AFTER RECORDATION, RETURN BY MAIL [ ] PICKUP j ]

REGULAR SYSTEM

LAND COURT SYSTEM

[DO NOT WRITE IN THIS SPACE]

Vt ELRAcncr.223 022394

ENCROACHMENT AGREEMENT

THIS AGREEMENT, dated , is by and between

 and

 , whose address is

(collectively the "Lot Owner"), and the Enchanted Lake Residents Association, a Hawaii non-profit

corporation, (the "ELRA"), whose address is

RECITALS

1. The Lot Owner is the fee simple owner of that certain parcel of land, which is more particularly described in the attached Exhibit "A" ("Lot X").
2. The ELRA is the fee simple owner of that certain body of water known as "Enchanted Lake," which is more particularly described in the attached Exhibit "B" (the "Lake Property").
3. There is now a portion of a (the "Improvement") constructed on Lot

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X, which extends across the common boundary line of Lot X and the Lake Property and encroaches onto the Lake Property. without the consent or any authorization from the ELRA or the ELRA's predecessor in interest (the "Encroachment"). The Encroachment is shown on the survey map prepared by

 , Hawaii Registered Surveyor No. , a copy of which is attached as Exhibit "C."

1. The ELRA is willing to permit the Encroachment to continue to exist on the portions of the Lake Property that it presently affects, subject to the following terms and conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is acknowledged, the Lot Owner and the ELRA agree as follows:

1. The Lot Owner agrees to become a member of the Enchanted Lake Residents Association, retroactive to July 1, 1994. and to comply with ELRA's rules, regulations and policies as adopted and amended from time to time, if any. The Lot Owner agrees to remain a member of the ELRA for as long as this Encroachment Agreement is in effect and to pay the prescribed annual dues and assessments, if any, retroactive to July 1. 1994, to the extent such dues and/or assessments do not exceed the per annum limits provided in the ELRA By-Laws. Nothing herein shall be construed to require the Lot Owner to defend the ELRA against any suit or claim against the ELRA, or to be liable for the debts and/or liabilities of the ELRA. In this regard. the Lot Owner will be considered to have no more rights or obligations than any voluntary ELRA member who is not a party to this Encroachment Agreement, or any similar encroachment agreement.
2. The Lot Owner hereby covenants and agrees that the Improvement existed in its present form and at its present location before January 1. 1993. The Lot Owner further agrees that the Encroachment as shown in Exhibit "C" has not been enlarged or substantially altered from its condition that existed before January 1, 1993.
3. The ELRA hereby covenants and agrees that the Lot Owner shall have the right to have the Improvement overlap and extend beyond the common boundary between Lot X and the Lake Property, but only to the extent and in the same manner as it now does, as shown on the map attached as Exhibit "C."
4. The Lot Owner does not make any claim against the Lake Property or the ELRA by virtue of the existence of the Encroachment. The Lot Owner agrees that the Lot Owner has not sought, and hereby relinquishes any accrued right, if any. to claim title or the right to possession of any portion of the Lake Property as a result of the Encroachment.
5. The Lot Owner and the ELRA agree that the Improvement is the sole property and responsibility of the Lot Owner and that the Lot Owner shall be solely responsible for all necessary maintenance and upkeep of the Improvement. The Lot Owner agrees to keep and maintain the Improvement in good order and condition, except for reasonable wear and tear.
6. The Lot Owner and the ELRA agree that the Lot Owner may repair or enhance the Improvement, subject to the conditions in this Agreement, and that any such repair or enhancement shall be in compliance with all applicable laws, ordinances and regulations and shall not result in a greater encroachment onto the Lake Property than now exists.

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1. If the Lot Owner removes the Improvement, or if the Improvement is substantially damaged or destroyed, the Lot Owner may replace the damaged or destroyed Improvement: provided, however, that such replacement shall be at the Lot Owner's sole expense and shall only encroach to the same extent and manner as the original Improvement and shall be in compliance with all applicable laws, ordinances and regulations. Such replacement shall be subject to the approval of the ELRA Board of Directors, provided that such approval shall not be unreasonably withheld. The phrase "substantially damaged or destroyed" shall mean the damage or destruction of more than one-half of the encroaching portion of the Improvement.
2. The Lot Owner shall at all times indemnify, hold harmless and defend the ELRA and the ELRA's successors and assigns against loss or damage to the Lake Property and/or to the property of others, and from all liability for injury to or death of persons arising out of the use or in connection with the Encroachment, or by reason of the breach of any covenants in this Agreement, or by reason of the quality, condition or repair of the Improvement when the loss, damage, injury or death arises out of the negligence, wrongful act or failure to act of the Lot Owner, or the Lot Owner's lessees, tenants, family invitees, servants and/or guests.
3. This Agreement shall not be revoked, except by a written instrument duly executed by the ELRA and the Lot Owner, which specifically references thiS Agreement. The Lot Owner and the ELRA further agree that these provisions shall be covenants running with the lands of both Lot X and the Lake Property, respectively, and shall bind the ELRA and the Lot Owner and their respective heirs. executors, personal representatives. successors and assigns. This Agreement shall remain in full force and effect only so long as the Improvement remains standing, and upon the removal or substantial destruction or damage of the Improvement, all rights of the Lot Owner under this Agreement shall automatically cease.
4. Any controversy that may arise between the parties with respect to the rights or liabilities of the parties under this Agreement shall be submitted to the American Arbitration Association for arbitration. The result of the arbitration shall be final and conclusive on the parties. The prevailing party shall be entitled to its costs and reasonable attorneys' fees.
5. This instrument may be executed in counterparts, each of which shall be an original, and the counterparts shall together constitute one and the same agreement, binding 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.

In witness as hereof, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

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ENCHANTED LAKE RESIDENTS ASSOCIATION

By

Its

By

Its

Lot Owner

STATE OF HAWAII

*SS.*

CITY AND COUNTY OF HONOLULU )

On , before me personally appeared

and to me personally known, who, being by me duly sworn or affirmed,
did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

My commission expires:

STATE OF HAWAII

) SS.

CITY AND COUNTY OF HONOLULU )

On , before me personally appeared

and , to me personally known, who, being by me duly sworn or affirmed,

did say that they are the and the , respectively,
of the BOARD OF DIRECTORS OF THE ENCHANTED LAKE RESIDENTS ASSOCIATION, and that said instrument was executed on behalf of said Association by authority of its Board of Directors, and said Officers acknowledged that they executed said instrument as the free act and deed of the BOARD OF DIRECTORS OF THE ENCHANTED LAKE RESIDENTS ASSOCIATION.

Notary Public, State of Hawaii

My commission expires:

**EXHIBIT 1Ba**

**ALL that certain parcel of land (part of R. P. 4475, L. C. Aw. 7713. Apana 45 to V. Ka.marnalu) situate at Kaclepulu, Kailua, District of Koolaupoko, City and County of Honolulu, State of Hawaii, comprising I portion of Enchanted Lake as delineated on Bishop Estate Map 8057 filed in.the office of the Trustees of the Esute of Bernice Pauxhi Bishop and being more particularly described as follows:**

**Beginning at the most Southerly corner of this parcel of land, the Southwest corner of Lot 106, Enchanted Lake Estates, Unit Seven-B, File Plan 878, the coordinates of said point of beginning referred to Government Survey Triangulation Station "U.S.M.R. MON. No. 1' being 1293.94 feet South and 6224.70 feet West and running thence by azimuths measured clockwise from true South:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **L.****feet along remainder of Enchanted.lAke;****feet along remainder of R. P. 4475, L. C. Aw. 7713, Ap. 45 to- V. Karnarnalu;****feet along same;****feet along Kukilakila, Phase II, File Plan 1299;****Thence along same, on a curve to the right. with a radius of 845.93 feet, the chord azimuth and distance being****feet;****feet along Kukilakila. Phase II, File Plan 1299;****feet along same;****feet along :met;****feet along same;****feet along same;****feet along same, along Lot A, Enchanted Lake Estates, Unit Eight .11-2A, File Plan 1258 and Kuldlakila, Phase!, FUe Plan 1298;****feet along Kukilrkiln. Phase I, File Plan 1298; feet along same;****feet along same;**CO-V94 Endo:00MA |  |  |  | **781.74** |
| **2.** | **169'** | **16** | **13"** | **792.25** |
| **3.** | **79t\*** | **16'** | **13"** | **25.00** |
| **4.** | **169'** | **16'** | **13"** | **23.42** |
| **5.** | **173'** | **29'** | **35'** | **124.58** |
| **6.** | **2501** | **50'** |  | **271.90** |
| **7.** | **239'** | **40'** |  | **113.00** |
| **8.** | **235°** | **30'** |  | **37.00** |
| **9.** | **202`** | **40'** |  | **110.00** |
| **10.** | **193''** | **00°** |  | **100.00** |
| **11.** | **175''** | **00'** |  | **127.00** |
| **12.** | **156°** | **00'** |  | **202.00** |
| **13.** | **2471** | **00'** |  | **462.00** |
| **14.** | **238'** | **35'** |  | **280.00** |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 15. | 239' |  | 13° | 56.74 |
| 16. | 256"- | 00' |  | 75.00 |
| 17. | 229: | 25' |  | 70.31 |
| 18. | 205: | 30' |  | 60.00 |
| 19. | 189° | 39' |  | 67.27 |
| 20. | 207 | 3V | 20' | 60.04 |
| **hi.** | ......".**+Ad'** | ***AA,**** **••**
 | ln- | 31.89 |
| 22. | 320: | 30' |  | 40.00 |
| 23. | 201° | 19' | 25° | 65.68 |
| 24. | 249° | 20' |  | 8.20 |
| 25. | 228° | 03' |  | 47.16 |
| 26. | 244' | 30' |  | 30.00 |
| 27. | 236; | 10' |  | 10.00 |
| 28. | 224° | 45' |  | 15.00 |
| 29. | 205' | 45' |  | 25.00 |
| 30. | 2084 | 40' |  | 37.00 |
| 31. | 2001 | 38' | 20° | 49.20 |
| 32. | 2094 | 00' |  | 20.00 |
| 33. | 1894 | 10' |  | 15.00 |
| 34. | 177' | 35' |  | 15.00 |
| 35. | * 162'
 | 35' |  | 10.00 |
| 36. | 1404 | 05' | 30" | 5.00 |

feet along Lot 38, Enchanted Lake Estates, Unit Eight-B-I, File Plan 1081;

feet along Lot 37 of File Plan 1081; feet along same;

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feet along Lot 36 of File Plan 1081; feet along **same;**

feet along Lot 35 of file Plan 1081; feet alon,g Lot 34 of File Plan 1081;

feet along Lot 32-D, Enchanted Lake Estates, Unit Eight-B-1;

feet along same; feet along same;

feet along Lot 3I-D, Enchanted Lake Estates, Unit Eight-B-1;

feet along same; feet along same; feet along same; feet along same; feet along same;

feet along Lot 30-C, Enchanted Lake Estates. Unit Eight-B-1;

feet slonE cim:-,1

feet along same;

feet along same;

feet along same;

fact along same;

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 37.feet along Lots 3 and 4. Enchanted Lake Estates, Unit Five B-4--A. File Plan 983;Thence along Lots 3, 2 and 1. Enchanted Lake Estates, Unit Five-B4, File Plan 97.1 and Lots 33 and 32, Enchanted Lake Estates, Unit Five. B-2, File Plan 923, on a curve to the right, with a radius of 1640.00 feet, the chord azimuths and distance beingfeet;feet along Lot 10, Enchanted ;Ake Estates, Unit **Five-B-I,** File Plan 922;tea **awns L., : : ...:1=2: Pl." 022•**feet along Lot 12 of **File Plan 922;****feet along Lot 12 and 13 of** File Plan 922;feet along Lot 21 of File Plan 922;**feet along Lot 22 of File Plan 922;****Thence along Lots 24 to 29 inclusive of File Plan 922, on a curve to the lei% with a rclius of 970.00 feet, the chord azimuth and distance being****feet;****feet along Lot 42 of File Plan 922:****feet along same; feet along sumo;****feet along Lou 23, Enchanted Lake Estates. Unit Five-C, File Pim 751;****Thence along Lou 23 to 20 inclusive, A, B. 16 and 15 of Enchanted Lake Estates, Unit Five-P. on a curve to the left, with a radius of 405.36 feet, the chord** azimuth and distance beingfeet; | 219' | 36' |  |  | 115.00 |
| 38. | 266' | 43' |  | 33' | 372.65 |
| 39. | 3: | 14' |  | 58' | 20.00 |
| 40. | 344' | 22' |  |  | 180.01 |
| 41. | 300' | 04' |  |  | 77.34 |
| **42.** | **285°** | **22'** |  |  | **118.21** |
| 43. | 339' | 10' |  | 30" | 142.98 |
| 44. | **2'** | **38'** |  |  | **130.93** |
| **45.** | **5'** | **20'** |  | **20"** | **482.64** |
| **46.** | **356'** | **36'** |  |  | **110.00** |
| **47.** | **329'** | **35'** |  | **30"** | **129.30** |
| **48.** | **298'** | **48'** |  | **30** | **115.00** |
| **49.** | **19'** | **44'** | **'** | **30'** | **64.68** |
| 50. | 326' | 50' |  | 48' | 646.57 |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 51. | 238° | 03' | 02" | 586.81 |
| 52. | 220° | 43' | 14.5' | 509.57 |
| 53. | 331° | 18' | 48' | 146.41 |
|  | 36° |  | 26.5° | 428.79 |
| **55.** | **40°** | * **30'**
 | **55"** | **434.20** |
|  | **354'** | **05'** |  | **505.14** |
|  | **9'** | **55'** |  | **59.18** |
|  | **72'** | **44'** | **30"** | **371.73** |

**Thence** along Lots 15 to 8 inclusive of File Plan 751, on a curve to the left, with a radius of 500.36 feet, the chord azimuth and distance being

feet;

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Thence 110;4 Lots 8 to 1 inclusive cf File Plan 751, on a curve to the right, with a radius of 800.00 feet, the chord azimuth and distance being

feet;

feet along Lot **194,** Enchanted LaXe rstares. Unit Two, File Plan 652;

Thence along Lots 62, 61, 60, 59, 65 and 56, Enchanted Lake Estates, Unit Six-A, File Plan 740, on **a** curve to the left, with a radius of 910.00 feet, the chord azimuth and distance being

feet;

Thence along Lots 56, 55.54, 39 and 38 **of File Plan *740,* on *k* Cli/VO to the right,** with a **rndiv of 700.00 feet, the chord azimuth and distance being**

**feet;**

***Thence* along Lots 38 to 32 inclusive of File Plan 740. on a curve to the left, with a radius of 279.83 feet, the chord azimuth and &ranee**

**feet;**

**feet along Lot 31 of File Plan 740;**

**Thence along Lots 30, 29 and 28 of File Plan 740** and Lots **1, 3, 2 and 1, Enchanted Lake Estates, Unit Six-B-1, File Plan 764 on a curve to the right, with a radius of 320,00 feet, the** chord azimuth and distance being

**feet;**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 59.feet along Lot 11, Enchanted Lake Estates, Unit Seven A-1, File. Plan 805:feet along Lots 10 and 9 of File Plan 805;feet along Lot 8 of File Plan 805; •feet along Lots 7 to 2 inclusive of File Plan 805;feet along Lots 1 and 78 of File Plan 805;feet along Lots 77 and 76 of File Plan 805;feet along Lot 75 of File Plan 805;feet along Lots 74, 73 and 72 of File Plan 805;feet along Lots 71 and 70 of File Plan 805;feet along Lot 2, Enchanted Lake **Estates,** Unit Seven-B, File Plan 878;feet along Lots 3, 4 and 5 of File Plan 878; feet along Lots 6, 7 and 8 of File Plan 878; feet along Lots 9, 10 and 11 of File Plan 878; feet along Lots 12 and 13 of File Plan 878; feet along Lots 14 and 15 of File Plan 878; feet along Lots 16 and 17 of File Plan 878; **feet** along Lot 18 **of File Plan 878; feet along Lots 19 and 20 of File Plan 878;** feet along **LOU 21 and 22 of File Plan 878:** feet along Lots 23, 87 and 88 of File Plan 878; feet along Lots 89, 90 and 91 of File Plan 878; feet along Lots 92, 93 and 94 of File Plan 878: feet along Lots 95, 96 and 97 of File Plan 878;5 | 108" | 15' |  | 60.28 |
| 60. | 182' | 56' | 10" | 161.70 |
| 61. | 137' | 27' | 20" | 108.09 |
| 62. | 131' | 54' |  | 501.87 |
| 63. | 105: | 05' |  | 208.21 |
| 64. | 63: | 38' |  | 202.43 |
| 65. | 29: | 37' |  | 65.69 |
| 66. | 18: | 15' |  | 196.43 |
| 67. | 109° | 23' | 20" | 74.17 |
| 68. | 126: | 35' |  | 24.87 |
| 69. | 181; | 35' | 30" | 198.08 |
| 70. | 190' | 51' | 10' | 223.02 |
| 71. | 201; | 51' | 20' | 236.39 |
| 72. | 206' | 01' |  | 180.98 |
| 73. | 175: | 21' | 50' | 201.34 |
| 74. | 143' | 49' | 30" | 200.10 |
| **75.** | **1162** | **42'** |  | **106.95** |
| **76.** | **98'** | **20'** | **20'** | **216.76** |
| 77. | 64: | 11' | 20' | 219.05 |
| **78.** | **38`** | **25'** |  | **259.40** |
| 79. | 267% | 33' | 30" | 254.56 |
| 80. | **14'** | 56' | 20" | 253.65 |
| **81.** | 3- | 21' | 20' | 252.92 |



|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | 350: | 33' | 10' | 266.87 |
|  | 332' |  |  | t |
|  |  | 04' | 30" | 43.00 |
|  | 25' | 11' | 10" | 145.34 |

feet along Lots 98, 99 and 100 of file Plan 878;

feet along Lots 101, 102 and 103 of Filo Plan 878;

feet along Lot 104 of file Plan 878;

feet along Lots 105. 106 of File Plan 878 to the point of beginning and containing an area of 79.471 acres, more or less.

Being the premises conveyed to ENCHANTED LAKE RESIDENTS ASSOCIATION, a Hawaii nonprofit corporation, by Deed, dated December 18, 1987, recorded in Libel 21662, Page 476.

SUBJECT, HOWEVER, to the encumbrances of record.

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