

With the exception of the change of name from Paradise Hui Hanalike, the deletion of the reference to the Road Committee and the year, the following is the basic waterline easement agreement between HPP owners and the Association. It contains the criteria for the installation and maintenance for a waterline. If you have a waterline agreement with HPPOA, there should be a copy in your file in the office.

Please call the Hawaii County Board of Water supply for more information about installing a waterline to your house.

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### WATERLINE EASEMENT

THIS AGREEMENT dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between HAWAIIAN PARADISE PARK OWNERS ASSOCIATION, a Hawaii non-profit corporation, whose principal place of business is 15-1570 Maku'u Drive, Hawaiian Paradise Park Subdivision and whose mailing address is HC 3 BOX 11000 KEA'AU, HAWAII 96749-9204, hereinafter called "Grantor", and \_\_\_\_\_, whose mailing address is \_\_\_\_\_, hereinafter called "Grantees".

WHEREAS, by way of that certain Quitclaim Assignment of Reservation of Rights, dated December 18, 1985, and attached to Land Court order No. 77755, Grantor is the assignee of certain exceptions, reservations and powers to grant licenses, easements and privileges to others in, over, across and through certain roadway lots located in Hawaiian Paradise Park Subdivision, County of Hawaii, State of Hawaii, as more particularly described in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, Grantee is presently an owner of real property, being more particularly described in Exhibit "B", attached hereto and incorporated herein by reference, and Grantee intends to locate a waterline under the roadway lots described in Exhibit "A" for the purpose of accessing water supply lines of the County of Hawaii by installation of a waterline from Paho-Kea'au Road, a public highway, to Grantee's property; and

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Waterline Easement  
Revised 10/03  
Page 2 of 8

WHEREAS, Grantor intends to grant to Grantee a waterline easement;

NOW THEREFORE, for valuable consideration, the parties agree as follows:

1. Grantor does hereby grant, assign, or otherwise transfer to Grantee a non-exclusive easement for waterline purposes, under the real property described in Exhibit "A", subject to the covenants and

conditions herein set forth. Said easement shall inure to the benefit of the real property described in Exhibit "B".

2. In consideration of the receipt of the said easement, Grantee and Grantee's heirs, successors and assignees do agree to the following conditions.

a.) Grantee shall hire the services of only contractors licensed in the State Hawaii and approved by the Board of Directors for the construction of the waterline.

b.) The waterline shall be buried at a minimum depth of eighteen inches. Furthermore, where the waterline passes directly beneath any portion of the roadway used for vehicular traffic, that portion of the waterline shall be placed inside a protective sleeve or conduit, in this case, a six-inch (6") schedule 40 PVC pipe below the grade of the shoulder or roadway, as applicable.

c.) Except when crossing a roadway, pipes shall not be buried or placed directly beneath any portion of a roadway used for vehicular traffic but, instead, off the shoulder of the roadway as follows:

i.) In regard to any waterline buried along Ua Kilihune (Shower Drive), Pohaku Place, Kaloli Drive, Paradise Drive or Maku'u Drive within Hawaiian Paradise Park Subdivision, pipe shall be buried not less than 25 feet from the roadway's center line.

ii.) In regard to waterlines buried along any other roadway within Hawaiian Paradise Park Subdivision, pipe shall be buried not less than 15 feet from the roadway's center line.

No pipe shall be buried across or beneath any portion of any road in Paradise Park Subdivision that has been paved with either asphalt or concrete, unless prior approval is obtained from Grantor and Board of Directors in writing.

d.) Grantee will pay for the entire cost of the waterline easement, including the cost of installation, future repair and maintenance, all licenses or permits, all legal documents, including this agreement, the grant of easement, recording fees and insurance as may be necessary. In cases of any common usage of one pipe by multiple lot owners, each such lot owner shall have a joint and several obligations to Grantor to pay the aforesaid costs. Furthermore Grantee hereby agrees to pay, or reimburse, a co-user of the pipe for a pro rata share of any expense incurred in effecting future repairs. The pro rata share shall be computed by dividing the total expense by the number of lots being served by the subject water line pipe.

Waterline Easement

Revised 10/03

Page 3 of 8

e.) Grantee will comply with all relevant governmental rules, laws and requirements related to the construction, installation and repair to the water line, and agrees to obtain all licenses and permits prior to start of actual construction.

f.) During the period of construction, Grantee will not impede, interfere with, or disrupt, vehicular traffic along any roadway where the waterline is being installed, EXCEPT whenever prior written approval allowing for temporary closure of a roadway to vehicular traffic is obtained from the Grantor in writing upon application. Such exception shall be approved only upon demonstration by the applicant that such road closure is reasonable and necessary for concerns of safety and cost effectiveness for the general benefit of all concerned. In all instances, closure shall be for a maximum of three (3) hours. Furthermore, three (3) days prior written notice shall be posted by the Grantee at the closure site. Said notice shall be legible from a distance of 25 feet to traffic in both directions and shall specify the date and time of closure. Additionally, Grantee shall notify the grantor and local fire and police department in advance of such closure.

g.) During the period of construction, Grantee shall be responsible for placement of warning signs, markers or signals observable at least fifty (50) yards in both directions by passing motorists along the roadway during all hours.

h.) At no time will any object, debris, barrier, rocks, soil, gravel, sign, equipment, machinery or other matter be placed upon or near the vehicular lane of travel, except as provided in subparagraph "f" above.

i.) Aggregate not exceeding 3/8 inches diameter or red cinder that is tamped and crushed shall be placed at a depth of at least 4 inches below the waterline and 6 inches after compaction, above the waterline. All ditches must be refilled with existing or new materials and conform to the topography of the area. No crevices, holes, or open ditches shall be left unfilled upon completion of the work. Any ditching area consisting of broken rocks after filling must be covered with an adequate layer of cinder or other suitable material to allow for the safe passage of pedestrians and motor vehicles.

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Waterline Easement  
Revised 10/03  
Page 4 of 8

j.) All debris generated by the construction of the waterline shall be removed from the site upon completion, and Grantee shall be responsible for the cleanup. If any such debris washes on to the roadway as a result of the construction, Grantee shall be responsible for its cleanup and removal, even if construction has already ceased.

k.) All construction, once started, shall be promptly completed within \_\_\_\_ days. Any waterline leak or similar need for repair shall be attended to within days.

l.) Grantee shall notify Grantor of his intent to begin work on the waterline at least fifteen 15 days before actual construction begins. Grantor's present telephone number is 966-4500.

m.) Grantee shall notify Grantor at least twenty-four (24) hours before completion of construction to enable a representative of Grantor to inspect the work prior to actual completion. If Grantor's representative is not satisfied in any way with the work, Grantee agrees to make appropriate corrections.

3.) Grantee hereby agrees to release, indemnify and hold harmless Grantor, its successors and assigns, from any claims, demands, liability or damages and any expenses incurred by reason of the same, including reasonable attorneys fees incurred by Grantor, whether or not a suit is involved, in any way arising from or related to the construction of the waterline, or the maintenance of said waterline.

Grantee hereby releases Grantor from any liability for damage to or interference with Grantee's waterline caused by any third persons, including other lot owners holding waterline easements.

4.) This easement shall run with the land in respect to both the dominant and servient estates.

5.) Grantor and Grantee recognize that there are numerous other owners of lots in said subdivision who also will need to have water supplied to their lots and that Grantor must consider not only the needs of Grantee, but also those of the other owners. In order to do so, Grantor and Grantee have agreed to the following provisions for future replacement of Grantee's waterline:

a. Grantor shall have the right to replace any waterline or related improvement installed pursuant to this easement, upon prior written notice to Grantee, but without further approval by Grantee, on the following terms and conditions:

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Waterline Easement  
Revised 10/03  
Page 5 of 8

(i) The replacement is for the purpose of providing water to lots in the subdivision;

(ii) Upon completion, the replacement shall provide Grantee's lot with at least the same flow rate and water pressure as that of Grantee's waterline, and Grantee will connect to such water 1 me;

(iii) During construction, Grantee's water supply shall be interrupted only to the extent necessary to complete construction of the replacement system.

(iv) The replacement system may service as many lots as its capacity allows, without diminishing Grantee's rights hereunder; and

(v) Grantor shall have the right to dedicate the replacement system to the County of Hawaii Department of Water Supply, its successor, or to a private water company from which Grantee will have the right to water as provided herein. Upon acceptance of such dedication, that Grantor shall have no further rights or responsibilities with respect to Grantee hereunder.

For purposes of this paragraph 5 only, Grantor shall be deemed to be the legal owner of all pipeline buried by Grantee pursuant to this easement.

In instances whereby water pipe is replaced, as allowed by this in paragraph 5:

a.) Grantee does expressly consent to share usage of any such replacement waterline with such other lot owners who Grantor may designate; and

b.) Any replacement of a waterline, pursuant to this Paragraph 5, shall not diminish or otherwise affect Grantee's obligations to maintain and/or repair the waterline.

6.) Grantor reserves the right to install protective sleeves for crossing roadways at selected locations to be paid by Grantee. Such sleeves, when installed, are intended to avoid repeated trenching across roadways and are intended to be shared by more than one lot owner. Grantee hereby agrees to utilize said sleeves,

when available for crossing any roadway. Furthermore, Grantee agrees to pay to Grantor a one-time user fee, additional to any consideration paid for the grant of this easement.

7.) If a public or private water system is to be provided for the common benefit of this lot and other lots in the subdivision, then Grantee agrees as follows:

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Waterline Easement  
Revised 10/03  
Page 6 of 8

a. Grantee will join in any petition for creation of an improvement district to fund construction of such system and will not object to an owner-initiated or a County-initiated improvement district under the ordinances of the County of Hawaii, provided that Grantee may object to a proposed assessment to the extent that it exceeds the special benefit to the lot (taking into account any fire protection benefits as well as the benefits from domestic water supply);

b. Grantee will join in any petition or request to create a community facilities district or the like, if and when such are allowed by law, and to the levy of a special tax fund the same for construction of such system, and will not object to such an owner-initiated or County-initiated district; provided that Grantee may object to a special tax that is not applied on a uniform basis to other similar lots to be included in the district;

c. Grantee will join in and participate in the creation of a private non-profit water company established for the purpose of constructing and maintaining such system, provided that Grantee shall have the right to become a voting member of such a company;

d. With respect to any of the foregoing and subject to the rights above, Grantee agrees to participate in such a system, to pay for a share in construction costs, and to pay for fees, charges or assessments, levied for the maintenance of the system and water supplied.

8.) If Grantee fails to abide by the terms of this Easement, Grantee shall be liable for all costs, expenses and damages sustained by Grantor, including costs and reasonable attorneys fees, whether in enforcing the same or otherwise. In addition to any other remedies, Grantor shall be entitled to injunctive and other equitable relief for violations of the terms of this easement.

9.) The word "Grantee" as used herein includes the undersigned property owner(s) above named, and his/her heirs, personal representatives, administrators, successors and assignees.

10.) This easement shall be binding upon the respective parties hereto and their respective heirs, personal representatives, administrators, successors and assignees.

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11.) This easement may be accepted for filing by the Assistant Registrar of the Land Court of the State of Hawaii without notation of the same on Transfer Certificates of Title applicable to the road way lots described in Exhibit "A", as authorized by Land Courts Order No. 78006, being that certain ORDER AUTHORIZING ACCEPTANCE OF EASEMENT FOR FILING, dated April 22, 1986.

12.) This easement may be revoked or amended at any time at the discretion and approval of the Board of Directors.

13.) I (we) declare that I (we) have read and understand this document

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first above written.

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Hawaiian Paradise Park Owners Association, GRANTOR  
By Its President

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GRANTEE

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GRANTEE