

TO: Tasha Kama, Chair
Housing and Land Use Committee
County Council
County of Maui
200 South High Street
Wailuku, Maui, Hawai'i 96793

DATE: May 15, 2024

SUBJECT: HLU-25 Unilateral Agreement for Bill 27
(2024) Change in Zoning for Miki 200
Industrial Park

Enclosed is/are:

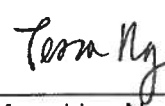
Copies	Date	Description
3 Original	May 2024	Unilateral Agreement

X	For your information For necessary action For your review For your files	For your use As requested For your signature Returning
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REMARKS: As requested, we are providing three (3) hard copies of the signed Unilateral Agreement for your review and processing.

Please call us at (808)244-2015, if you have any questions. Thank you.

Signed: _____


Tessa Munekiyo Ng, AICP
Vice President

TMN:yp
Copy to:

Keiki-Pua Dancil, Pulama Lāna'i (via email)
K:\DATA\Pulama Lanai\MikiBasinExp 1769\Applications\UAIUA.trans.docx

RECEIVED
2024 MAY 15 PM 1:39
OFFICE OF THE
COUNTY COUNCIL

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail (X) Pickup (): To:

Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Total Number of Pages: _____

(Including exhibits, notary certification pages, and all other components)

Affects Tax Map Key (Lāna'i) (2)4-9-002:061 (por.)

**UNILATERAL AGREEMENT AND DECLARATION OF CONDITIONS FOR CHANGE OF
ZONING**

THIS INDENTURE, referred to as "***Declaration***" or "***Unilateral Agreement***," is made this, _____ day of _____, 202__, by the following "Declarant," who is the owner of real property located at Miki Road, Lāna'i, Hawai'i, referred to as "***the Property***," comprised of 200 acres, and identified for real property tax purposes as Tax Map Key: (2)4-0-002:061 (por.).

The Declarant is Lāna'i Resorts LLC, a Hawai'i Limited Liability Company doing business as Pūlama Lāna'i, whose principal address is at 733 Bishop Street, Suite 1500, Honolulu, Hawai'i, and whose authorized contact person is President, who is currently Kurt Matsumoto, and any of their successors.

WITNESSETH:

WHEREAS, the Council is considering the Declarant's Petition ("***Petition***") for a Change of Zoning for the Property, described in Exhibit "1" and more particularly identified in Exhibit "2," Land Zoning Map No. L-2634; Exhibit "3" and more particularly identified in Exhibit "4," Land Zoning Map No. L-2635; and Exhibit "5" and more particularly identified

in Exhibit "6," Land Zoning Map No. L-2636; and

WHEREAS, the Council's Housing and Land Use Committee recommended passage on first reading of a Change of Zoning bill for the Property in accordance with Section 19.510, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this Unilateral Agreement in accordance with Section 19.510, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. In accordance with Maui County Code. That this Declaration is made in accordance with the provisions of Section 19.510.050, Maui County Code, relating to Conditional Zoning;

2. Binding until Maui County written release. That until written release by the County of Maui, (a) the Property, and all its parts, are held subject to this Declaration's covenants, conditions, and restrictions, which are effective as to and run with 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 to the Property by the Declarant, the County of Maui, or any successor or assign; (b) the acquisition of any right, title or interest in or with respect to the Property by any person or entity constitute acceptance of all of the covenants, conditions, and restrictions of this Declaration by the person or entity; and (c) upon any transfer of any right, title, or interest in or with respect to the Property, the transferee assumes, is bound by, and is obligated to observe and perform all of the covenants, conditions, and restrictions of this Declaration;

3. Running with the Land. That this Declaration and all of its covenants, conditions, and restrictions contained are effective as to and run with the land in perpetuity, or until the Declarant notifies the County Department of Planning that any of the covenants, conditions, and restrictions are satisfied by the Declarant, and the Department verifies the satisfaction and provides a written release of the covenant, condition, or restriction;

4. Lāna'i Resorts LLC, a Hawai'i Limited Liability Company doing business as Pūlama Lāna'i, as Declarant. That the term "Declarant" and any pronoun in reference to it, wherever used in this Declaration, means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and includes any corporation or any other entity, and means and includes Lāna'i Resorts LLC, a Hawai'i Limited Liability Company doing business as Pūlama Lāna'i, as Declarant and the Declarant's successors, and assigns;

5. Effective as of date Change of Zoning ordinance approved. That this Declaration is fully effective on the effective date of the Change of Zoning ordinance approving the change in zoning from Agricultural District to M-2 Heavy Industrial District for 95.848 acres, from Interim District to M-2 Heavy Industrial District for 4.152 acres, and from Agricultural District to M-1 Light Industrial District for 100.000 acres for the Property;

6. Develop consistent with Change of Zoning conditions. That the Declarant agrees to develop the Property in conformance with the conditions stated in Exhibit "7" and in the Change of Zoning ordinance;

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

8. Conditions enforceable by County of Maui. AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County of Maui, the conditions imposed in this Declaration run with the land identified in this Declaration and bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Property. The Declarant further understands and agrees that the County of Maui has the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, with the understanding the Declarant or its successors and assigns may at any time file a petition with the County Department of Planning for the removal of the conditions and termination of this Unilateral Agreement, which will be processed in the same manner as petitions for Change of Zoning.

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


Any persons signing this Unilateral Agreement represent that they are duly authorized and have legal capacity to execute and deliver this Unilateral Agreement. Each party represents to the other that the execution and delivery of this Unilateral Agreement and the performance of the party's obligations have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on the party and enforceable in accordance with its terms.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year indicated on the following notary public certification pages.

DECLARANT:

Lānaʻi Resorts LLC, a Hawaiʻi Limited Liability Company doing business as Pūlama
Lānaʻi

By: 
Kurt Matsumoto
President

Approved as to Form and Legality:

By: _____
Print name: _____
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII

COUNTY OF MAUI

SS.

On this 14th day of MAY 2027, before me personally appeared KURT MATSUMOTO, to me personally known, who being by me duly sworn, did say that he/she is the CAPACITY of the DECLARANT, and that said instrument was signed on behalf of said DECLARANT by authority of its Board of Regents, and said KURT MATSUMOTO, as said CAPACITY, acknowledged said instrument to be the free act and deed of said DECLARANT.

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



Notary Public, State of HAWAII

Print Name: SCOTT PISANI

My Commission Expires: 7/17/2026

NOTARY PUBLIC CERTIFICATION

Doc Date: TIME OF NOTARILATION # Pages: 12

Notary Name: SCOTT PISANI Judicial Circuit: 2ND

Document Description: AGREEMENT AND

DECLARATION OF CONDITIONS FOR

CHANGE OF ZONING

Notary Signature: [Signature]

Date: 5/14/2027

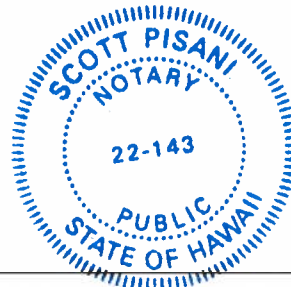


EXHIBIT "1"

**Description of the Property for 95.848-acre portion changing from Agricultural District to M-2
Heavy Industrial District**

EXHIBIT "2"

LAND ZONING MAP NO. L-2634 FOR THE 95.848 ACRES

EXHIBIT "3"

Description of the Property for 4.152-acre portion changing from Interim District to M-2 Heavy Industrial District

EXHIBIT "4"

LAND ZONING MAP NO. L-2635 FOR THE 4.152 ACRES

EXHIBIT "5"

Description of the Property for 65-acre and 35-acre portions, respectively, cumulatively representing the 100 acres changing from Agricultural District to M-1 Light Industrial District

EXHIBIT "6"

LAND ZONING MAP NO. L-2636 FOR THE 100.000 ACRES

EXHIBIT "7"

CONDITIONS OF CHANGE OF ZONING ORDINANCE

**HEAVY, LIGHT INDUSTRIAL PARCELS
MIKI BASIN**

**M-2 Heavy Industrial
Area 1**

Being a Portion of Lot 13-A-1-A-1-A-1 (Subdivision File No. 6.185)
Same Being a Portion of a Subdivision of Lot 13-A-1-A (Map 15) of Land Court Consolidation 170

Situated on the Island of Lanai, State of Hawaii

Beginning at the Northeast corner of this piece of land, being the North corner of Lot 12 (Map 5) of Land Court Consolidation 170, the coordinates referred to Government Survey Triangulation Station "POHOULA" being 19,767.16 feet South and 4,274.56 feet West and thence running by azimuths measured clockwise from true South:

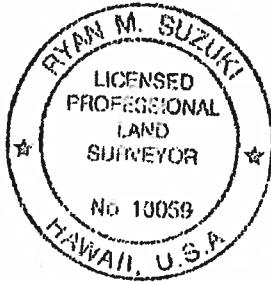
- | | | |
|-----|----------|---|
| 1. | 59° 42' | 615.20 feet along Lot 12 (Map 5) of Ld. Ct. Cons. 170; |
| 2. | 298° 44' | 530.63 feet along Lot 12 (Map 5) of Ld. Ct. Cons. 170; |
| 3. | 59° 42' | 707.83 feet along Lot 13-A-1-A-2 (Subdivision File No. 6.180); |
| 4. | 329° 42' | 865.75 feet along Lot 13-A-1-A-2 (Subdivision File No. 6.180); |
| 5. | 76° 20' | 1471.05 feet; |
| 6. | 119° 30' | 189.09 feet; |
| 7. | 149° 30' | 1435.88 feet; |
| 8. | 231° 15' | 1954.36 feet; |
| 9. | 240° 12' | 635.07 feet; |
| 10. | 330° 12' | 981.31 feet to the point of beginning and containing an area of 95.350 Acres. |

2024 North King Street,
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Fax 808 842-1937
eMail rmtowill@rmtowill.com



R. M. TOWILL CORPORATION
SINCE 1930

Planning
Engineering
Environmental Services
Photogrammetry
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Construction Management



R. M. TOWILL CORPORATION

Description Prepared by:

Ryan M. Suzuki

Ryan M. Suzuki Exp: 4/30/2024
Licensed Professional Land Surveyor
Certificate Number 10059

February 22, 2024

Note:

Tax Map Key: (2) 4-9-002: Por. 061

Reference: Map No. L-2634

-2-

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**HEAVY, LIGHT INDUSTRIAL PARCELS
MIKI BASIN**

**M-2 Heavy Industrial
Area 2**

Being a Portion of Lot 13-A-1-A-1-A-1 (Subdivision File No. 6.185)
Same Being a Portion of a Subdivision of Lot 13-A-1-A (Map 15) of Land Court Consolidation 170

Situated on the Island of Lanai, State of Hawaii

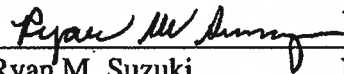
Beginning at the Northeast corner of this piece of land, being 329° 42', 231.43 feet from the East corner of Lot 13-A-1-A-2 (Subdivision File No. 6.180), the coordinates referred to Government Survey Triangulation Station "POHOULA" being 21,076.17 feet South and 3,509.63 feet West and thence running by azimuths measured clockwise from true South:

1. 329° 42' 118.31 feet;
2. 76° 20' 382.41 feet;
3. 238° 19' 366.51 feet to the point of beginning and containing an area of 0.498 Acre.

R. M. TOWILL CORPORATION

Description Prepared by:




Ryan M. Suzuki Exp: 4/30/2024
Licensed Professional Land Surveyor
Certificate Number 10059

February 22, 2024

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Note:

Tax Map Key: (2) 4-9-002: Por. 061

Reference: Map No. L-2634

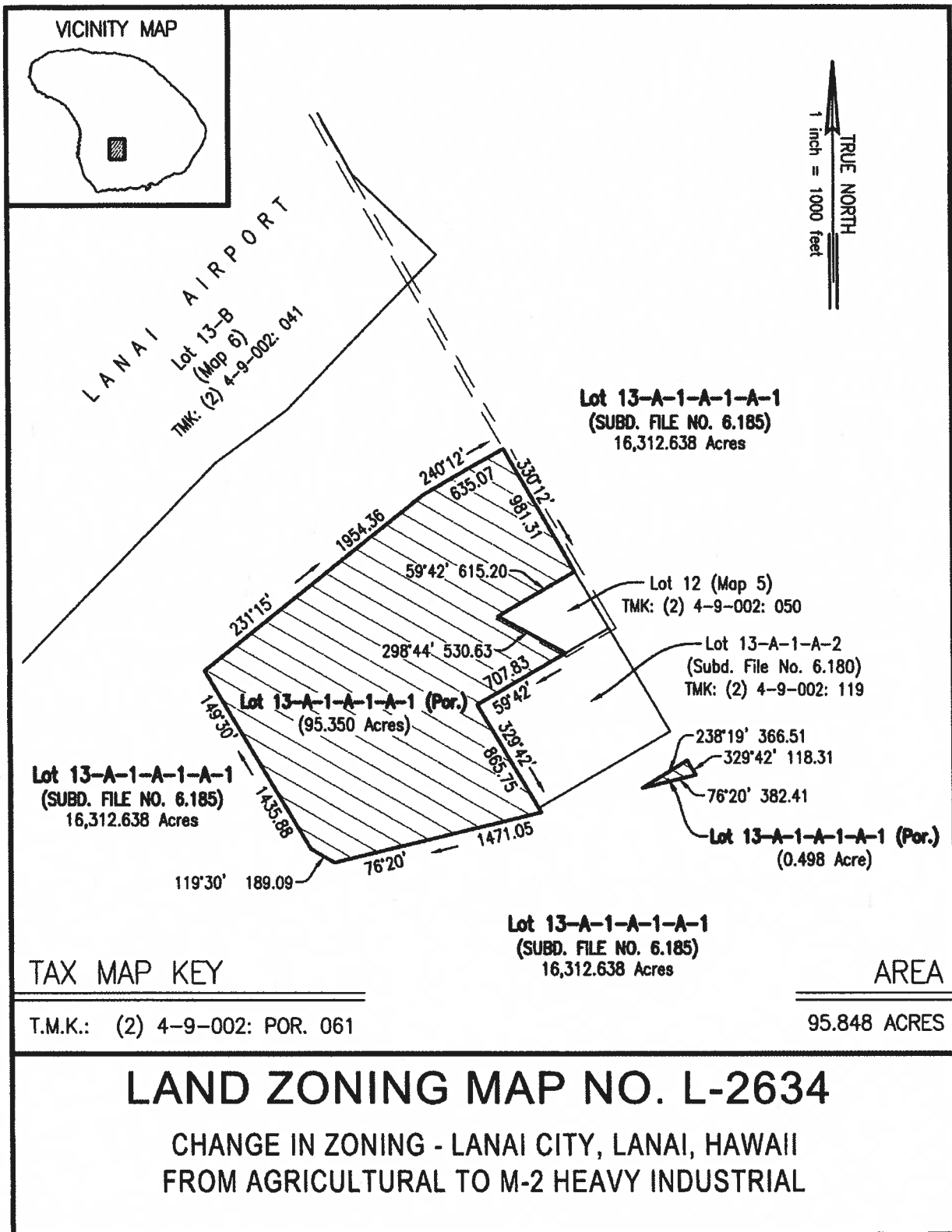
-2-

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**HEAVY, LIGHT INDUSTRIAL PARCELS
MIKI BASIN**

**M-2 Heavy Industrial
Area 3**

Being a Portion of Lot 13-A-1-A-1-A-1 (Subdivision File No. 6.185)
Same Being a Portion of a Subdivision of Lot 13-A-1-A (Map 15) of Land Court Consolidation 170

Situated on the Island of Lanai, State of Hawaii

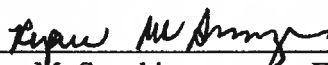
Beginning at the Northeast corner of this piece of land, being the East corner of Lot 13-A-1-A-2 (Subdivision File No. 6.180), the coordinates referred to Government Survey Triangulation Station "POHOULA" being 20,876.36 feet South and 3,626.39 feet West and thence running by azimuths measured clockwise from true South:

- | | | |
|----|----------|--|
| 1. | 329° 42' | 231.43 feet; |
| 2. | 58° 19' | 366.51 feet; |
| 3. | 76° 20' | 713.44 feet; |
| 4. | 149° 42' | 36.05 feet; |
| 5. | 239° 42' | 1050.00 feet along Lot 13-A-1-A-2 (Subdivision File No. 6.180),
to the point of beginning and containing an area of 4.152
Acres. |



R. M. TOWILL CORPORATION

Description Prepared by:


Ryan M. Suzuki Exp: 4/30/2024
Licensed Professional Land Surveyor
Certificate Number 10059

February 22, 2024

Note:

Tax Map Key: (2) 4-9-002: Por. 061

Reference: Map No. L-2635

-2-

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Exhibit "4"

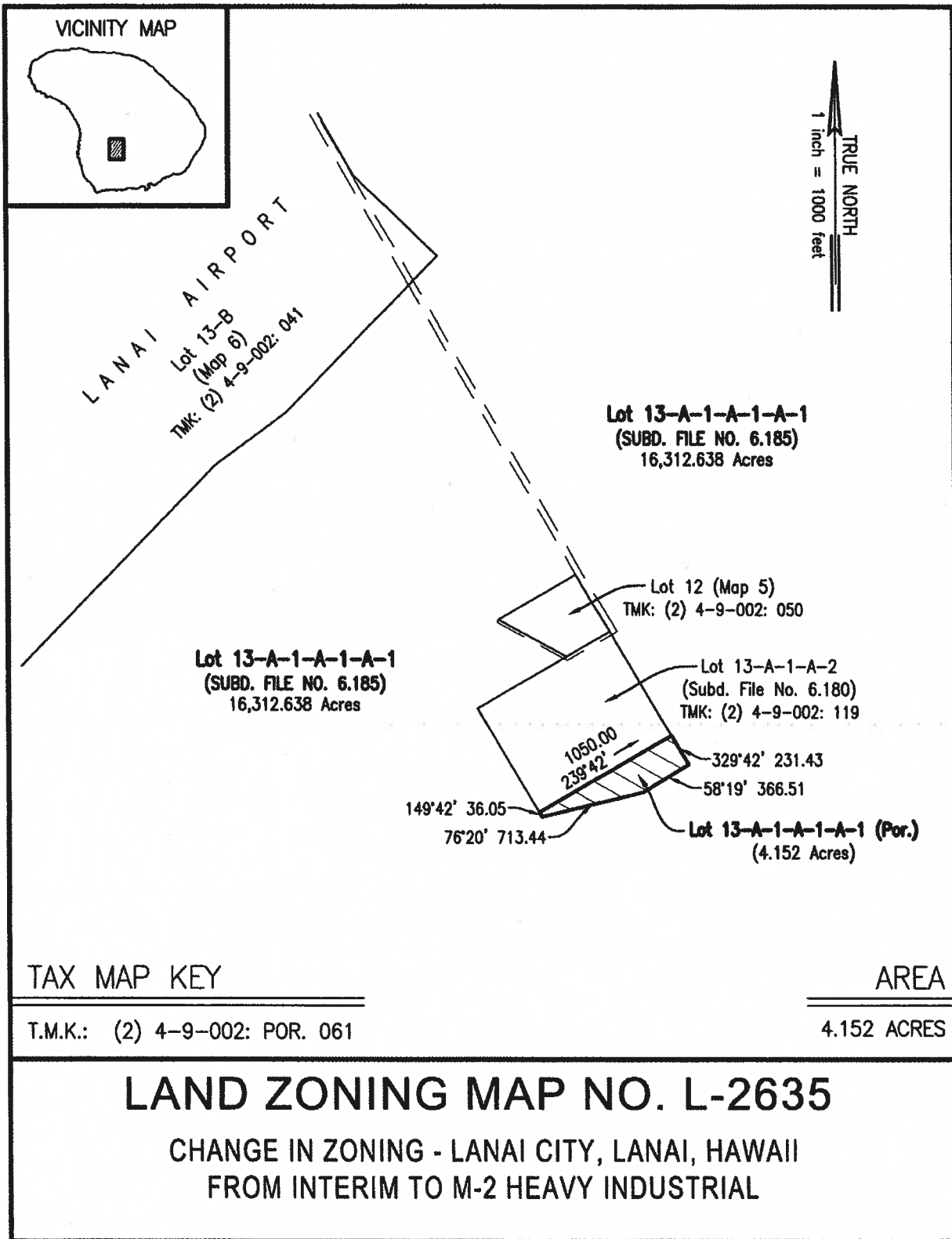


Exhibit "5"

**HEAVY, LIGHT INDUSTRIAL PARCELS
MIKI BASIN**

**M-1 Light Industrial
Area 1**

Being a Portion of Lot 13-A-1-A-1-A-1 (Subdivision File No. 6.185)
Same Being a Portion of a Subdivision of Lot 13-A-1-A (Map 15) of Land Court Consolidation 170

Situated on the Island of Lanai, State of Hawaii

Beginning at the Northeast corner of this piece of land, being 282.46 feet from the Northeast corner of Lot 13-B (Map 6) of Land Court Consolidation 170, the coordinates referred to Government Survey Triangulation Station "POHOULA" being 17,775.36 feet South and 5,415.27 feet West and thence running by azimuths measured clockwise from true South:

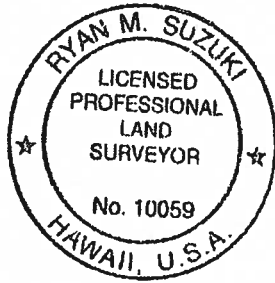
- | | | |
|----|----------|--|
| 1. | 330° 12' | 1314.01 feet; |
| 2. | 60° 12' | 635.07 feet; |
| 3. | 51° 15' | 1954.36 feet; |
| 4. | 149° 30' | 975.83 feet; |
| 5. | 224° 03' | 836.95 feet along Lanai Airport, being Lot 13-B (Map 6) of Ld. Ct. Cons. 170; |
| 6. | 233° 31' | 608.00 feet along Lanai Airport, being Lot 13-B (Map 6) of Ld. Ct. Cons. 170; |
| 7. | 224° 03' | 1217.82 feet along Lanai Airport, being Lot 13-B (Map 6) of Ld. Ct. Cons. 170, to the point of beginning and containing an area of 65.000 Acres. |

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R. M. TOWILL CORPORATION

Description Prepared by:

A handwritten signature of Ryan M. Suzuki in black ink.

Ryan M. Suzuki Exp: 4/30/2024
Licensed Professional Land Surveyor
Certificate Number 10059

February 22, 2024

Note:

Tax Map Key: (2) 4-9-002: Por. 061

Reference: Map No. L-2636

-2-

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**HEAVY, LIGHT INDUSTRIAL PARCELS
MIKI BASIN**

**M-1 Light Industrial
Area 2**

Being a Portion of Lot 13-A-1-A-1-A-1 (Subdivision File No. 6.185)
Same Being a Portion of a Subdivision of Lot 13-A-1-A (Map 15) of Land Court Consolidation 170

Situated on the Island of Lanai, State of Hawaii

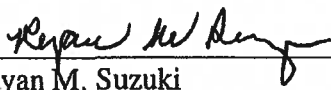
Beginning at the West corner of this piece of land, being 323° 54' 28", 435.99 feet from the East corner of Lot 12 (Map 5) of Land Court Consolidation 170, the coordinates referred to Government Survey Triangulation Station "POHOULA" being 20,512.31 feet South and 3,788.16 feet West and thence running by azimuths measured clockwise from true South:

1. 239° 42' 1662.28 feet;
2. 345° 20' 1280.42 feet;
3. 79° 30' 1400.00 feet;
4. 149° 42' 758.82 feet to the point of beginning and containing an area of 35.000 Acres.

R. M. TOWILL CORPORATION

Description Prepared by:




Ryan M. Suzuki Exp: 4/30/2024
Licensed Professional Land Surveyor
Certificate Number 10059

February 22, 2024

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Note:

Tax Map Key: (2) 4-9-002: Por. 061

Reference: Map No. L-2636

-2-

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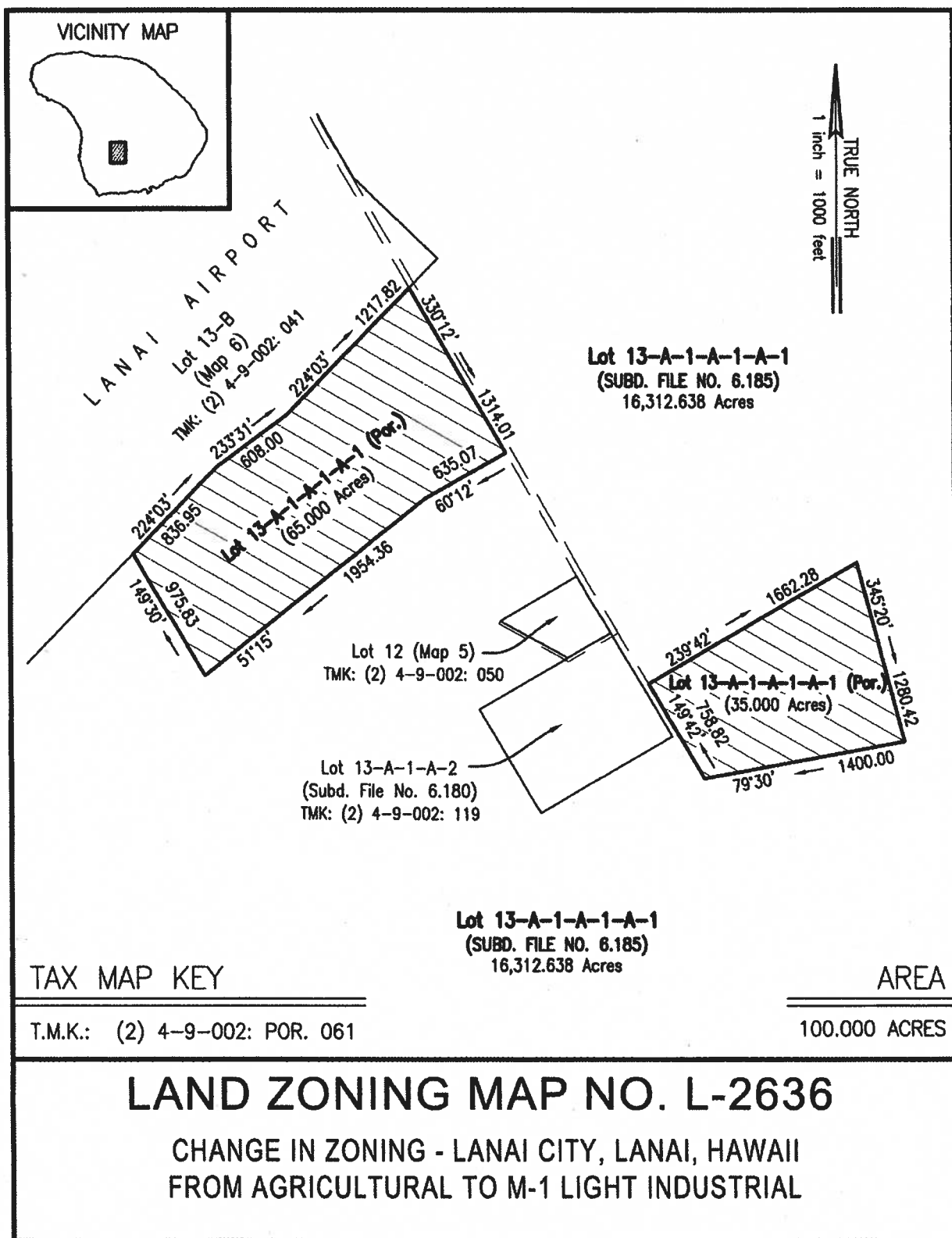


Exhibit "7"

CONDITIONS OF ZONING

1. The permitted uses for the 100.000 acres zoned M-1 Light Industrial District under section 3 of this Ordinance are limited to the uses outlined in the following table:

M-1 Light Industrial Permitted Uses
Any use permitted in a B-1, B-2, or B-3 business district except single-family dwellings, duplexes, bungalow courts, short-term rental homes, and transient vacation rentals
Dwelling units located in the same building as any non-dwelling permitted use
Assembly of electrical appliances, radios and phonographs including the manufacture of small parts such as coils, condensers crystal holders and the like
Carpet cleaning plants
Cold storage plants
Commercial laundries
Craft cabinet and furniture manufacturing
Education, specialized
Farm implement sales and service
General food, fruit and vegetable processing and manufacturing plants
Ice cream and milk producing, manufacturing and storage
Laboratories – experimental, photo or motion picture, film or testing
Light and heavy equipment and product display rooms, storage and service
Machine shop or other metal working shop
Manufacture, compounding or treatment of articles or merchandise from the following previously prepared materials: aluminum, bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, plastics, precious or semi-precious metals or stones, shell, tobacco and wood
Manufacture, compounding, processing, packing or treatment of such products as candy, cosmetics, drugs, perfumes, pharmaceutical, toiletries, and food products. (except the rendering or refining of fats and oils)
Manufacture, dyeing and printing of cloth fabrics and wearing apparel
Manufacture of musical instruments, toys, novelties and rubber and metal stamps
Manufacture of pottery and figurines or other similar ceramic products
Milk bottling or central distribution stations
Plumbing shops
Production facility, multimedia
Radio transmitting and television stations; provided, that towers are of the self-sustaining type without guys
Replating shop
Retail lumberyard including mill and sash work (Mill and sash work shall be conducted within a completely enclosed building)
Small boat building
Soda water and soft drink bottling and distribution plants
Solar energy facilities
Tire repair operation including recapping and retreading
Utility facilities, minor, and substations up to, and including 69 kV transmission
Warehouse, storage and loft buildings
Wearing apparel manufacturing
Wholesale business, storage buildings, nonexplosive goods and warehouses

2. The permitted uses and special uses for the 100.000 acres zoned M-2 Heavy Industrial District under sections 1 and 2 of this Ordinance are limited to the permitted uses and special uses outlined in the following table:

M-2 Heavy Industrial Permitted Uses	
Any use permitted in a B-1, B-2, and B-3 business district and M-1 light industrial district except single-family dwellings, duplexes, bungalow courts, short-term rental homes, and transient vacation rentals and apartments (Except for living quarters used by security/watchmen or custodians of an industrially-used property)	
Automobile wrecking, if conducted within a building	
Boiler and steel works	
Concrete or cement products manufacture	
Factories	
Junk establishment used for storing depositing, or keeping junk or similar goods for business purposes (Such establishment shall not be nearer than 8 feet from any other property line for the storage of the junk or similar goods except in buildings entirely enclosed with walls)	
Lumber yard	
Machine shops	
Material recycling and recovery facilities	
Oil storage plants	
Petroleum products manufacture or wholesale storage of petroleum	
Planing mill	
Utility facilities, major	
In general those uses which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas, noise, vibration and the like and not allowed in any other district; provided, however, that any use not specified in this condition shall not be permitted unless approved by the planning director as conforming to the intent of this condition	
M-2 Heavy Industrial Special Uses	
Asphalt manufacture of refueling and asphaltic concrete plant	
Rock, sand, gravel, or earth excavation, crushing or distribution	

3. The conditions associated with the Decision & Order for Docket No. A19-809 approved by the State Land Use Commission apply to the portions of tax map key (2) 4-9-002:061 that are the subject of this Ordinance.
4. Lānaʻi Resorts, LLC must provide the State Land Use Commission and Department of Planning with an annual report regarding occupancy of the Miki 200 Industrial Park. Information must include the number of inquiries and number of executed leases. Without disclosing private and proprietary information, Lānaʻi Resorts, LLC should include whether the inquiry was made or the executed lease is held by a resident of Lānaʻi. Annual reports must be provided as long as the State Land Use Commission deems necessary.
5. Lānaʻi Resorts, LLC must provide the State Land Use Commission and Department of Planning with semi-annual water usage reports for each category of water, including drinking, brackish, and R-1, for the Miki 200 Industrial Park for as long as the State Land Use Commission deems necessary.