

REQUEST FOR LEGAL SERVICES

Date: December 12, 2019
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael J. Hopper, Esq.

Subject: CHANGE IN ZONING FOR THE SOUTH MAUI GARDENS DEVELOPMENT AT 30 ALAHELE PLACE AND 33 AUHANA ROAD (KIHEI) (PSLU-36)

Background Data: Please review the attached Unilateral Agreements (three originals) and if appropriate, approve them as to form and legality.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY
☐ OTHER:

Requestor's signature <u>Tamara A. M. Paltin</u> Tamara Paltin	Contact Person <u>James Krueger or Ana Lillis</u> (Telephone Extension: 7761 or 7660, respectively)
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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): Friday, December 13 at 9:00 a.m.
REASON: For posting on December 13 for the December 20 Council meeting agenda.

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)

pslu:ltr:036acc03:jgk/alkl

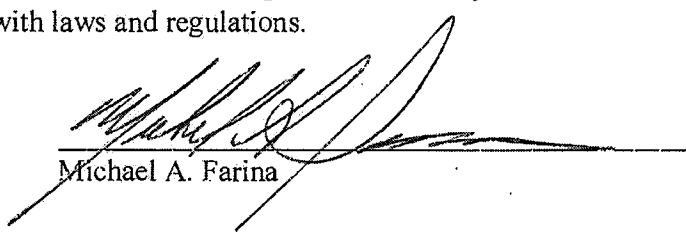
Attachments

**ACTION OF THE MEMBER OF
NATION LAND COMPANY, LLC**

Massillon, OH
December 9, 2019

The undersigned, being the sole member of Nation Land Company, LLC, does hereby take the following action in writing pursuant to the authority of Section 1701.54 of the Ohio Revised Code:

RESOLVED, that Ankush Mehta is hereby appointed Assistant Vice President of the Company with authority to sign all documents related to South Maui Gardens, including but not limited to, applications related to zoning, land use, unilateral agreements and any other documents involving the business and compliance with laws and regulations.



Michael A. Farina

STATE OF Ohio)
) SS:
COUNTY OF Stark)

Before me, a Notary Public of said County and State, personally appeared Michael A. Farina, on this 9 day of December, 2019, and hereby verifies that this resolution is his free act and deed.



Notary Public

My Commission Expires: DECEMBER 20, 2020



EMILY A. SIKORSKY
Notary Public, State of Ohio
My Commission Expires on
the 20th day of December 2020

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: 10

Affects Tax Map Key (Maui) (2)3-9-003:003 and (2) 3-9-003:005

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 11th day of December, 2019, hereinafter referred to as "DECLARATION" or "UNILATERAL AGREEMENT", by Nation Land Company, LLC, an Ohio limited liability company whose principal place of business is located in Kihei, Maui, Hawai'i, and whose mailing address is 35 Auhana Road, Kihei, Hawai'i 96753, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcels located at Kihei, Maui, Hawai'i, comprised of approximately 2.5 acres, and identified for real property tax purposes by Tax Map Key No(s). (2)3-9-003:003 and (2) 3-9-003:005, 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 2.5 acres, 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-5124, which is attached hereto and made a part hereof as Exhibit "2"; and

WHEREAS, the Council recommends through its Planning and Sustainable 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 this Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of B-2 Community Business 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 "3", 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:

Nation Land Company, LLC

A handwritten signature in black ink, appearing to read 'A. Mehta', written over a horizontal line.

Ankush Mehta
Assistant Vice President

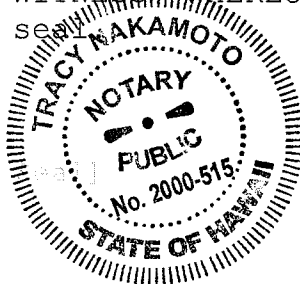
APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

STATE OF Hawaii)
) SS.
County of Maui)

On this 11th day of December, 2019, before me personally appeared Ankush Mehta, 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



Tracy Nakamoto
Notary Public, State of Hawaii

Print Name: Tracy Nakamoto

My Commission Expires: 10/15/2020

NOTARY PUBLIC CERTIFICATION

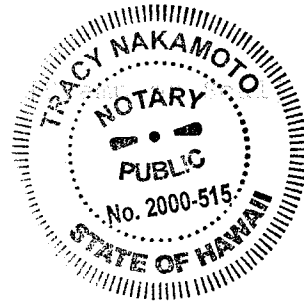
Doc. Date: 12/11/19 # Pages: 10

Notary Name: Tracy Nakamoto Judicial Circuit: Second

Document Description: Unilateral agreement
and Declaration for conditional zoning

Notary Signature: Tracy Nakamoto

Date: 12/11/19



LAND DESCRIPTION

Lot 37

All that certain parcel of land known as Lot 37 of the Kihei Farm Subdivision, being a portion of Lot 20A of the Kamaole Homesteads, being also a portion of Land Patent Grant 8265 to Dora Von Tempsky.

Situate at
Kihei, Maui, Hawaii

Beginning at a ¾" pipe (found) at the Northwestern corner of this parcel of land, being the Northeastly corner of Lot 35 of the Kihei Farm Subdivision [Tax Map Key:(2)3-9-03:02] and a point on the Southerly right-of-way line of Alahele Place, the coordinates of said point of beginning are based on record information and referred to Government Survey Triangulation Station "PUU-O-KALI" being 250.86 feet North and 22,029.15 feet West and running by azimuths measured clockwise from True South; thence,

- | | | | |
|----|--------------|--------|--|
| 1. | 254° 50' 00" | 166.57 | feet along the Southerly right-of-way line of Alahele Place, to a ½" pipe (set); thence, |
| 2. | 340° 05' 00" | 387.20 | feet along the same and the Southwesterly property boundary line of Lots 39-E and 39-D of the Kihei Farm Subdivision [Tax Map Key:(2)3-9-03: 21 and 49] to a ½" pipe (set); thence, |
| 3. | 70° 05' 00" | 166.00 | feet along the Northwestern property boundary line of Lot 38 of the Kihei Farm Subdivision [Tax Map Key:(2)3-9-03:05] to a ½" pipe (set); thence, |
| 4. | 160° 05' 00" | 401.00 | feet along the Northeastly property boundary line of Lots 36 and 35 of the Kihei Farm Subdivision [Tax Map Key:(2)3-9-03:01 and 02] to the point of beginning and containing an area of 1.502 acres. |

This work was done by me or
under my direct supervision.

AKAMAI LAND SURVEYING, INC.



Sherman Dudley DePonte
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 6960
Expires: April 30, 2020
218246(9/13/18 WN)

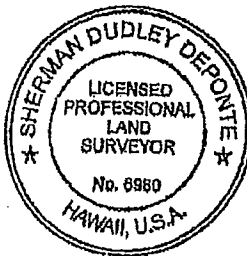


EXHIBIT "1"

LAND DESCRIPTION

Lot 38

All that certain parcel of land known as Lot 38 of the Kihei Farm Subdivision, being a portion of Lot 20A of the Kamaole Homesteads, being also a portion of Land Patent Grant 8265 to Dora Von Tempsky.

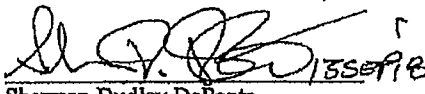
Situate at
Kihei, Maui, Hawaii

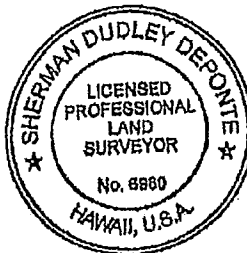
Beginning at a ¾" pipe (found) at the Southeasterly corner of this parcel of land, being the Southwesterly corner of Lot A-1 of the Resubdivision of the Consolidation of Lots A & B of a portion of Land Patent Grant 5598 to Akuna Akina, [Tax Map Key:(2)3-9-17: 23] and a point along the Northerly right-of-way of Auhana Road, the coordinates of said point of beginning are based on record information and referred to Government Survey Triangulation Station "PUU-O-KALI" being 368.14 feet South and 21,678.91 feet West and running by azimuths measured clockwise from True South; thence,

- | | | | |
|----|--------------|---------|--|
| 1. | 102° 40' 00" | 140.55 | feet along the Northerly right-of-way line of Auhana Road, to a ½" pipe (set); thence, |
| 2. | 160° 05' 00" | 224.600 | feet along the Northeasterly property boundary line of Lot 36 of the Kihei Farm Subdivision [Tax Map Key:(2)3-9-03:01] to a mag nail on tile wall footing (set); thence, |
| 3. | 250° 05' 00" | 201.52 | feet along the Southeasterly property boundary line of Lot 37 and Lot 39-D of the Kihei Farm Subdivision [Tax Map Key:(2)3-9-03: 03 and 49] passing over a ½" pipe (set) at 166.00 feet to a ½" pipe (set); thence, |
| 4. | 355° 33' 00" | 311.57 | feet along the Westerly property boundary line of Lot A-1 of the Resubdivision of the Consolidation of Lots A & B of a portion of Land Patent Grant 5598 to Akuna Akina, [Tax Map Key:(2)3-9-17: 23] to the point of beginning and containing an area of 43,557 square feet. |

This work was done by me or
under my direct supervision.

AKAMAI LAND SURVEYING, INC.


Sherman Dudley DePonte
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 6960
Expires: April 30, 2020
218246(9/13/18 WN)



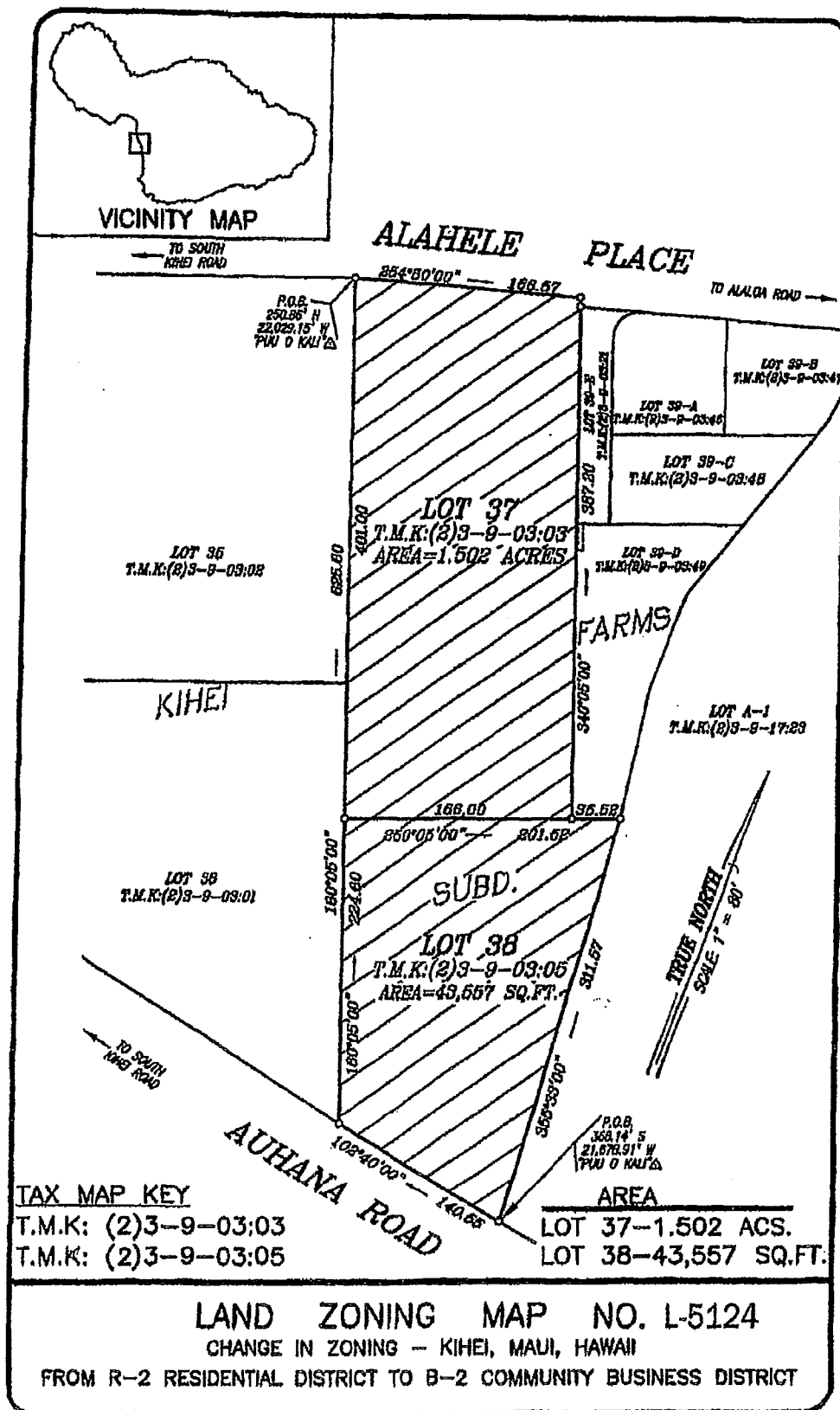


EXHIBIT "2"

CONDITIONS OF ZONING

1. Nation Land Company, LLC and any future owner or lessee must not operate Short-Term Rental Homes, Bed and Breakfast Homes, or any other transient accommodations on the property.
2. Nation Land Company, LLC and any future owner or lessee may only conduct the following B-2 Community Business District uses on the property:
 - a. Permitted uses:
 - i. Catering establishments.
 - ii. Eating and drinking establishments.
 - iii. Education, specialized.
 - iv. Educational institutions.
 - v. Farmers markets.
 - vi. General merchandising.
 - vii. General office.
 - viii. Nurseries (flowers or plants), provided, that all incidental equipment and supplies, including fertilizers and empty cans, are kept within enclosed buildings.
 - ix. Parking lots, which may include solar energy facilities that are installed on overhead canopies or structures, and may provide power to other lots.
 - x. Personal and business services.
 - xi. Other similar businesses or commercial enterprises or activities that are not detrimental to the welfare of the surrounding area, provided that such uses shall be approved by the appropriate planning commission as conforming to the intent of the B-2 Community Business District.
 - b. Accessory uses:
 - i. One or more dwelling units located above or below the first floor of a permitted use.
 - c. Special uses:
 - i. None.
3. The maximum height of any structure on the property is 45 feet.

EXHIBIT "3"