

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 28, 2020

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 15KD-212

KAUAI

Amend Prior Board Action of February 23, 2018, Item D-3, Request to Extinguish a Twenty (20) Foot Wide Ditch Right-of-Way Easement Reserved to the State of Hawaii Under Land Patent Grant No. 12,829, Traversing Private Property Owned By Michael Clark and Denise Addesso at Wailua Houselots, Wailua, Kauai, Tax Map Key: (4) 4-1-013: Portions of 046.

The purpose of the amendment is to change the applicant from Michael Clark and Denise Addesso to W. Noel Rodman, due to the recent sale of the private property containing the ditch right-of-way.

BACKGROUND:

At its meeting of February 23, 2018, item D-3, the Board of Land and Natural Resources (Board) approved the extinguishment of a twenty (20) foot wide ditch right-of-way easement reserved to the State of Hawaii under Land Patent Grant No. 12,829, traversing the private property owned by Michael Clark and Denise Addesso at Wailua Houselots, Wailua, Kauai, Tax Map Key: (4) 4-1-013: portions of 046. (Exhibit A)

REMARKS:

Based on the Board approval, the Department of the Attorney General prepared a document to extinguish the easement. When Kauai District Land Office (KDLO) staff forwarded the document to Michael Clark and Denise Addesso for signature, however, staff discovered that their private property was in a bank foreclosure.

On August 21, 2019, KDLO received a call from a W. Noel Rodman who explained that he was in the process of acquiring the property through foreclosure. Mr. Rodman indicated that he would be in contact with KDLO once the sale was finalized.

On January 27, 2020, Mr. Rodman provided KDLO with copies of the Notice of Entry of Judgment (Exhibit B) and Commissioner's Deed (Exhibit C), which confirm the finalized foreclosure sale of the Clark/Addesso private property. Mr. Rodman also provided a check

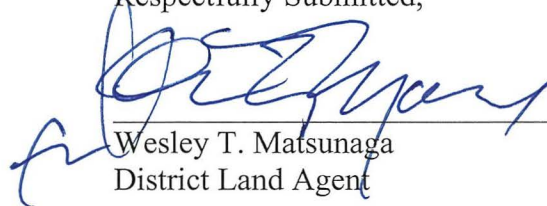
for \$19,655.00, made payable to Department of Land and Natural Resources for the consideration (\$19,600), survey fee (\$25.00) and document fee (\$30.00), which was the amount charged Clark/Addesso.

As a result, staff is recommending an amendment of the Board's prior action of February 23, 2018, item D-3, to change the applicant from Michael Clark and Denise Addesso to W. Noel Rodman.

RECOMMENDATION: That the Board:

1. Amend its prior action of February 23, 2018, under agenda item D-3 by changing the applicant from Michael Clark and Denise Addesso to W. Noel Rodman, as the new landowner of the private property over which the ditch right-of-way easement was reserved.
2. Confirm that, except as amended hereby, all terms and conditions listed in its February 23, 2018 approval shall remain the same.

Respectfully Submitted,



Wesley T. Matsunaga
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 23, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 15KD-212

KAUAI

Request to Extinguish a Twenty (20) Foot Wide Ditch Right-of-Way Easement Reserved to the State of Hawaii under Land Patent Grant No. 12,829, Traversing Private Property Owned By Michael Clark and Denise Addesso at Wailua Houselots, Wailua, Kauai, Tax Map Key: (4) 4-1-013: Portions of 046.

APPLICANT:

Michael Clark and Denise Addesso, husband and wife, Tenants by the Entirety.

LEGAL REFERENCE:

Sections 171-16(d) and 171-57, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of a ditch right-of-way reserved onto the State, Wailua Houselots, 4th Series, situated at Wailua, Puna (Kawaihau), Kauai, identified by Tax Map Key: (4) 4-1-013: Portions of 046, as shown on the attached map labeled Exhibit A.

AREA:

Ditch E (Part 1): 2,118 square feet, more or less.
Ditch E (Part 2): 2,214 square feet, more or less.

ZONING:

State Land Use District: Rural
County of Kauai CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

February 23, 2018 *wa*

EXHIBIT A

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:
YES _____ NO x

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment representing the difference in the fair market value of the private property with and without the easement reservation, to be determined by an independent appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, concurred and reviewed by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and item 44, which states, "Transfer of title to land." See Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 2) Pay for an appraisal to determine the one-time payment for the difference in the fair market value of the private property with and without the easement reservation, at Applicant's own cost.

REMARKS:

Applicants Michael Clark and Denise Adesso (Applicants) request that the easement for a ditch right-of-way reserved in favor of the State on their private property designated as TMK: (4) 4-1-013:046 (Parcel 46) be extinguished so Applicants can remove the encumbrance from record. Applicants intend to construct two residential dwellings and a

shred treatment facility on the land. The improvements would overlay portions of the easement right-of-way.

Pursuant to section 171-16(d) and 171-57, HRS, as amended:

Notwithstanding any limitations to the contrary, where public land is disposed of with reservation in the State of quarry rights to rock, sand or gravel or an easement, and if the board of land and natural resources finds that a disposition of the reserved right or easement is not prejudicial to the best interest of the State, community or area in which the land is situated, it may, after giving public notice of the intended disposition as provided in section 171-16(d), dispose of the reserved right or easement to the owner of the land by direct sale or by lease without public auction.

The Territory of Hawaii conveyed Parcel 46 to Applicants' predecessors –in-interest on March 9, 1955 under Land Patent Grant No. 12,829, reserving to the Territory in perpetuity a 20-foot wide easement for a ditch right-of-way. Staff confirmed through the County of Kauai, Real Property Tax Office and by recorded Deed as evidenced through a title report prepared by Old Republic Title & Escrow of Hawaii, Order No. 6822000515-BJ, that Applicants are the current owners of Parcel 46. The title report indicated that the last recorded transfer or agreement to transfer of the subject property was dated January 24, 2007, recorded in the Bureau of Conveyances on January 31, 2007, under Document No. 207-018291.

Parcel 46 is currently undeveloped and no ditch is visible from aerial photographs or from onsite inspections. When Applicants' surveyor inspected Parcel 46, he noted that the ditch had been abandoned some time ago, as the upslope landowners had filled in the ditch right-of-way and constructed residential dwellings over the prior location of the ditch alignment. Staff has therefore determined that the subject area is an abandoned ditch right-of-way, identified as Portion of Ditch E, Parts 1 & 2. See Exhibit A.

On June 14, 2017 and again on December 11, 2017, various governmental agencies and interest groups were solicited for comments with the results indicated below:

AGENCIES	COMMENTS
County of Kauai:	
Planning	No comments/objections
Public Works	No comments
State of Hawaii:	
Agribusiness Development Corp	No comments/ objections
DLNR-Aquatic Resources	No response by suspense date
DLNR-CWRM	No response by suspense date
DLNR-Engineering	No comments/objections

DLNR-Historic Preservation	No response by suspense date
DOA	No comments/objections
Interest Groups:	
DHHL	No response by suspense date
East Kauai Water Users' Coop	No response by suspense date
OHA	No response by suspense date

The only respondents to our request for comments were the Kauai County Planning Department, DLNR-Engineering, the Department of Agriculture, and the Agribusiness Development Corporation. All had no comments to offer.

Staff made several attempts to contact the East Kauai Water User's Coop, by phone and by letter, but was unsuccessful to make contact on the two dates comments were solicited.

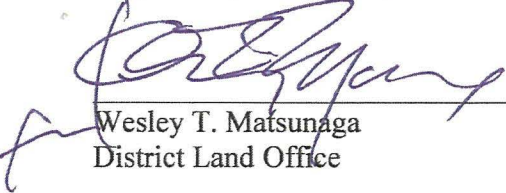
Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Find that the extinguishment of the reserved easement is not prejudicial to the best interests of the State.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore, exempt from the preparation of an environmental assessment.
3. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the extinguishment of the subject easement for a ditch right-of-way (portions of Ditch E, Parts 1 & 2) reserved on the private property belonging to Michael Clark and Denise Addesso, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current extinguishment of a reserved easement document form, as may be amended from time to time;
 - B. The applicant shall pay for an appraisal to determine one-time payment;
 - C. Review and approval by the Department of the Attorney General; and

- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
District Land Office

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



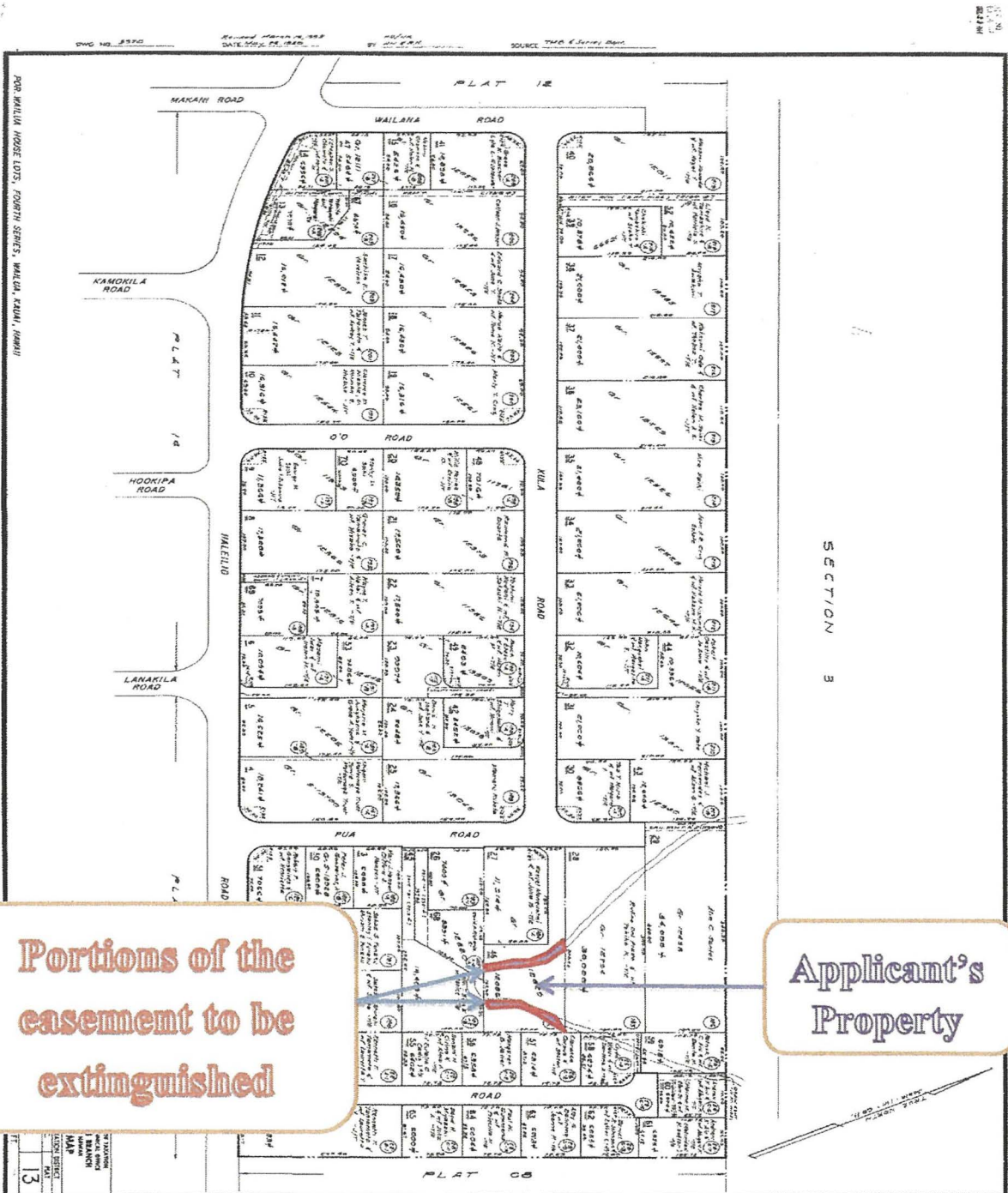


EXHIBIT A

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 23, 2018

Ref. No.: 15KD-212

EXEMPTION NOTIFICATION:

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

Project Title:	Extinguishment of easement (an abandoned ditch right-of-way) traversing a private property belonging to Michael Clark and Denise Adesso.
Project / Reference No.:	PSF No.: 15HD-212
Project Location:	Wailua Houselots, Wailua, Kauai, Tax Map Key: (4) 4-1-013: portions of 046.
Project Description:	Extinguishment of easement reserved to the State for a now-abandoned ditch right-of-way.
Chap. 343 Trigger(s):	Use of State land.
Exemption Class No. and Item Description:	In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to, Exemption Class 1, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Item No. 44, "Transfer of title to land."
Consulted Parties:	Agencies listed in submittal.
Recommendation:	The extinguishment of the easement in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the action is exempt from the preparation of an environmental assessment.

EXHIBIT B

TMLF HAWAII LLC
A Hawaii Limited Liability Law Company

SUN YOUNG PARK #9787
PETER T. STONE #2788
1099 Alakea Street, Suite 1500
Honolulu, HI 96813
Telephone: 808-489-9741
Facsimile: 808-489-9835

Attorneys for Plaintiff

2019 SEP 25 09:10:42

STATE OF HAWAII

CLERK

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

WILMINGTON TRUST, NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS TRUSTEE
FOR MFRA TRUST 2014-2,

Plaintiff,

vs.

MICHAEL CLARK; DENISE ADDESSO;
STATE OF HAWAII - DEPARTMENT OF
TAXATION; MARIA DING WANG;
SUNRUN, INC.; and DOES 1 through 20,
inclusive,

Defendants.

CIVIL NO. 17-1-0144
(FORECLOSURE)

NOTICE OF ENTRY OF JUDGMENT

HONORABLE KATHLEEN N. A.
WATANABE

HEARING DATE: 08/27/2019

HEARING TIME: 1:30 P.M.

NO TRIAL DATE SET

EXHIBIT B

I do hereby certify that this is a full,
true and correct copy of the original
on file in this office.

[Signature]
Clerk, Circuit Court, Fifth Circuit

NOTICE OF ENTRY OF JUDGMENT

Pursuant to the provisions of Hawaii Rules of Civil Procedure 77(d), NOTICE IS HEREBY GIVEN of the Entry of Judgment granting Plaintiff's Motion for Order Confirming Foreclosure Sale, Approving Commissioner's Report, Allowance of Commissioner's Fees, Attorney's Fees, Costs, Directing Conveyance and for Writ of Ejectment; Exhibit "A" in favor of Plaintiff in the above-entitled action.

DATED: Lihue, Hawaii, _____.

CLERK OF THE ABOVE-ENTITLED COURT

COPIES MAILED TO:

MICHAEL CLARK
[REDACTED]

Aptos, CA 95003
Defendant

DENISE ADDESSO
[REDACTED]

Aptos, CA 95003
Defendant

MARIA DING WANG
[REDACTED]

Waipahu, HI 96797
Defendant

LAWRENCE MCCREERY
[REDACTED]

Lihue, HI 96766
Commissioner

W. NOEL RODMAN
[REDACTED]

Kapaa, HI 96746
Third Party Purchaser

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED November 19, 2019 8:01 AM
Doc No A72620393
CONVEYANCE TAX: \$378.00
/s/ LESLIE T. KOBATA, Registrar
SKC 6

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN ORIGINAL BY: MAIL (X) PICK-UP ()

W. Noel Rodman

San Luis Obispo, CA 93405
Esc. #6828009539-CK



Tax Map Key No.: (4) 4-1-013-046-0001 and
(4) 4-1-013-046-0002

Total Pages: 6

COMMISSIONER'S DEED

PARTIES TO DOCUMENT

GRANTOR: LAWRENCE MCCREERY, Commissioner

GRANTEE: W. NOEL RODMAN

THIS DEED, made this 29th day of October, 2019, by LAWRENCE MCCREERY, as Commissioner, duly appointed as hereinafter set forth, hereinafter called the "Grantor", in favor of W. NOEL RODMAN, a married man, whose address is [REDACTED], San Luis Obispo, California 93405, hereinafter called the "Grantee,"

EXHIBIT C

WITNESSETH

THAT WHEREAS, LAWRENCE MCCREERY, was duly appointed as Commissioner pursuant to that certain "FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST ALL DEFENDANTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE", (hereinafter referred to as "Order"), filed on April 30, 2019 in the Fifth Circuit Court, State of Hawaii, in that certain proceeding entitled "WILMINGTON TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE FOR MFRA TRUST 2014-2, Plaintiff, vs. MICHAEL CLARK; DENISE ADDESSO; STATE OF HAWAII - DEPARTMENT OF TAXATION; MARIA DING WANG; SUNRUN, INC., Defendants", designated as Civil No. 17-1-0144 (Foreclosure) in the files of said Court;

AND WHEREAS, pursuant to said Order, said Commissioner duly held a public auction, wherein the real property hereinafter described was offered for sale, the auction was re-opened at the hearing on the Motion to Confirm Sale and wherein Grantee was the purchaser of said real property, subject to the confirmation of said Court;

AND WHEREAS, said sale has been confirmed by ORDER CONFIRMING FORECLOSURE SALE, APPROVING COMMISSIONER'S REPORT, ALLOWANCE OF COMMISSIONER'S FEES, ALLOWANCE OF COMMISSIONER'S FEES, ATTORNEY'S FEES, COSTS, DIRECTING CONVEYANCE AND FOR WRIT OF EJECTMENT, filed on September 25, 2019, entered on September 23, 2019, in the aforesaid proceeding, and in and by the terms of said Court Order, said Commissioner was directed to convey the real property hereinafter described to Grantee;

NOW, THEREFORE, Grantor, as Commissioner as aforesaid, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid by the Grantee, receipt whereof is hereby acknowledged, and in compliance with said Court Order as hereinabove set forth, does hereby RELEASE, REMISE AND FOREVER QUITCLAIM the real property more particularly described in Exhibit "A" hereto attached and expressly made a part hereof, unto Grantee, as tenant in severalty, his heirs, devisees, personal representatives and assigns, in fee simple:

All of that certain real property and personal property (if any) described in Exhibit "A" attached hereto and made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, as to said real property, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee absolutely and according to the tenancy herein set forth, and as to said personal property (if any), absolutely and forever.

The terms "Grantor" and "Grantee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees, corporations or limited liability companies, and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

[END OF TEXT, CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the Grantor, as Commissioner as aforesaid, executed this instrument this _____ day of OCT 29 2019, 2019.

Lawrence McCreery
LAWRENCE MCCREERY, Commissioner as
aforesaid

"Grantor"

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this _____ day of OCT 29 2019, 2019, before me personally appeared LAWRENCE MCCREERY, duly appointed as Commissioner pursuant to that certain "FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST ALL DEFENDANTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE", (hereinafter referred to as "Order"), filed on April 30, 2019 in the Fifth Circuit Court, State of Hawaii, in that certain proceeding entitled "WILMINGTON TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE FOR MFRA TRUST 2014-2, Plaintiff, vs. MICHAEL CLARK; DENISE ADDESSO; STATE OF HAWAII - DEPARTMENT OF TAXATION; MARIA DING WANG; SUNRUN, INC., Defendants", designated as Civil No. 17-1-0144 (Foreclosure) in the files of said Court, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as such Commissioner.

Document Date: OCT 29 2019 Number of Pages: 6
Description of Document: Commissioner's Deed



Signature: [Signature]
Name: _____
Notary Public, State of Hawaii, _____ Circuit

My commission expires: Preston Brede
State of Hawaii, Fifth Circuit
My Commission Expires: July 5, 2021

EXHIBIT "A"

All of that certain parcel being presently demarcated as Tax Map Key: (4) 4-1-013-046, being all of Lot 184-B which being a subdivision of Lot 184 of Wailua House Lots, 4th Series Extension, Wailua (Puna), Kauai, Hawaii, being some 18,086 square feet in area.

Being all the property described in the following:

WARRANTY DEED

Recorded: January 31, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-018291
Grantor: MICHAEL MANGUCHEI, a married man
Grantee: MICHAEL CLARK and DENISE ADDESSO, husband and wife, as Joint Tenants

NOTE: The aforementioned premises has been divided into 2 condominium units more particularly described in the Declaration of Condominium Property Regime of PUA CONDOMINIUM, recorded December 14, 2007 in the Bureau of Conveyances of the State of Hawaii as Document No. 2007-215919, as amended, as shown on Condominium Map No. 4556.

SUBJECT, HOWEVER, TO:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. An easement twenty (20) feet wide for a ditch right-of-way over, under, upon and across the above described lot, designated as Ditch E on the map attached hereto and made a part hereof, together with rights of ingress and egress thereto for the construction, maintenance and repair of said ditch, as reserved to the Territory of Hawaii in Land Patent Grant No. 12,829.
3. Condominium Map No. 4556, filed in the Bureau of Conveyances, State of Hawaii.
4. Terms and provisions as contained in an instrument,

Entitled: DECLARATION OF CONDOMINIUM PROPERTY REGIME
Dated: August 27, 2007
Recorded: December 14, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-215919

Said above Declaration was amended by the following:

DATED:	RECORDED	DOCUMENT NO.
March 14, 2015	March 27, 2015	A-55640730

5. Terms and provisions as contained in an instrument,

Entitled: BYLAWS OF PUA CONDOMINIUM PROJECT
Dated: August 27, 2007
Recorded: December 14, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-215920

6. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument: GRANT OF EASEMENT
Granted To: KAUAI ISLAND UTILITY COOPERATIVE, a cooperative association, and
HAWAIIAN TELCOM INC., a Hawaii corporation
For : a right and easement for utility purposes
Dated : September 25, 2008
Recorded: November 7, 2008 in the Bureau of Conveyances, State of Hawaii, as Document
No. 2008-171056

END OF EXHIBIT "A"