

# REQUEST FOR LEGAL SERVICES

**Date:** March 31, 2017  
**From:** Robert Carroll, Chair  
Land Use Committee


TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: James Giroux, Esq.

**Subject:** Community Plan Amendment and Change In Zoning for Lanai Avenue Residential Homes Project (LU-28)

**Background Data:** Please review the attached unilateral agreements (three originals) and, if appropriate, approve as to form and legality.

**Work Requested:**  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER:

Requestor's signature  Robert Carroll	Contact Person <u>Gary Saldana</u> (Telephone Extension: 7137)
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ROUTINE (WITHIN 15 WORKING DAYS)       RUSH (WITHIN 5 WORKING DAYS)  
 PRIORITY (WITHIN 10 WORKING DAYS)       URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): Tuesday, April 11, 2017  
REASON: To meet posting deadline for Council meeting of April 21, 2017

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR:  APPROVED  DISAPPROVED  OTHER (SEE COMMENTS BELOW)  
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

lu:ltr:028acc03:grs

Attachments

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail ( ) Pickup ( ) : To:  
Office of the County Clerk  
County of Maui  
200 South High Street  
Wailuku, Hawai'i 96793

Total Number of Pages: 8

Affects Tax Map Key (Maui) (2)4-9-006:050, Lana'i City, Lana'i,  
Hawai'i

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 27th day of March, 2017, hereinafter referred to as "DECLARATION" or "UNILATERAL AGREEMENT", by Lanai Resorts, LLC, a Hawai'i limited liability company doing business as Pūlama Lāna'i, whose principal place of business is located in Honolulu, O'ahu, Hawai'i and whose mailing address is 733 Bishop Street, Suite 2000, Honolulu, Hawai'i, 96813, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Lana'i City, Lana'i, Hawai'i, comprised of approximately 0.51 acre, and identified for real property tax purposes by Tax Map Key No. (2)4-9-006:050, hereinafter referred to as "PROPERTY".

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i, hereinafter referred to as "Council", is considering the establishment of zoning for the Property, comprised of approximately 0.51 acre, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and which is more particularly identified in Land Zoning Map No.

L-2621, which is on file in the Office of the County Clerk of the County of Maui; and

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. \_\_\_\_\_, that said establishment of zoning be approved for passage on first reading subject to certain conditions, pursuant to Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the conditional zoning provisions of Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.510.050, Maui County Code, relating to conditional zoning;

2. That until written release by the County of Maui, the Property, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which shall be effective as to and shall run with the land as to the Property, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawai'i, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration;

3. That this Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the Declarant notifies the appropriate County Department that any of said covenants, conditions and restrictions are satisfied by the Declarant, and the appropriate County Department verifies

the satisfaction and provides a written release of the covenant, condition or restriction;

4. That the term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That the Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of R-1, Residential District zoning and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawai'i;

6. That the Declarant agrees to develop said Property in conformance with the conditions set forth in Exhibit "2", which is attached hereto and made a part hereof and which shall be made a part of the zoning ordinance;

7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use;

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors and any other persons who claim an interest in said land, and the County of Maui shall have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may at any time file a petition for the removal of the conditions and terminate this Unilateral Agreement, such petition to be processed in the same manner as petitions for change in zoning.

This Declaration may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Declaration.

Each person signing this Unilateral Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Unilateral Agreement. Each party represents and warrants to the other that the execution and delivery of this Unilateral Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

DECLARANT:

Lanai Resorts, LLC, a Hawai'i  
limited liability company  
doing business as Pūlama  
Lāna'i

By its member, Lanai Island  
Holdings, LLC

By its Manager, LIH  
Corporation

By: 

Kurt Matsumoto

Its: Vice President

APPROVED AS TO FORM AND LEGALITY:

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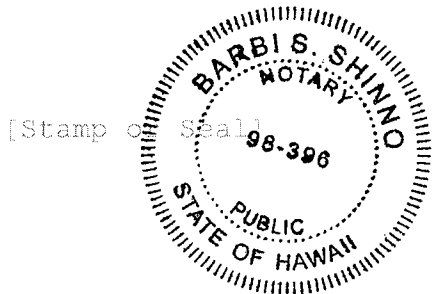
JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui

K:\DATA\Pulama Lanai\Lanai Avenue Houses 1741\Unilateral Agreement.doc

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 27<sup>th</sup> day of March, 2017, before me personally appeared Kurt Matsumoto, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

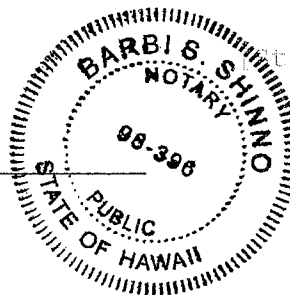
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



*[Signature]*  
Notary Public, State of Hawaii  
Print Name: Barbi S. Shinno  
My Commission Expires: 08-11-18

NOTARY PUBLIC CERTIFICATION

Doc. Date: 3-27-17 # Pages: 8  
Notary Name: Barbi S. Shinno Judicial Circuit: First  
Document Description: Unilateral Agreement and  
Declaration for Conditional Zoning  
TMK (2)4-9-006:050  
Notary Signature: *[Signature]* [Stamp or Seal]  
Date: 3-27-17



CHANGE IN ZONING  
LAND ZONING MAP NO. L-2621  
BUSINESS COUNTY TOWN TO R1 RESIDENTIAL  
LOT 363  
AS SHOWN ON MAP 28  
OF LAND COURT APPLICATION 862  
AT ISLAND OF LANAI, HAWAII

All of that certain parcel of land situate at Island of Lanai, State of Hawaii, described as follows:

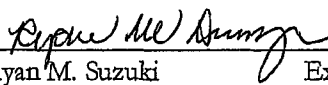
LOT 356, area 22,328 square feet, more or less, as shown on Map 24, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 862.

R. M. TOWILL CORPORATION

Description prepared by:



2024 North King Street, Suite 200  
Honolulu, Hawaii 96819  
May 16, 2016  
Tax Map Key: (2) 4-9-006: 050

  
Ryan M. Suzuki Exp: 4/30/18  
Licensed Professional Land Surveyor  
Certificate Number 10059

- 1 -

2024 North King Street  
Suite 200  
Honolulu HI 96819-3470  
Telephone 808 842 1133  
Fax 808 842 1937  
eMail rmtowill@hawaii.rr.com



R. M. TOWILL CORPORATION  
SINCE 1930

Planning  
Engineering  
Environmental Services  
Photogrammetry  
Surveying  
Construction Management

**EXHIBIT 1**



EXHIBIT ``2''

CONDITION OF ZONING

1. The three proposed dwellings on Tax Map Key (2)4-9-006:050 will be rented to Lana'i residents only.