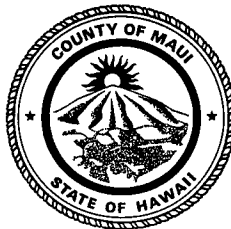


ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

OFFICE OF THE
COUNTY COUNCIL

2017 FEB - 7 PM 4: 02

RECEIVED

February 7, 2017

MEMO TO: Don S. Guzman, Chair
Parks, Recreation, Energy, and Legal Affairs Committee

FROM: Moana M. Lutey, Deputy Corporation Counsel

SUBJECT: LITIGATION MATTERS - Settlement of Claims and Lawsuits
(PRL-1)

Settlement of Claim: Marilyn Silva on behalf of Piilani
Gardens, LLC
Claim No.: 2014-1129-16-0001

Pursuant to Section 3.16.020B of the Maui County Code, our department hereby requests authorization to discuss settlement of the aforementioned claim. It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. There is no immediate deadline to this matter.

Copies of the claim and proposed resolution are enclosed. We request that a representative from the Department of Public Works be in attendance during discussion of this matter. If you have any questions, or concerns, please do not hesitate to contact me.

cc: David Goode, Director

MML:cs

Resolution

No. _____

AUTHORIZING SETTLEMENT OF CLAIM NO. 2014-1129-16-0001 OF MARILYN SILVA ON BEHALF OF PIILANI GARDENS LLC

WHEREAS, Marilyn Silva on behalf of Piilani Gardens, LLC, filed Claim No. 2014-1129-16-0001 on October 30, 2013, against the County of Maui for dust and dirt damages to her property located at 150 Manino Circle, Kihei, Maui, Hawaii; and

WHEREAS, the County of Maui and Marilyn Silva, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, have reached a proposed resolution of this claim by way of a negotiated settlement; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of attempts to reach resolution of this claim by way of a negotiated settlement by the Department of the Corporation Counsel, the Council wishes to discuss a settlement offer; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby approves settlement of Claim No. 2014-1129-16-0001 under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

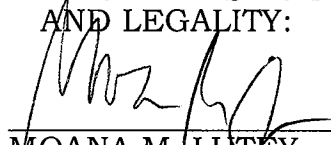
Resolution No. _____

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of the Department of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

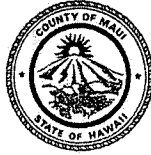
4. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Department of Public Works, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui

JEFFREY T. KUWADA
County Clerk



OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

November 4, 2013

AIMS
900 Fort Street Mall, Suite 1000
Honolulu, Hawaii 96813

Attn: Davina Kunimoto
New Claims Assignment

Dear Ms. Kunimoto:

Respectfully transmitted is a copy of a claim against the County of Maui filed by Marilyn Silva on behalf of Pillani Gardens, LLC, of 150 Manino Circle, Kihei, which was received by our office on November 1, 2013.

Very truly yours,

A handwritten signature in black ink, appearing to be "J. Nishita", written over a horizontal line.

JOSIAH K. NISHITA
Deputy County Clerk

Attachment

cc: Mayor
✓ Corporation Counsel
Council Chair

/lka

JOSIAH K. NISHITA
Deputy County Clerk

LT 17 11/5/13
JK email 11-6-
to ML 11-6-13

RECEIVED
CORPORATION COUNSEL
2013 NOV -5 AM 10:54

Claim Form

RECEIVED
2013 OCT 32 AM 11:25
COUNTY OF MAUI
CLAIM FOR DAMAGE OR INJURY

Marilyn Silva

PLEASE PRINT FULLY IN THE
OFFICE OF THE
COUNTY CLERK

1. Claimant: Mr. ☐ Mrs. ☒ PILANI GARDENS APARTMENTS
2. Address: 150 MANINO CIRCLE Kihēi, MAUI 96753
3. Telephone No.: Business 808-8741800 Residence 818-7834319
4. Date of Accident: OCTOBER - 2010 April 2012
5. Location of Accident: 150 MANINO CIRCLE Kihēi, MAUI 96753
6. Amount of Claim: Property Damage \$ 94,362.02 Personal Injury \$ _____

7. Describe the accident in detail. Indicate all the facts, causes, persons involved, witnesses, extent of damage, etc., and why you think the County is responsible. You may write on the back if needed. (over)

Dust and Dirt from Construction of Bike Path on
Lulua / Pihēa, movement of Dirt from Storm
Damage on South Kihēi Road and Roundabout Construction
Endangering property (PBA) destroying plants, irrigation
and dust and dirt on residents - Noise damage
on all.

See all attached backup.

8. If you carry insurance applicable to this claim, please provide the name and address of the insurance company and your policy number.

Policy No. _____

- A. Did you file a claim with your insurance company? NO

If yes, amount claimed \$ _____ Deductible amount \$ _____

- B. If a claim was filed with your insurance company, what action do they intend to take?

I HEREBY DECLARE THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT.

Marilyn Silva
(Signature of Claimant)

10/30/13
(Date)

Goodfellow was the culprit for part of the damage so you could subrogate with them.

- ① Letter from Goodfellow and pictures of Culprits.
- ②- ⑧) Letters from affected people.
- ⑨ Letter and expense for damages to property with backup
- ⑩ Summary of complaints and damages from tenants
- ⑪ Certificate of Liability Ins. from Contractor
- ⑫ Rental Income - Loss (Sheet 5)
- ⑬ Housekeeping - Loss (Sheet 3)
- ⑭ Power Washing (Sheet 2)

Claim

Goodfellow was the culprit for part of this damage as you could subrogate with them. I filed claim with Goodfellow - they said they worked for county.

① Letter from Goodfellow and pictures of Culprits.

② 84-88) Letter from affected people.

⑨ Letter and expense for damages to property with backup

⑩ Summary of complaint and damages from demands

⑪ Certificate of liability from Contractor

⑫ Rental Income - loss (Sheet 5)

⑬ Housekeeping - loss (Sheet 3)

⑭ House Working (Sheet 2)

⑮ Additional Carrying Letter and cost backup

⑯ Executed Right of Entry from County



Total Charges from
pages- 1 - 16
attached

	TOTALS SHEET #4 (SHEET #3) HOUSEKEEPING	(SHEET #2) POWER WASHING	(SHEET #5) LOSS OF RENT	(SEE ATTACHEI LANDSCAPING	(SEE ATTACHED SOLAR PANELS	TOTAL
NOV/DEC 2010		\$ 792.00 \$ 990.00				\$ 1,782.00
JANUARY	\$ 67.50	\$ 792.00	\$ 1,260.00			\$ 2,119.50
FEBRUARY	\$ -	\$ 792.00	\$ 300.00	\$ -		\$ 1,092.00
MARCH	\$ 67.50	\$ 990.00	\$ 1,440.00	\$ -		\$ 2,497.50
APRIL	\$ 247.50	\$ 792.00	\$ 4,874.00	\$ -		\$ 5,913.50
MAY	\$ 360.00	\$ 792.00	\$ 5,682.00	\$ -		\$ 6,834.00
JUNE	\$ 495.00	\$ 990.00	\$ 6,763.00	\$ -		\$ 8,248.00
JULY	\$ 112.50	\$ 792.00	\$ 1,285.00	\$ -		\$ 2,189.50
AUGUST	\$ 270.00	\$ 1,485.00	\$ 4,685.00	\$ 3,397.02		\$ 9,837.02
SEPTEMBER	\$ 315.00	\$ 1,188.00	\$ 4,975.00	\$ -		\$ 6,478.00
OCTOBER	\$ 405.00	\$ 1,485.00	\$ 6,190.00			\$ 8,080.00
NOVEMBER	\$ 360.00	\$ 1,188.00	\$ 5,850.00	\$ -	\$1,350.00	\$ 8,748.00
DECEMBER	\$ 270.00	\$ 1,188.00	\$ 4,000.00	\$ -	\$1,350.00	
JANUARY, 2012	\$ 225.00	\$ 1,485.00	\$ 2,675.00	\$ -	\$ 1,350.00	
APRIL, 2012				\$ 18,000.00		
TOTAL	\$ 3,195.00	\$ 15,741.00	\$ 49,979.00	\$ 21,397.02	\$4,050.00	\$94,362.02



GOODFELLOW BROS., INC. GENERAL CONTRACTOR

11

September 27, 2011

Marilyn Silva
Piilani Gardens
150 Manino Circle
Kihei, HI 96753

Dear Mrs. Silva,

Please find enclosed the photographs I took related to your property.

Picture #1 taken on December 26, 2010, depicts storm residue that was deposited on the shoulder of the roadway across from your complex. In the background of this photo two semi-trailers parked on the shoulder, which were commonly moving in and out of the road shoulder area, at that time.

The three additional photographs I took during my visit with your grounds manager depict items he brought to my attention, none of which are result of any activity by Goodfellow Bros., Inc.

Sincerely,

Fred Hollenbeck
Goodfellow Bros., Inc.



	TOTALS SHEET #4 (SHEET #3) HOUSEKEEPING	(SHEET #2) POWER WASHING	(SHEET #5) LOSS OF RENT	(SEE ATTACHEI LANDSCAPING	(SEE ATTACHED) SOLAR PANELS	TOTAL
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DECEMBER	\$ 270.00	\$ 1,188.00	\$ 4,000.00	\$ -	\$1,350.00	
JANUARY, 2012	\$ 225.00	\$ 1,485.00	\$ 2,675.00	\$ -	\$ 1,350.00	
APRIL, 2012				\$ 18,000.00		\$ 18,000.00
TOTAL	\$ 3,195.00	\$ 15,741.00	\$ 49,979.00	\$ 21,397.02	\$4,050.00	\$ 94,362.02
ADDENDUM TO ORIGINAL CLAIM/LOST RENT TIMOTHY SUMMERS (Jan - April 2011 rent)						\$ 3,956.00
ADDENDUM TO ORIGINAL CLAIM/LOST RENT PAUL ADDISON (April - July 2011 rent)						\$ 2,025.00
ADDENDUM TO ORIGINAL CLAIM/LOST RENT BRANDON MARTIN (Nov - July rent)						\$ 309.00

ADDENDUM TO ORIGINAL CLAIM/LOST RENT NAPOLEAN WEAVER (May - December)	\$ 1,550.00
ADDENDUM TO ORIGINAL CLAIM/LOST RENT DAN AND JANA VIRGIL (March 2012)	\$ 900.00
ADDENDUM TO ORIGINAL CLAIM/MARKET RENT VS ACTUAL RENT	\$73,478
TOTAL	\$ 176,580.02

3A
revised total.