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2 Regional Counsel
3 United States Environmental Protection Agency, Region IX

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7 75 Hawthorne Street
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10 Attorneys for Complainant

11 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
12 **REGION IX**
13 75 Hawthorne Street
14 San Francisco, California 94105

15 IN THE MATTER OF:) DOCKET NO. UIC-09-2015-0001
16 Heavenly Hana, LLC, and)
17 Hana Town Center, LLC,)
18 Hana, Maui,)
19 Respondents.) **CONSENT AGREEMENT**
20) **AND**
21) ~~PROPOSED~~ **FINAL ORDER**
22) *sdh*
23 Proceedings under Sections 1423(c) and)
24 1445(a) of the Safe Drinking Water Act,)
25 42 U.S.C. §§ 300h-2(c) and 300j-4(a).)

CONSENT AGREEMENT

I. AUTHORITY

1. This Consent Agreement is entered into and the ~~Proposed~~^{sdh} Final Order is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the "SDWA" or "the Act"), 42 U.S.C. §§ 300h-2(c) and 300j-4(a).

1 8. "Well injection" means the subsurface emplacement of fluids through a well. 40
2 C.F.R. § 144.3.

3 9. A "cesspool" is a "drywell," which in turn is a "well," as those terms are defined in 40
4 C.F.R. § 144.3. "Large capacity cesspools" (or "LCCs") include "multiple dwelling, community
5 or regional cesspools, or other devices that receive sanitary wastes, containing human excreta,
6 which have an open bottom and sometimes perforated sides." 40 C.F.R. § 144.81(2). LCCs do
7 not include single family residential cesspools or non-residential cesspools which receive solely
8 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

9 10. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R. §
10 144.80(e).

11 11. Class V UIC injection wells are considered a "facility or activity" subject to regulation
12 under the UIC program. 40 C.F.R. § 144.3.

13 12. "Owner or operator" means the owner or operator of any "facility or activity" subject
14 to regulation under the UIC program. 40 C.F.R. § 144.3.

15 13. The "owner or operator" of a Class V UIC well must comply with Federal UIC
16 requirements in 40 C.F.R. parts 144 through 147, and must also comply with any other measures
17 required by States or an EPA Regional Office UIC Program to protect underground sources of
18 drinking water. 40 C.F.R. § 144.82.

19 14. Owners or operators of existing LCCs were required to have closed them no later than
20 April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.

21 15. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. Part
22 147 Subpart M, § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC
23 program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart
24 M), and 148.

1 16. Respondents are each a limited liability company incorporated in the State of
2 Colorado, and thus each qualifies as a “person” within the meaning of Section 1401(12) of the
3 SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

4 17. Respondents Heavenly Hana, LLC and Hana Town Center, LLC own and/or operate
5 14 cesspools alleged by EPA to be LCCs (listed in Attachment A to this CA/FO) located at
6 the Travaasa Hotel Hana Resort at 5031 Hana Highway, Hana, Maui (the “Property”), and each
7 is an “owner or operator,” as that term is defined at 40 C.F.R. § 144.3.

8 18. Since May 2010, Respondents Heavenly Hana, LLC and Hana Town Center, LLC
9 have failed to close the 14 cesspools alleged to be LCCs referred to in Paragraph 17 by April 5,
10 2005, and are therefore in violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

11 19. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R.
12 § 19.4, EPA may issue an order either assessing an administrative civil penalty of not more than
13 \$16,000 per day per violation up to a maximum of \$187,500, or requiring compliance, or both,
14 against any person who violates the SDWA or any requirement of an applicable UIC program.

15 20. Pursuant to Section 1445(a)(1)(A) of the SDWA, 42 U.S.C. § 300j-4(a), EPA may
16 require any person who is subject to the SDWA’s requirements to submit information relating to
17 such person’s compliance with those requirements.

18 **III. SETTLEMENT TERMS**

19 The Parties agree as follows:

20 **A. General Provisions**

21 21. Respondents admit the jurisdictional allegations contained in this CA/FO, and agree
22 not to contest, in any administrative or judicial forum, EPA’s jurisdiction to enter into this
23 CA/FO or to enforce this CA/FO’s terms.

24 22. Respondents neither admit nor deny the specific factual allegations set forth in this
25 CA/FO.

1 23. Respondents consent to the issuance of this CA/FO and the conditions specified
2 herein, including the assessment and payment of the administrative civil penalty in accordance
3 with this CA/FO's terms.

4 24. Respondents waive any right to a hearing under Section 1423(c)(3) of the SDWA, 42
5 U.S.C. § 300h-2(c)(3), and waive any and all remedies, claims for relief and otherwise available
6 rights to judicial or administrative review that Respondents may have with respect to any issue of
7 fact or law set forth in this CA/FO, including any rights of judicial review under the SDWA or
8 the Administrative Procedures Act, 5 U.S.C. §§ 701-706, providing for judicial review of final
9 agency action.

10 25. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
11 agreement between the Parties to resolve EPA's civil penalty claim against Respondents for the
12 specific SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which
13 includes payment of administrative civil penalties of \$187,500, shall constitute full settlement
14 only of Respondents' liability for federal civil penalties for the SDWA violations specifically
15 identified in this CA/FO, and shall constitute full compliance with Respondents' obligations to
16 close the LLCs at the Property once Respondents have complied with Paragraphs 40 and 41.

17 26. The provisions of this CA/FO shall apply to and be binding upon Respondents, their
18 officers, directors, agents, servants, authorized representatives, employees, and successors or
19 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
20 acting under, through, or for Respondents shall not excuse any failure of Respondents to fully
21 perform their obligations under this CA/FO.

22 27. Issuance of this CA/FO does not in any case affect the right of EPA to pursue
23 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
24 except with respect to those claims that have been specifically resolved pursuant to Paragraph 25
25 above.

1 28. This CA/FO is not a permit or modification of a permit, and does not affect
2 Respondents' obligation to comply with all federal, state, local laws, ordinances, regulations,
3 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
4 satisfy, or otherwise affect Respondents' obligation to comply with all applicable requirements
5 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
6 except as specifically set forth herein.

7 29. This CA/FO does not constitute a waiver, suspension, or modification of the
8 requirements of any federal, state, or local statute, regulation or condition of any permit issued
9 thereunder, including the requirements of the Act and accompanying regulations.

10 30. EPA reserves any and all legal and equitable remedies available to enforce this
11 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
12 any actions against Respondents for noncompliance with this CA/FO. Violation of this CA/FO
13 shall be deemed a violation of the SDWA.

14 31. Unless otherwise specified, the Parties shall each bear their own costs and attorneys
15 fees incurred in this proceeding.

16 32. This Consent Agreement may be executed and transmitted by facsimile, email or other
17 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
18 of which shall constitute an instrument. If any portion of this Consent Agreement is determined
19 to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining
20 portions shall remain in full force and effect.

21 33. The undersigned representative of each party certifies that he or she is duly and fully
22 authorized to enter into and ratify this Consent Agreement.

1 **B. Penalty**

2 34. Respondents together agree to pay to the United States a single administrative civil
3 penalty of One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500) no later than
4 30 days following the Effective Date of the Final Order (hereafter referred to as the "Due Date").

5 35. Respondents may pay the penalty by check (mail or overnight delivery), wire transfer,
6 ACH, or online payment. Payment instructions are available at:

7 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
8 check must be payable to the order of "Treasurer, United States of America" and delivered to the
9 following address:

10 U.S. Environmental Protection Agency
11 Fines and Penalties
12 Cincinnati Finance Center
13 P.O. Box 979077
14 St. Louis, Missouri 63197-9000

15 36. Respondents must provide a letter with evidence of the payment made pursuant to
16 Paragraphs 34 and 35 above, accompanied by the title and docket number of this action, to the
17 EPA Region 9 Regional Hearing Clerk, the EPA Region 9 Enforcement Division Compliance
18 Officer, and the EPA Region 9 Office of Regional Counsel attorney, via United States mail, at
19 the following addresses:

20 Regional Hearing Clerk
21 U.S. Environmental Protection Agency
22 Region 9 - Office of Regional Counsel
23 75 Hawthorne Street (ORC-1)
24 San Francisco, CA 94105

25 Aaron Setran, Compliance Officer
 U.S. Environmental Protection Agency
 Region 9 - Enforcement Division
 75 Hawthorne Street (ENF-3)
 San Francisco, CA 94105

 Rich Campbell, Attorney
 U.S. Environmental Protection Agency
 Region 9 - Office of Regional Counsel
 75 Hawthorne Street (ORC-2)
 San Francisco, CA 94105

1 37. If the full penalty payment is not received on or before the Due Date, interest shall
2 accrue on any overdue amount from the Due Date through the date of payment, at the annual rate
3 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late
4 payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion
5 thereof) following the Due Date in which the balance remains unpaid. A 6% per annum penalty
6 will also be applied on any principal amount not paid within 90 days of the Due Date.

7 Respondents shall tender any interest, handling charges, or late penalty payments in the same
8 manner as described above.

9 38. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), if
10 Respondents fail to pay by the Due Date the administrative civil penalty assessed in this CA/FO,
11 EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus
12 costs, attorneys fees, and interest). In such an action, the validity, amount, and appropriateness of
13 such penalty shall not be subject to review.

14 39. Respondents shall not deduct the civil penalty, nor any interest, late penalty
15 payments, or administrative handling fees provided for in this CA/FO from Respondents'
16 federal, state, or local income taxes.

17 **C. Compliance Requirements**

18 40. Subject to the provisions of Paragraph 41 ("Local Approvals") and Paragraph 50
19 ("Force Majeure"), Respondents shall close the 14 cesspools alleged to be LCCs described in
20 Paragraph 17 above and in Attachment A in accordance with EPA's UIC Program LCC closure
21 requirements at 40 C.F.R. § 144.89 and in accordance with any additional Hawaii Department of
22 Health ("HDOH") closure requirements ("Full Closure"), no later than 28 months from this
23 CA/FO's Effective Date (hereinafter, the "Closure Date").

1 41. The Parties acknowledge that Respondents' actions towards Full Closure of the 14
2 LCCs in accordance with 40 C.F.R. § 144.89 and HDOH's closure requirements are subject to
3 certain local governmental approval requirements ("Local Approvals"), including certain
4 obligations regarding cultural resources, where such cultural resources are, or may be, impacted.
5 It is further acknowledged that issuance of such Local Approvals is not entirely within the
6 control of Respondents and may delay the Full Closure of all 14 LCCs. If Respondents' closure
7 of any LCC is delayed due to delays in issuance of Local Approvals, Respondents shall
8 nevertheless disconnect and cease all use of the affected LCC or LCCs, and prevent any further
9 movement of fluids containing any contaminants through the affected LCC or LCCs, by the
10 Closure Date ("Delayed Closure"). Any Delayed Closure which cannot be completed by the
11 Closure Date due to delay in issuance of Local Approvals shall be completed as soon as
12 reasonably practicable following issuance of the required Local Approvals. A Delayed Closure
13 within the meaning of this paragraph shall not trigger the applicability of stipulated penalties
14 provided for under Section III.D of this CA/FO upon Respondents' submittal of documentation
15 within 7 days of this CA/FO's Closure Date that demonstrates the Delayed Closure was due to a
16 delay in issuance of Local Approvals, including any correspondence between Respondents and
17 the relevant local governmental authorities responsible for providing Local Approvals.

18 42. Respondents shall submit quarterly status reports no later than the 15th day of every
19 third month, beginning the 4th month following the Effective Date of this CA/FO, describing
20 progress that has been made toward Full Closure of the LCCs. The quarterly status reports shall
21 provide:

- 22 a. The status of any LCCs that have been closed in accordance with 40 C.F.R. §
23 144.89 and HDOH requirements, including any HDOH approvals of the
24 conversion of the closed LCCs to individual wastewater systems, and any HDOH
25 letters of approval to operate an individual wastewater system;

- 1 b. The status of any LCCs that will not be closed by the Closure Date; and
- 2 c. The status of any LCCs subject to a Delayed Closure after the Closure Date,
- 3 including: (i) any correspondence from relevant local governmental authorities
- 4 that provide the basis for claiming a Delayed Closure due to a delay in issuance of
- 5 Local Approvals; (ii) a narrative explanation, accompanied by photographic
- 6 evidence, of how any LCC that was not closed by the Closure Date due to delays
- 7 in the issuance of Local Approvals was in fact disconnected and no longer allows
- 8 for the movement of fluids containing any contaminants through the affected
- 9 LCC; (iii) an estimated Full Closure date for any LCC subject to a Delayed
- 10 Closure.

11 Respondents shall continue to submit quarterly status reports to EPA until Respondents' Full

12 Closure of all 14 LCCs described in paragraph 17 and Attachment A of this CA/FO.

13 **D. Stipulated Penalties**

14 43. The following stipulated penalties shall accrue per day for each day Respondents fail

15 to close all 14 LCCs subject to this CA/FO by the deadline established in Part III.C above,

16 subject to the provisions of Paragraph 41 ("Local Approvals") and/or Paragraph 50

17 ("Force Majeure") and/or Paragraph 55 ("Stipulated Penalty Dispute Resolution"). Stipulated

18 penalties will be calculated as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 14 th day
\$2,000	15 th through 30 th day
\$3,000	31 st day and beyond

22 44. Stipulated penalties under this section shall begin to accrue on the day after

23 Respondents fail to close all 14 LCCs by the deadlines established in Part III.C above, and shall

24 continue to accrue until Respondents' Full Closure of all 14 LCCs in accordance with 40 C.F.R.

25 § 144.89 and HDOH requirements.

1 45. Respondents shall pay any stipulated penalty within 30 days of receiving EPA's
2 written demand unless Respondents contest such stipulated penalty in accordance with Paragraph
3 55.

4 46. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated
5 penalties otherwise due under this CA/FO.

6 47. EPA may demand stipulated penalties pursuant to this paragraph within 12 months
7 after the date stipulated penalties first began to accrue as defined in Paragraph 43 above.

8 48. Respondents shall pay stipulated penalties owed under this Consent Agreement in the
9 manner set forth in Paragraph 35 and with the confirmation notices required by Paragraph 36,
10 except that the transmittal letter shall state that the payment is for stipulated penalties.

11 49. If Respondents fail to pay stipulated penalties according to the terms of this CA/FO,
12 unless Respondents are contesting such stipulated penalties pursuant to Paragraph 55,
13 Respondents shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961,
14 accruing as of the date payment became due. Nothing in this paragraph shall be construed to
15 limit the United States from seeking any remedy otherwise provided by law for Respondents'
16 failure to pay any stipulated penalties.

17 **E. Force Majeure**

18 50. "*Force majeure*," for purposes of this CA/FO, is defined as any event arising
19 from causes beyond the reasonable control of Respondents, or of any entity controlled by
20 Respondents, or of Respondents' contractors, that delays or prevents the performance of any
21 obligation under this CA/FO despite Respondents' reasonable best efforts to fulfill the
22 obligation. The requirement that Respondents exercise "reasonable best efforts to fulfill the
23 obligation" includes using reasonable best efforts to anticipate any potential *force majeure* event
24 and reasonable best efforts to address the effects of any such event (a) as it is occurring and (b)
25 after it has occurred to prevent or minimize any resulting delay to the greatest extent possible.

1 Examples of events that are not *force majeure* events include, but are not limited to, increased
2 costs or expenses of any work to be performed under this CA/FO, and normal inclement weather.

3 51. If any event occurs or has occurred that may delay reaching the deadline established
4 in Part III.C above for closure of the 14 LCCs, whether or not caused by a *force majeure* event,
5 then Respondents shall provide written notice by electronic or facsimile transmission to EPA
6 Region IX's Enforcement Division within 7 calendar days of when Respondents first knew that
7 the event might cause a delay. Within 14 days thereafter, Respondents shall provide in writing to
8 EPA Region IX's Enforcement Division an explanation and description of the reasons for the
9 delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or
10 minimize the delay; a schedule of implementation of any measures to be taken to prevent or
11 mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a
12 *force majeure* event if it intends to assert such a claim; and a statement as to whether, in
13 Respondent's opinion, such event may reasonably be expected to cause or contribute to an
14 endangerment to public health or welfare or the environment. Respondents shall include with any
15 notice all available documentation supporting the claim that the delay was attributable to a *force*
16 *majeure* event. Failure to comply with the notice requirement of this paragraph precludes
17 Respondents from asserting any claim of *force majeure*.

18 52. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure*
19 event, the time for performance of the obligations under this CA/FO that are affected by the
20 *force majeure* event will be extended by EPA for a period of no longer than the delay resulting
21 from the circumstances causing the delay. An extension of the time for performing an obligation
22 granted by EPA pursuant to this paragraph will not, of itself, extend the time for performing a
23 subsequent obligation. EPA will notify Respondents in writing of the length of the extension, if
24 any, for performance of the obligations affected by the *force majeure* event.

1 53. Respondents have the burden of demonstrating, by a preponderance of the evidence,
2 that the actual or anticipated delay has been or will be caused by a *force majeure* event, that the
3 duration of the delay was or will be warranted under the circumstances, that Respondents did
4 exercise or are using their reasonable best efforts to avoid and mitigate the effects of the delay,
5 and that Respondents complied with the requirements of this section.

6 54. In the event that EPA does not agree that a delay in achieving compliance with the
7 requirements of this CA/FO has been or will be caused by a *force majeure* event, EPA will notify
8 Respondents in writing of its decision and any delays will not be excused. Upon this occurrence,
9 the stipulated penalties specified in Part III.D of this CA/FO will become due and must be paid
10 by Respondents according to the process expressed in Paragraphs 35 and 36, unless Respondents
11 contest the finding that the delay was not caused by a *force majeure* event, in which case the
12 Parties shall seek to resolve their differences in accordance with the requirements of Paragraph

13 55.

14 55. Stipulated Penalty Dispute Resolution

- 15 a. The dispute resolution procedures of this paragraph shall be the exclusive
16 mechanism to resolve disputes arising under or with respect to this CA/FO's
17 stipulated penalty provisions.
- 18 b. If Respondents dispute a decision by EPA to demand stipulated penalties,
19 pursuant to Paragraph 45 above within 30 days of receiving EPA's demand, this
20 dispute shall in the first instance be the subject of informal negotiations between
21 the Parties. The period for informal negotiations shall not exceed 20 calendar days
22 from the time the dispute arises, unless it is modified by written agreement of the
23 Parties. The dispute shall be considered to have arisen when the Assistant
24 Director of the Enforcement Division's Water and Pesticide Branch receives a
25 written Notice of Dispute from Respondents.

- 1 c. In the event that the Parties cannot resolve a dispute by informal negotiations
2 under the preceding paragraph, then the position advanced by the Enforcement
3 Division shall be considered binding unless, within 10 calendar days after the
4 conclusion of the informal negotiation period, Respondents invoke the formal
5 dispute resolution procedures set forth in subparagraphs (d) and (e) below by
6 providing a written Statement of Position on the dispute to the Director of the
7 EPA Region 9 Enforcement Division (“Director”), which shall include, but not be
8 limited to, any factual data, analysis or opinion supporting Respondents’ position,
9 as well as any supporting documentation relied upon by Respondents.
10 Respondents shall also provide a copy of their Statement of Position to the
11 Assistant Director of the Enforcement Division’s Water and Pesticide Branch.
- 12 d. Within 20 calendar days after receipt of Respondents’ written Statement of
13 Position as required by subparagraph (c) above, the Assistant Director of the
14 Enforcement Division’s Water and Pesticide Branch shall provide its written
15 Statement of Position to the Respondents and the Director, which shall include,
16 but not be limited to, any factual data, analysis, or opinion supporting the demand
17 for stipulated penalties.
- 18 e. Following receipt of both Statements of Position submitted pursuant to
19 subparagraphs (c) and (d) above, the Director will issue a final decision resolving
20 the dispute. The Director’s decision shall be binding and considered final.

21 56. Subject to the provisions of Paragraph 25 above related to the effect of this settlement,
22 the stipulated penalties provided for in this CA/FO shall be in addition to any other rights,
23 remedies, or sanctions available to EPA for Respondent’s violation of this CA/FO or applicable
24 law.
25

1 **F. Notices**

2 57. Respondents must send any written communications, including any requests for
3 extensions of time to meet the compliance deadline set forth in Part III.C above, to the following
4 address:

5 Aaron Setran, Compliance Officer
6 U.S. Environmental Protection Agency
7 Region 9 - Enforcement Division
8 75 Hawthorne Street (ENF-1)
9 San Francisco, CA 94105

10 58. EPA must send any written communications, including any response to requests for
11 extensions of time to meet the compliance deadline set forth in Part III.C above, to the following
12 addresses:

13 Doug Wiley
14 Amstar
15 1050 17th Street, 23rd Floor
16 Denver, CO 80265

17 With an [electronic] copy to:

18 Dave Roth
19 Travaasa Experiential Resorts
20 Hana Office
21 Email: dave.roth@travaasa.com

22 And:

23 Andrew Wolf
24 Amstar
25 1050 17th Street, 23rd Floor
 Denver, CO 80265
 Email: andrew.wolf@amstar.com

 And:

 Kevin G. Desharnais
 Mayer Brown LLP
 71 South Wacker Drive
 Chicago, Illinois 60091
 Email: KDesharnais@mayerbrown.com

1 59. The person signing Respondents' submissions must make the following certification:

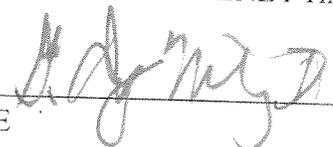
2 *I certify under penalty of law that this document and all attachments were*
3 *prepared under my direction or supervision in accordance with a system designed*
4 *to assure that qualified personnel properly gather and evaluate the information*
5 *submitted. Based on my inquiry of the person or persons who manage the system,*
6 *or those persons directly responsible for gathering the information, the*
7 *information submitted is, to the best of my knowledge and belief, true, accurate,*
8 *and complete. I am aware that there are significant penalties for submitting false*
9 *information, including the possibility of fine and imprisonment for knowing*
10 *violations.*

11 **IV. EFFECTIVE DATE AND TERMINATION**

12 60. This CA/FO shall terminate only after Respondents have complied with all
13 requirements of the CA/FO, including payment of any interest and late fees, and after EPA has
14 issued a written notice of termination, which notice of termination shall be issued by EPA within
15 30 days after receipt of confirmation of completion of the Full Closure of all 14 LCCs specified
16 herein. The "Effective Date" of the CA/FO shall be the date that the Final Order is filed.
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1 FOR THE CONSENTING PARTIES:

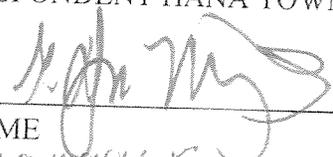
2 RESPONDENT HEAVENLY HANA LLC:

3 
4 NAME

Date: 8/6/15

5 manager
6 TITLE

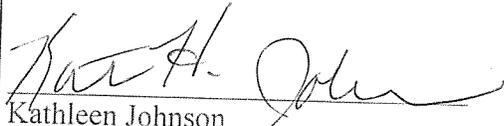
7 RESPONDENT HANA TOWN CENTER, LLC:

8 
9 NAME

Date: 8/6/15

10 manager
11 TITLE

12
13 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

14
15 
16 Kathleen Johnson
17 Director, Enforcement Division, Region IX
18 U.S. Environmental Protection Agency
19 75 Hawthorne Street
20 San Francisco, CA 94105

Date: 8/12/15

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

3 75 Hawthorne Street
4 San Francisco, California 94105

5 IN THE MATTER OF:)

) DOCKET NO. UIC-09-2015-0001

6 Heavenly Hana, LLC, and)
7 Hana Town Center LLC,)

8 Hana, Maui,)

9 Respondents.)

10 CONSENT AGREEMENT
11 AND

12 ~~PROPOSED~~ FINAL ORDER

13 *sdj*

14 Proceedings under Sections 1423(c) and)
15 1445(a) of the Safe Drinking Water Act,)
16 42 U.S.C. §§ 300h-2(c) and 300j-4(a).)

17 The United States Environmental Protection Agency Region 9 (“EPA”), and Heavenly
18 Hana LLC and Hana Town Center, LLC (“Respondents”), having entered into the foregoing
19 Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and
20 proposed Final Order regarding the matters alleged therein,

21 IT IS HEREBY ORDERED THAT:

22 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2015-
23 0001) be entered;

24 2. Respondents pay a single administrative civil penalty of \$187,500 dollars to the
25 Treasurer of the United States of America in accordance with the terms set forth in the Consent
26 Agreement;

27 3. Respondents shall close or otherwise disconnect and cease using all 14 LCCs
28 described in Paragraph 17 and Attachment A to this CA/FO no later than 28 months of this
29 CA/FO’s Effective Date; and

30 In re: Heavenly Hana, LLC, and Hana Town Center, LLC –
31 Consent Agreement and Final Order

1 4. Close any of the 14 LCCs that were not closed within 28 months of this CA/FO's
2 Effective Date (but which were disconnected and ceased to be used by that date) as soon as
3 reasonably practicable following issuance of any state and local governmental approval
4 requirements, and in accordance with Part III.C of the CA/FO ("Compliance Requirements").

5 This Final Order's Effective Date is the date that it is filed. This Final Order constitutes
6 full adjudication of the allegations in the Consent Agreement entered into by the Parties in this
7 proceeding.

8
9 
10 Regional Judicial Officer, Region IX
11 U.S. Environmental Protection Agency

Date: 09/18/15

ATTACHMENT A

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2
3
4 **CONSENT AGREEMENT AND FINAL ORDER**
5 **IN RE: HEAVENLY HANA, LLC and HANA TOWN CENTER, LLC**
6 **LARGE CAPACITY CESSPOOLS TO BE CLOSED**
7 **AT THE TRAVAASA HOTEL HANA RESORT, HANA, MAUI**

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1. The large capacity cesspool that serves the Travaasa Hotel Hana Resort (“Hotel”) Buildings (“Bldgs.”) TC-4 and 5.
 2. The large capacity cesspool that serves the Plantation Guest House (Bldg. R1) and Bldg. R3.
 3. The large capacity cesspool that serves Bldg. R-2.
 4. The large capacity cesspool that serves Bldg. G-6.
 5. The large capacity cesspool that serves Garden Suite Guest Rooms at Bldg. G-30-33.
 6. The large capacity cesspool that serves eight Garden Suite Rooms at Bldgs. G-34-41.
 7. The large capacity cesspool that serves six separate Garden Suite Guest Rooms at Bldg. G-44-49.
 8. The large capacity cesspool that serves the Hamoa Beach Pavilion Restrooms (Bldg. HB-2).
 9. The large capacity cesspool that serves Bldgs. R5 through 9.
 10. The large capacity cesspool (CP-1) that serves Waikoloa Suites and Residences (the “Residences”) 101 and 102.
 11. The large capacity cesspool (CP-2) that serves Residences 104 and 103.
 12. The large capacity cesspool (CP-3) that serves Residences 106 and 105.
 13. The large capacity cesspool (CP-4) that serves Residences 108 and 107.
 14. The large capacity cesspool (CP-5) that serves Residences 110 and 109.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing FINAL ORDER incorporating a CONSENT AGREEMENT AND FINAL ORDER in the matter of *Heavenly Hana LLC and Hana Town Center LLC* (UIC-09-2015-0001), dated September 18, 2015, has been filed with the Regional Hearing Clerk, and a copy was served on Counsel for Respondent, and Counsel for EPA, as indicated below:

FIRST CLASS MAIL - CERTIFIED

Respondent -
(By Counsel)

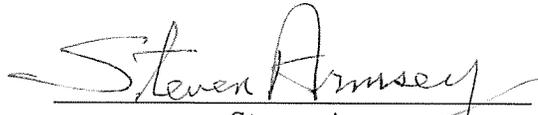
Kevin G. Desharnis, Esq.
MAYER, BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606

HAND DELIVERED

Complainant -
(By Counsel)

Richard Campbell, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA. 94105

Dated at San Francisco, Calif., this 18th day of September, 2015.


Steven Armsey
Regional Hearing Clerk
EPA, Region 9