mortgagor by the laws of the State of Hawaii. All policies, endorsements and renewals thereof shall be held by the Mortgagee and have contained therein or attached thereto Loss Payable clauses in favor of and in form acceptable to the Mortgagee. The delivery of such policies to the Mortgagee shall constitute an assignment by the Mortgagor to the Mortgagee of all return premiums. In the event of loss, the Mortgagor immediately shall give notice to the Mortgagee, who may make proof of loss, if such is not made promptly by the Mortgagor, and each insurance company concerned is

hereby authorized and directed to make payment of such loss directly to the Mortgagee, instead of to the Mortgagee and the Mortgagor jointly, and the insurance proceeds or any part thereof may be applied by the Mortgagee, at the Mortgagee's option, either to the reduction of the indebtedness secured hereby or to the restoration or repair of the property damaged. In the event of foreclosure of this Mortgage or other transfer of title to the mortgaged property in extinguishment of the debt secured hereby, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pay to the purchaser or grantee.

(6) Should the mortgaged property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or be damaged by fire or earthquake or in any other manner, the Mortgagee shall be entitled, at the Mortgagee's option, to commence, appear in and prosecute in the Mortgagee's own name, any action or proceeding, or to make any compromise or settlement in connection with such taking or damage, and to obtain all compensation, awards or other relief therefor, and all costs, expenses and attorney's fees paid or incurred by the Mortgagee shall constitute an advance hereunder. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of insurance affecting said property, are hereby assigned to the Mortgagee, who may release any money so received by the Mortgagee or apply the same on any indebtedness secured hereby. The Mortgagor agrees to execute such further assignment of any compensation, award, damages and rights of action and proceeds as the Mortgagee may require.

(7) That by accepting payment of any sum hereby secured after its due date, the Mortgagee shall not waive Mortgagee's right to require prompt payment when due of all other sums so secured, or to exercise any legal rights the Mortgagee may have to collect any

unpaid balance of said indebtedness. If the Mortgagee holds any additional security for any obligation secured hereby, the Mortgagee may enforce the sale thereof, at the Mortgagee's option, either before or contemporaneously therewith, or after the sale is made hereunder, and on any default of the Mortgagor, the Mortgagee may, at the Mortgagee's option, offset against any part of the indebtedness secured hereby.

(8) That without affecting the liability of any person, including the Mortgagor, for the payment of any indebtedness secured hereby, or the lien of this Mortgage on the remainder of the property for the full amount of any indebtedness unpaid, the Mortgagee is empowered as follows: The Mortgagee may from time to time and without notice: (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional security therefor of any kind, including deeds of trust or mortgages, (d) alter, substitute or release any property securing the indebtedness, (e) join in granting any easement or creating any restriction thereof, (f) join in any subordination or other agreement affecting this Mortgage or the lien or charge thereof.

(9) Should Mortgagor sell or transfer all, or any part of the property secured herein without the Mortgagee's prior written consent [which consent shall not be unreasonably be withheld] including without limitation by way of a conveyance, mortgage, agreement of sale, or otherwise, Mortgagee may, at its option, declare all the sums secured by this Mortgage to be immediately due and payable.

Mortgagee shall have waived such an option to accelerate if, prior to the sale or transfer, Mortgagee and the person to whom the Property is to be sold or transferred reach an agreement in writing that the credit of such person is satisfactory to Mortgagee and that the interest payable on the sums secured by this Mortgage shall be at such rate as Mortgagee shall request. If Mortgagee has waived the option to accelerate provided in this paragraph, and if Mortgagor's successor in interest has executed a written assumption agreement accepted in writing by the Mortgagee, the Mortgagee shall release Mortgagor from all obligations under this Mortgage and the Note.

Should the Mortgagee exercise such option to accelerate, Mortgagee shall mail Mortgagor notice of acceleration. Such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Mortgagor must pay the sums declared due. If Mortgagor fails to pay such sums prior the expiration of such period, Mortgagee may, without further notice or demand on Mortgagor, invoke any remedies permitted under this Mortgage or otherwise permitted by law.

It is further agreed that upon the request of the Mortgagor, the Mortgagee may hereafter, at the Mortgagee's option, make further advances to or for the account of the Mortgagor and the same shall be secured by this Mortgage; provided, however, that the amount of principal secured by this Mortgage and remaining unpaid shall not at the time of and including any such advance exceed the original principal sum secured hereby; and provided, further, that if the Mortgagee, at the Mortgagee's option, shall make a further advance or advances as aforesaid, the Mortgagor agrees to execute and deliver to the Mortgagee a Promissory Note to evidence the same, payable on or before the maturity of the indebtedness secured hereby and bearing such

other terms as the Mortgagee shall require. Such further advances and note evidencing the same shall be secured by this Mortgage and shall apply to such further advances, as well as to all other indebtedness secured hereby. Nothing herein contained shall be deemed to affect, impair or limit the right of the Mortgagee, without request by the Mortgagor, or exercise any rights or powers elsewhere in this Mortgage given to protect this security by making advances to pay ground rents, taxes, assessments, insurance or otherwise, nor shall anything herein contained limit the amount that shall be secured by this Mortgage if such amount is increased by advances so made by the Mortgagee for the purpose of protecting the security.

In the event of a sale of the mortgaged property or any part thereof, the Mortgagee may, without notice to the Mortgagor, deal with the successor in interest of the Mortgagor with reference to this Mortgage and to the note hereby secured, either by forbearance on the part of the Mortgagee or extension of the time of payment of said note or any sum secured by this Mortgage without in any way releasing or discharging or in any way affecting the Mortgagor's liability hereunder for the debt hereby secured.

It is also agreed that until any default, the Mortgagor may hold and enjoy the mortgaged property and receive the rents, income and profits thereof. That the term "advances", costs, and "expenses" wherever used herein shall include reasonable attorney's fees and recording fees whenever incurred; that where there is more than one mortgagor all obligations herein shall be binding upon the Mortgagors jointly and severally notwithstanding anything else herein contained; that when the term, "Mortgagors" as used herein described a husband and wife and the property shall be owned by the husband, joinder herein by the wife shall be construed not only as binding her individually but also as a quitclaim and release to the Mortgagee of any

interest of the wife in the mortgaged property by way of dower, community property or otherwise, and when the property is owned by the wife, and the joinder herein by the husband shall be construed not only as binding him individually but also as a quitclaim and release to the Mortgagee of any interest of the husband in the mortgaged property, whether by way of courtesy, community property or otherwise, that all the benefits and obligations herein shall be equally binding upon and inure to the benefit of the heirs, legatees, devisee, personal representatives, successors and assigns of the Mortgagor and Mortgagee and shall be so construed that, wherever applicable with reference to any of them, the use of the single number shall include the plural number and the use of the plural number shall include the single number, and the use of the gender shall include all genders.

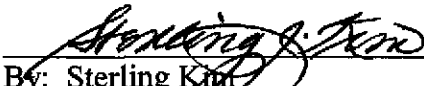
This Mortgage shall be governed and construed in accordance with the laws of the State of Hawaii. Mortgagor and Mortgagee each agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located (the "Property Jurisdiction"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Mortgage. Mortgagor and Mortgagee each irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage the day
and year set forth above.

MORTGAGOR:

HALE MUA PROPERTIES, LLC,
a Hawaii limited liability company:



By: Sterling Kim
Its: Managing Member

STATE OF HAWAII)
) SS
CITY AND COUNTY OF HONOLULU)

On this 1st day of July, 2008, before me personally appeared STERLING KIM, 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.



Trisha Maxwell
Notary Public, State of Hawaii
Print Name: TRISHA N. MAXWELL
My commission expires: My commission expires: April 27, 2012

Date: <u>July 1, 2008</u>	# of Pages: <u>24</u>
Name: <u>TRISHA N. MAXWELL</u>	<u>1st</u> Circuit
Doc. Description: <u>MORTGAGE</u>	
MORTGAGOR: <u>HALE MUA PROPERTIES, LLC</u>	
MORTGAGEE: <u>SOUTHWEST 7, LLC</u>	
<u>Trisha Maxwell</u> Notary Signature	
NOTARY CERTIFICATION	

EXHIBIT "A"

-ITEM I:-

All of that certain parcel of land (portion(s) of the lands described in and covered by Deed of Kamehameha IV to C. Brewer and Company, James Robinson and Company, Thomas Cummins and Josiah Fuller, dated April 21, 1863 and recorded in Liber 16 at Page 374; Royal Patent Number _____, Land Commission Award Number 8559-B, Apana 20 (Boundary Certificate No. 204) to Wm. C. Lunalilo; Land Commission Award 1806, Royal Patent 6073, Apana 1, to Makalawelawe; Land Commission Award 1806, Royal Patent 6073, Apana 3, to Makalawelawe; Land Commission Award 1806, Royal Patent 6073, Apana 4, to Makalawelawe; Land Commission Award 2426, Royal Patent 6362, to Kaiwi; Land Commission Award 2447, Royal Patent 6164, Apana 1, to Kaawa; Land Commission Award 2451, Royal Patent 5978, Apana 1, to Kaelepulu; Land Commission Award 2526, Royal Patent 6167, Apana 1, to Makanui; Land Commission Award 2572, Royal Patent 8051, Apana 2 & 3, to Naheana; Land Commission Award 3275-T, Royal Patent 5178, to Kahookano; Land Commission Award 3275-U, Royal Patent 6126, to Kaiolani; Land Commission Award 3275-X, Royal Patent 6327, to Puula; Land Commission Award 3275-V, Royal Patent 6758, to Keaole; Land Commission Award 3327, Royal Patent 5444, Apana 1, to Naialoalao; Land Commission Award 3374, Royal Patent 6756, to Paele; Land Commission Award 3432, Royal Patent 5171, Apana 1 & 2, to Kula; Land Commission Award 3436, Royal Patent 6094, to Kapahi; Land Commission Award 3437, Royal Patent 6091, Apana 1 & 2, to Kailiula; Land Commission Award 3441, Royal Patent 6092, Apana 1, to Kapaula; Land Commission Award 3444, Royal Patent 6757, Apana 2, to Kalopa; and Poalima) situate, lying at Waiehu and Wailuku, Island and County of Maui, State of Hawaii, being LOT C of the IAO VALLEY LARGE-LOT SUBDIVISION, shown on subdivision map prepared by Erik S. Kaneshiro, Land Surveyor, LUCA File No. 3.1865, approved August 6, 2002, containing an area of 240.087 acres more or less and bearing Tax Key designation (2) 3-3-002-031.

Together with a strip of land 10.00 feet wide easement being more particularly described in Exchange Deed dated October 24, 1973, recorded in Liber 9654 at Page 326, to wit:

EXHIBIT A

Page 1 of 3

An easement through Parcels 3 and 4 for the operation, maintenance and repair of a concrete culvert: being A strip of land 10.00 feet wide and extending 5.00 feet on each side of the following described centerline:

Beginning at the west end of this easement, and on the west boundary of Parcel 3, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 7,948.98 feet north and 2,132.58 feet west, thence running by azimuths measured clockwise from the true south:

1. 271° 53' 40.79 feet through Parcels 3 and 4 to the east boundary of Parcel 4 and containing an area of 408 square feet."

-ITEM II:-

Excepting and Excluding from the above described parcel of land, the following sources of title:

- (A) Land Commission Award 2426, Royal Patent 6362, to Kaiwi;
- (B) Land Commission Award 2447, Royal Patent 6164, Apana 1, to Kaawa;
- (C) Land Commission Award 2572, Royal Patent 8051, Apana 2 & 3, to Naheana;
- (D) Land Commission Award 3275-T, Royal Patent 5178, to Kahookano;
- (E) Land Commission Award 3275-U, Royal Patent 6126, to Kaiolani;
- (F) Land Commission Award 3275-X, Royal Patent 6327, to Puula;
- (G) Land Commission Award 3327, Royal Patent 5444, Apana 1, to Naialoalao;
- (H) Land Commission Award 3374, Royal Patent 6756, to Paele;
- (I) Land Commission Award 3432, Royal Patent 5171, Apana 1 & 2, to Kula;

(J) Land Commission Award 3436, Royal Patent 6094, to Kapahi;

(K) Land Commission Award 3437, Royal Patent 6091, Apana 1 & 2, to Kailiula;

(L) Land Commission Award 3441, Royal Patent 6092, Apana 1, to Kapaula;

(M) Land Commission Award 3444, Royal Patent 6757, Apana 2, to Kalopa.

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : WAILUKU AGRIBUSINESS CO., INC.,
successor in interest to Wailuku
Sugar Company, a Hawaii corporation

GRANTEE : HALE MUA PROPERTIES, LLC, a Hawaii
limited liability company

DATED : May 12, 2004

RECORDED : Document No. 2004-102439

T.M.K. NO. (II) 3-3-002: 031

END OF EXHIBIT "A"

Exhibit "B"

EXCEPTIONS

1. Real Property Taxes, if any, that may be due and owing for 2008 and subsequent.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The terms and provisions contained in the following:

INSTRUMENT : DEED

DATED : June 23, 1924

RECORDED : Liber 740 Page 134

as amended by Agreement dated March 24, 1937,
recorded in Liber 1371 at Page 227.

including but not limited to the following:

water rights, easements and other rights.

4. Restrictions of abutter's rights of vehicle access into and from Waiehu Beach Road, Federal Aid Secondary Project No. S-0341 (2), (Kahekili Highway Realignment) as condemned by the State of Hawaii, by Final Order of Condemnation dated March 12, 1974, filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 879 on March 12, 1974, recorded in the Bureau of Conveyances in Liber 9903 at Page 379.
5. The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT

EXHIBIT B

Page 1 of 7

DATED : March 29, 1976
RECORDED : Liber 11357 Page 584
PARTIES : ALEXANDER & BALDWIN, INC., a Hawaii corporation, "Licensor", and BOARD OF WATER SUPPLY OF THE COUNTY OF MAUI, a board duly created and existing under the laws of the State of Hawaii, "Licensee"
RE : granting a perpetual right and easement to construct, reconstruct, repair, maintain, operate and remove an 8" diameter pipeline for purposes of carrying overflow from and cleanout of that certain water storage tank to within the Spreckels Ditch right of way, etc.

6. GRANT

TO : BOARD OF WATER SUPPLY OF THE COUNTY OF MAUI

DATED : January 19, 1977
RECORDED : Liber 12285 Page 50
GRANTING : a nonexclusive easement for waterline and road purposes to construct, reconstruct, maintain, operate, repair and remove a water pipeline or pipelines, pressure break tanks, pressure reducers and regulators and manholes with equipment and appurtenances, over, under across and through Easement B, for waterline and road, etc.

7. The terms and provisions contained in the following:

INSTRUMENT : RIGHT OF ENTRY AND AGREEMENT

DATED : September 27, 1977
RECORDED : Liber 12815 Page 281
PARTIES : WAILUKU SUGAR COMPANY, a Hawaii corporation, "Owner", and BOARD OF WATER SUPPLY OF THE COUNTY OF MAUI, "Grantee"
RE : non-exclusive right, power and privilege, for a period of three (3) years from the date hereof, to enter

EXHIBIT B

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upon, occupy and use for all purposes relating to the construction and installation of a water transmission line, as shown on map attached thereto

8. Any and all existing trails, roads, easements, rights of way, flume and irrigation ditches, heiaus, grave sites and other historic sites that may exist.

9. Any and all existing transmission lines in favor of MAUI ELECTRIC COMPANY, LIMITED, and HAWAIIAN TELEPHONE COMPANY, now known as HAWAIIAN TELCOM, INC., and distribution lines in favor of MAUI ELECTRIC COMPANY, LIMITED.

10. The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT TO DEFER THE CONSTRUCTION OF SUBDIVISION IMPROVEMENTS

DATED : October 3, 1988
RECORDED : Liber 22626 Page 32
PARTIES : WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, "Subdivider", and the COUNTY OF MAUI and its DEPARTMENT OF WATER SUPPLY, "County"

11. The terms and provisions contained in the following:

INSTRUMENT : FARM DWELLING AGREEMENT

DATED : December 5, 1988
RECORDED : Liber 22650 Page 96
PARTIES : WAILUKU AGRIBUSINESS CO., INC., "Applicant", and the COUNTY OF MAUI, through its Department of Public Works, "Department"

12. The terms and provisions contained in the following:

INSTRUMENT : MEMORANDUM CONCERNING GRANT OF
VARIOUS PROPERTIES

DATED : ----- (acknowledged August 18, 1999
and August 19, 1999)

RECORDED : Document No. 99-189645

13. The terms and provisions contained in the
following:

INSTRUMENT : DECLARATION OF COVENANTS AT CLOSING
BETWEEN WAILUKU AGRIBUSINESS CO.,
INC. AND CGM, LLC

DATED : ----- (acknowledged August 19, 2002)

RECORDED : Document No. 2002-146580

14. GRANT

TO : HO'OMALU LIMITED PARTNERSHIP, a
Hawaii limited partnership

DATED : November 26, 2003

RECORDED : Document No. 2003-259899

GRANTING : a perpetual non-exclusive easement
over and across Easement B-1, for
pedestrian and vehicular ingress and
egress and for utility purposes, more
particularly described therein

15. GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED and
VERIZON HAWAII INC, now known as
HAWAIIAN TELCOM, INC.

DATED : March 23, 2004

RECORDED : Document No. 2004-068719

GRANTING : an easement for utility purposes over
Easement "3", more particularly
described therein

16. Water rights, claims or title to water, whether

EXHIBIT B

Page 4 of 7

or not shown by the public records.

17. Matters arising out of, including but not limited to any utility and access rights in favor of, any Kuleana located within the subject land.
18. Matters arising out of the failure of a patent to have issued on Land Commission Award 8559-B, Apana 20 to W.C. Lunailo. The Company assumes no obligation to procure any patent or to pay commutation, if any, which may be owed thereon.
19. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
20. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS, RESERVATIONS AND
RESTRICTIONS

DATED : as of May 12, 2004
RECORDED : Document No. 2004-102438

ASSIGNMENT OF DECLARATIONS OF COVENANTS,
CONDITIONS, EASEMENTS, RESERVATIONS AND
RESTRICTIONS in favor of WAILUKU WATER COMPANY,
LLC, a Hawaii limited liability company, doing
business as Wailuku Water Company dated effective
October 1, 2005, recorded as Document No. 2005-
229075.

Said above Assignment was amended by instrument
dated August 27, 2007, recorded as Document No.
2007-157854.

21. The terms and provisions contained in the following:

INSTRUMENT : EASEMENT AGREEMENT

DATED : as of September 8, 2005

RECORDED : Document No. 2005-179295

PARTIES : HALE MUA PROPERTIES, LLC, a Hawaii limited liability company ("Hale Mua"), and CGM, LLC, a Hawaii limited liability company, ("CGM")

RE : a non-exclusive easement in favor of Lots 1 to 207 inclusive as shown on File Plan No. 2367, for the use and maintenance of the Storm Drain Improvements, as described therein

22. The terms and provisions contained in the following:

INSTRUMENT : UNILATERAL AGREEMENT

DATED : September 13, 2005

RECORDED : Document No. 2006-106454

PARTIES : HALE MUA PROPERTIES, LLC, a Hawaii limited liability company, "DECLARANT"

23. GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED, and HAWAIIAN TELCOM, INC.

DATED : August 17, 2006

RECORDED : Document No. 2006-235816

GRANTING : a perpetual right and easement for utility purposes, more particularly described therein

24. The terms and provisions contained in the following:

INSTRUMENT : NOTICE OF IMPOSITION OF CONDITIONS BY THE LAND USE COMMISSION

DATED : February 16, 2007

EXHIBIT B

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RECORDED : Document No. 2007-031188
PARTIES : HALE MUA PROPERTIES, LLC, a Hawaii
limited liability company

END OF EXHIBIT "B"