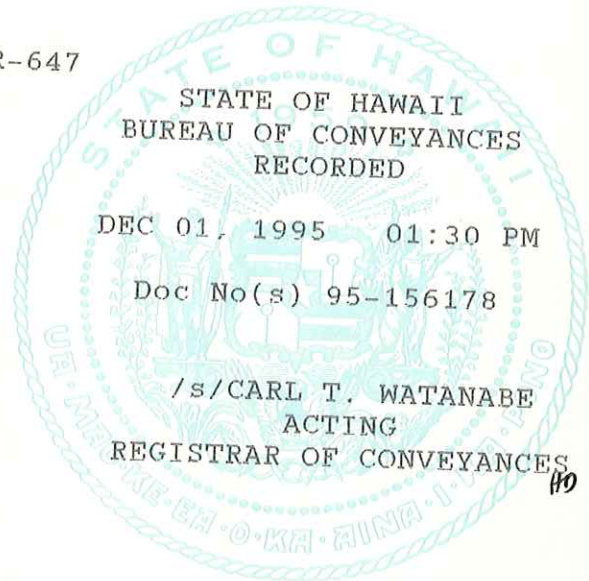


96 JAN 16 P4: 12

DEPT. OF WATER  
COUNTY OF KAUAI

R-647



LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( ) To:

Department of Water  
P. O. Box 1706  
Lihue, HI 96766

### GRANT OF EASEMENT

This Grant of Easement, dated this 28<sup>th</sup> day of November, 1995, is made by and between GLADSTONE BURNS, INC., a Hawaii corporation, whose principal place of business and mailing address is c/o William Gladstone, Waterside Productions, Inc., The Waterside Building, 2191 San Elijo Avenue, Cardiff By The Sea, California 92007-1839, and MICHAEL J. SCOYNI and DENISE DION-SCOYNI, husband and wife, whose residence and mailing address is 3265 N. W. 62d. Lane, Boca Raton, Florida 33496, hereinafter called "Grantor", and the BOARD OF WATER SUPPLY OF THE COUNTY OF KAUAI, the principal place of business of which is Lihue, Kauai, Hawaii 96766, hereinafter called the "Grantee".

### WITNESSETH THAT:

That the Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) to it paid by the Grantee, receipt whereof is hereby acknowledged, and the covenants hereinafter contained to be observed and performed by the parties hereto, does hereby grant unto the Grantee, its successors and assigns, a non-exclusive easement over, across, under, and along a portion of the property of the Grantor, hereinafter referred to as the "easement area", and more particularly described as Easement

LIHUE1\23239\1\5812.1\MMWG

Waipake 9/10 Unit I

Easement "AU-1" LOT 23

11-28-95

AU-1 in Exhibit "A" and shown on Exhibit "B", both of which exhibits are attached hereto and incorporated herein by reference.

The purpose of this easement shall be for: the installation, operation, maintenance, repair, reconstruction and removal of underground water pipelines or related underground structures and facilities; and the right of vehicular and pedestrian ingress and egress at all times over said easement area to said pipeline structures and/or related structures and facilities and to the Grantee's real property designated as Lot 14A of the Waipake Subdivision, Unit I ("Lot 14A"), as described in Exhibit "C", attached hereto and incorporated herein, together with the right to construct, maintain, repair and reconstruct an improved road on said easement.

TO HAVE AND TO HOLD the same unto the Grantee for the purposes hereinabove provided and for so long as so used and not otherwise; that the easement shall cease and the easement area shall immediately and without re-entry revert to the Grantor, its successors and assigns, when the granted premises shall cease to be used for said purposes for a period of two (2) years.

In consideration of the premises, the Grantor and Grantee hereby covenant and agree as follows that:

(1) The Grantee, after any installation, repair or removal of any pipelines and/or related facilities, will restore the surface of the ground to its original condition to the extent that such restoration is reasonably possible.

(2) After the original installation of said pipelines, and/or related facilities, the expense of any move or relocation thereof shall be borne by the party requesting or desiring same. Should the Grantor's development plan require that the easement area and/or waterworks facility improvements within, on, or under the easement area be relocated, the Grantor will, at the Grantor's own expense and pursuant to the Grantee's instructions and specifications, re-locate the affected easement area and waterworks facility improvements and appurtenances without interruption of the Grantee's services.

(3) Except as otherwise provided herein, the Grantor or its assigns shall not erect any building foundation of any kind below the surface of the easement area or at any time erect any building or structure of any kind or any walls or fences or hedges or plantings of any kind above or on the surface of the easement area, unless the construction of the same shall not unreasonably interfere with the Grantee's use of the easement area for construction, reconstruction, maintenance, operation, and repair of and access to said pipeline system and/or related facilities. Only lawn grass shall be planted within three (3) feet of all meter boxes, fire hydrants, and other waterworks facility improvements and appurtenances. No trees with aggressive root systems shall be planted within twenty (20) feet of all meter foxes, fire hydrants, and other waterworks facility improvements and appurtenances.

(4) The Grantee shall not assign any right or interest hereby granted otherwise than to a duly created or established legal successor of the Grantee without the written consent of the Grantor.

(5) Both parties shall have the right to use the Easement area. Both parties shall have the right to repair, maintain and improve the Easement area as provided herein, but except as



provided herein, neither party shall have the duty or responsibility to do so. Both parties agree to share the expense of repairing, replacing, reconstructing or repaving those portions of the improved road within the easement area which are used by both parties at the following percentage: Grantor - 75%; Grantee - 25%.

(6) The Grantee shall use and maintain the Easement for the purposes described herein and shall use and maintain the easement only in a manner permitted by and not contrary to any law, statute, code, regulation, ordinance, ruling or order, whether state, federal, or county. Except as otherwise provided herein, the Grantee may only make such improvements to the Easement as are necessary for the safe and reasonable use of said Easement for the purposes described herein.

(7) The Grantee shall use and enjoy the Easement granted herein at no cost or expense to the Grantor and shall repair any property or improvements of the Grantor or others from time to time existing on or within the Easement where damaged by the Grantee in the exercise of its rights hereunder.

(8) Any facilities constructed, reconstructed, installed or replaced within the Easement by either the Grantee or the Grantor shall be and remain the property of the party constructing, reconstructing, installing or replacing the same.

(9) Except as otherwise provided herein, each party shall indemnify, hold harmless and defend the other party against all loss or damage to the property of others and from all liability for the injury to or death of persons in the manner provided by law when such loss, damage, injury or death arises, is caused by, or proximately results from the acts of the party, its contractors, agents, servants, guests, invitees, or any other person, in connection with the exercise by the party or such persons of the rights and privileges granted herein to, or the duties imposed herein on, such party.

(10) The Grantor shall have the right to grant utility easements under and across the Easement to such other person, corporations, partnerships, public utilities, and governmental bodies, departments or agencies under such terms and conditions as the Grantor deems necessary or desirable, provided such easements do not unreasonably interfere with the Grantee's rights and privileges granted herein. The Grantor shall obtain Grantee's approval prior to initiating such easements. The Grantor shall obtain Grantee's approval prior to granting any such easements.

(11) The Grantor shall have the right to use the Easement for pedestrian and vehicular access purposes and for the construction, installation, operation, maintenance, repair, reconstruction and removal of roadways, pedestrian access paths, and utilities.

(12) The Grantor shall have the right to construct an entry gate and wall and a booster pump station ("Gate Improvements") at the eastern end of the Easement. The Grantor shall be solely responsible for the construction, installation, operation, maintenance, repair and reconstruction of the Gate Improvements. The Grantor shall not require the prior approval of the Grantee for the initial construction or any subsequent work on these Gate Improvements. The Grantee shall not be responsible for any damages to the Gate Improvements caused by Grantee's construction, installation, operation, maintenance, repair, use or reconstruction of any of the Grantee's Improvements within the Easement Area. If the gate is to be locked, Grantor shall obtain Grantee's approval for the design of the gate locking system. The Grantee shall provide its own lock independent of the Grantor's lock at the Grantor's expense.

(13) The Easement, and the rights granted hereunder, shall run solely in favor of the Grantee and the Grantee's interest in Lot 14A and may not be assigned, granted or otherwise given for the purpose of benefiting any other person, entity or real property, except to a successor in ownership.

(14) Any disputes arising out of this Grant shall be settled by binding arbitration pursuant to Chapter 658 of the Hawaii Revised Statutes. All matters shall be submitted to a single arbitrator, who shall conduct such arbitration in accordance with the rules of the American Arbitration Association. The losing party in any such arbitration shall be required to pay the arbitrator's fees and costs.

(15) For the purposes of this Grant, the term "Utility" shall mean and include services for water, sewer, telephone, gas, electricity, cable television and other services employing electrical or electronic means of transmission.

IT IS AGREED AND UNDERSTOOD that the rights and obligations of the Grantor and the Grantee shall be binding upon and inure to the benefit of the parties hereto and their respective estates, heirs, personal representatives, successors, corporate successors, successors in trust and assigns.



IT IS FURTHER AGREED AND UNDERSTOOD that the terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof.

This Grant of Easement may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, the Grantor and Grantee have caused these presents to be executed by their proper officers on the day and year first above written.

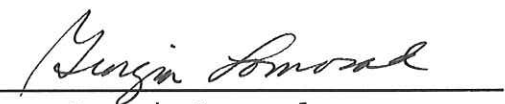
Grantor:

GLADSTONE BURNS, INC.

By   
William Gladstone  
Its 

Grantee:

BOARD OF WATER SUPPLY OF  
THE COUNTY OF KAUAI

By   
Georgia Lomosad  
Its Chairman



Michael J. Scoyni  
MICHAEL J. SCOYNI

Denise Dion-Scoyni  
DENISE DION-SCOYNI

APPROVED:  
DEPARTMENT OF WATER

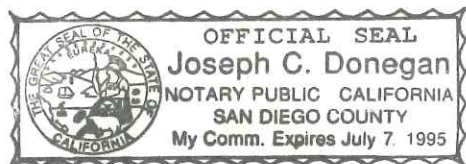
APPROVED AS TO FORM  
AND LEGALITY:

By Murl T. Nielsen  
Murl T. Nielsen  
Its Manager and Chief Engineer

By J. 72  
Deputy COUNTY ATTORNEY

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) SS.

On this 14th day of MARCH, 1995, before me appeared William GLADSTONE, to me personally known, who, being by me duly sworn, did say that He is the President of GLADSTONE BURNS, INC., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Officers acknowledged said instrument to be the free act and deed of said corporation.



Joseph C. Donegan  
Notary Public, in and for  
said County and State.

My commission expires: 7-7-95

STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

On this 28<sup>th</sup> day of November, 1995, before me appeared Georgina Lomosa, to me personally known, who, being by me duly sworn, did say that ~~he~~ she is the Chairperson of the BOARD OF WATER SUPPLY, COUNTY OF KAUAI, and that the foregoing instrument was signed on behalf of said Board of authority of said Board, and that said officer acknowledged said instrument to be the free act and deed of said Board, and that said Board has no corporate seal.

Dwight P. Tingo  
Notary Public, State of Hawaii.

My commission expires: 6-21-96

STATE OF HAWAII )  
 ) SS:  
COUNTY OF KAUAI )

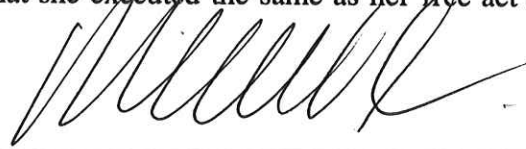
On this 7<sup>th</sup> day of MARCH, 1995, before me personally appeared MICHAEL J. SCOYNI, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Signature]  
Notary Public, in and for  
said County and State.

My commission expires: 3-19-97

STATE OF HAWAII )  
COUNTY OF KAUAI ) SS:

On this 7th day of MARCH, 1995, before me personally appeared DENISE DION-SCOYNI, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.



\_\_\_\_\_  
Notary Public, in and for  
said County and State.

My commission expires: 3-19-97

EASEMENT AU-1  
(20.00 Feet Wide)

Being a portion of R.P. 3586, L.C. Aw. 6730, to Naeole and more particularly described as follows:

Beginning at the Southeast corner of this parcel of land at the Southwest corner of Lot 23, Waipake Subdivision, Unit I, the coordinates of which referred to Government Survey Triangulation Station "MOLOAA" being 773.09 feet South and 15,669.68 feet West and running by azimuths measured clockwise from True South:

- |    |      |     |  |
|----|------|-----|--|
| 1. | 74°  | 31' | 598.75 feet along Grant 672;   |
| 2. | 164° | 31' | 20.00 feet along the remainder of R.P. 3586, L. C. Aw. 6730 to Naeole (Lot 14A);   |
| 3. | 254° | 31' | 621.27 feet over and across the remainder of R. P. 3586, L. C. Aw. 6730 to Naeole (Lot 14A);   |
| 4. | 37°  | 55' | 30.12 feet along the remainder of R. P. 3586, L. C. Aw. 6730 to Naeole (Lot 23, Waipake Subdivision, Unit I) to the point of beginning and containing an AREA of 0.280 Acre. |



**LOT L-3-A-1**  
Mary N. Lucas Trust Estate

**LOT 2**  
Kuthumy Aeollah, et. al.

**LOT 15**  
SCALE 1" = 100'

**LOT 23**

**LOT 1A**  
10.641 Acres

**LOT 14A**  
0.148 Acre

**EASEMENT AU-1**  
0.280 Acre

**GRANT 672**  
Mary N. Lucas Estate

**Map Showing Consolidation of LOT 1 and LOT 14 Waipake Subdivision Unit 1 and Resubdivision into LOT 1A and LOT 14A and Designation of EASEMENT AU-1 at Waipake, Hanalei, Kauai, Hawaii**

**NOTE:**  
1. Easement AU-1 for Access and Utility Purposes.  
2. Names of adjoining owners from the current records at the Real Property Mapping Branch.

**RONALD J. WAGNER**  
REGISTERED PROFESSIONAL LAND SURVEYOR  
No. 5074  
HAWAII, USA

Prepared for:  
Gladstone Burns, Inc., et. al.  
P.O. Box 3500 MEC 243  
Princeville, HI 96122

Graphic Scale in Feet  
0 50 100 200 300

This map was prepared by me or under my direct supervision.  
**Ronald J. Wagner**  
RONALD J. WAGNER  
Registered Professional Land Surveyor  
Certificate Number 5014.

LOT 14-A

Being the subdivision of Lot 14, Waipake Subdivision, Unit I;

Beginning at the Southeast corner of this parcel of land on the North boundary of Grant 672, the coordinates of which referred to Government Survey Triangulation Station "MOLOAA" being 932.93 feet South and 16,246.70 feet West and running by azimuths measured clockwise from True South:

- |    |      |     |  |
|----|------|-----|--|
| 1. | 74°  | 31' | 119.82 feet along Grant 672;   |
| 2. | 204° | 30' | 132.32 feet along L. C. Aw. 8559-B (Lot L-3-A-1;   |
| 3. | 321° | 21' | 53" 88.52 feet along the remainder of R. P. 3586, L. C. Aw. 6730 to Naeole (remainder of Lot 1, Waipake Subdivision, Unit I);  |
| 4. | 344° | 31' | 20.00 feet along the remainder of R. P. 3586, L. C. Aw. 6730 to Naeole (Lot 14, Waipake Subdivision, Unit I) to the point of beginning and containing an AREA of 0.148 Acre. |