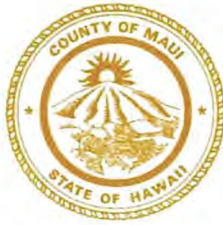


MICHAEL P. VICTORINO  
Mayor

LORI TSUHAKE  
Director

LINDA R. MUNSELL  
Deputy Director



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OFFICE OF THE  
COUNTY CLERK

DEPARTMENT OF HOUSING  
& HUMAN CONCERNS  
COUNTY OF MAUI  
2200 MAIN STREET, SUITE 546  
WAILUKU, MAUI, HAWAII 96793  
PHONE: (808) 270-7805

June 17, 2020

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Michael P. Victorino* 6/17/20  
Mayor Date

For Transmittal to:

Honorable Tamara Paltin, Chair  
Planning and Sustainable Land Use Committee  
Maui County Council  
200 S. High Street  
Wailuku, Hawaii 96793

Dear Chair Paltin:

**SUBJECT: CHANGE IN ZONING FOR THE PROPOSED KILOHANA MAKAI  
WORKFORCE HOUSING PROJECT (KIHEI) (PSLU-56)**

Thank you for your letter dated June 10, 2020 regarding the above subject. The Department's responses to your questions are provided below.

1. **If the Change in Zoning is granted, will the development be exempt from any permit fees? What is the estimated cost of the exempted permit fees?**

Permit fees and exemptions of such do not fall under the purview of DHHC.

2. **Please provide a copy of the contract entered into with the applicant to meet Maui County Code Section 2.96 requirements.**

A copy of the executed Residential Workforce Housing Agreement is attached.

3. **Are affordable homes provided through Section 2.96 required to be owner-occupied? Who is responsible for enforcing the owner-occupancy requirements? Would the developer earn credits for the 28 affordable homes?**

Honorable Tamara Paltin, Chair  
Planning and Sustainable Land Use Committee  
Maui County Council  
June 17, 2019  
Page 2

The affordable homes provided through MCC Section 2.96 are required to be owner-occupied for a period of 10 years. The Housing Division is responsible for monitoring the owner-occupancy requirements.

The Developer is entitled to receive credits for this project. Pursuant to MCC 2.96, 25% of the units in a qualifying housing project are required to be affordable. As Kilohana Makai is a 100% affordable project, the Developer is entitled to credits for the affordable units provided over and above the Section 2.96 requirements. Out of the 28 total units in this project, the Developer would be required to provide 7 affordable units to satisfy the requirements outlined in MCC 2.96. As all 28 units are to be affordable, the Developer is entitled to credits for the additional 21 affordable units provided.

Thank you for the opportunity to provide this information. Should you have any questions, please feel free to contact me at Ext. 7805.

Sincerely,



LORI TSUHAKE, LSW, ACSW  
Director of Housing and Human Concerns

Attachment  
xc: Housing Division

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail <input type="checkbox"/> Pickup <input type="checkbox"/>	
To: Department of Housing and Human Concerns County of Maui 2200 Main Street, Suite 546 Wailuku, Hawaii 96793	
TITLE OF DOCUMENT:	
RESIDENTIAL WORKFORCE HOUSING AGREEMENT KILOHANA MAKAI MULTI-FAMILY DWELLING UNITS – OWNERSHIP	
PARTIES TO DOCUMENT:	
DEVELOPER: AINA LANI PACIFIC LLC 360 Papa Place, #203 Kahului, Hawaii 96732	
COUNTY: COUNTY OF MAUI 200 S. High Street Wailuku, Maui, Hawaii 96793	
TAX MAP KEY: (2) 3-9-4:141	

(This document consists of \_\_\_\_\_ pages.)

# RESIDENTIAL WORKFORCE HOUSING AGREEMENT

## KILOHANA MAKAI

### MULTI-FAMILY DWELLING UNITS – OWNERSHIP

THIS AGREEMENT is made this 23rd day of January, 2019, by and between AINA LANI PACIFIC LLC, a Hawaii limited liability company, whose address is 360 Papa Place, #203, Kahului, Hawaii 96732 ("Developer"), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whole address is 200 South High Street, Wailuku, Maui, Hawaii 96793 ("County").

WHEREAS, Developer intends to construct a residential development in which all units will be "Residential Workforce Housing Units" as defined in Section 2.96.020 of the County's Residential Workforce Housing Policy, Chapter 2.96, Maui County Code ("MCC"); and

NOW, THEREFORE, Developer and County hereby agree as follows:

1. Project Description: Kilohana Makai ("Development") is to be located at Kihei, Maui, Hawaii, on that certain parcel of land identified as Tax Map Key No. (2) 3-9-4:141, area approximately 6.943 acres, and shall consist of a total of twenty-eight (28) single-family dwelling units that are intended to be ownership units. All twenty-eight (28) units are intended to be marketed and sold as Residential Workforce Housing Units.

2. Definitions:

"Above-moderate income" means those households whose gross annual family income is more than one hundred twenty percent (120%), but not more than one hundred forty percent (140%) of the area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai.

"Below-moderate income" means those households whose gross annual family income is more than eighty percent (80%), but not more than one hundred percent (100%) of the area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai.

"County" means the County of Maui.

"DHHC" means the County of Maui Department of Housing and Human Concerns.

"HUD" means the United States Department of Housing and Urban Development.

"Initial Appraisal" is defined in Section 9 below.

"Moderate income" means those households whose gross annual family income is more than one hundred percent (100%), but not more than one hundred twenty percent (120%) of the area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai.

Resident" means a person who meets one of the following criteria:

1. Currently employed in the County;
2. Retired from employment in the County, having worked in the County immediately prior to retirement;
3. A full-time student residing in the County;
4. A disabled person residing in the County who was employed in the County prior to becoming disabled;
5. The parent or guardian of a disabled person residing in the County;
6. A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; or
7. In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.

3. Residential Workforce Housing: All twenty-eight (28) units in the Development shall be marketed and sold at prices and on terms and conditions that qualify them as Residential Workforce Housing Units as defined in MCC Section 2.96.020.
  - a. Nine (9) units shall be initially marketed to "below-moderate income" residents;
  - b. Fourteen (14) units shall be initially marketed to "moderate income" residents; and
  - c. Five (5) units shall be initially marketed to "above-moderate income" residents.

All unit buyers must meet the eligibility criteria set forth in Section 2.96.060 MCC. Developer shall verify that each applicant meets the requirements of eligibility set forth therein.

4. Credits: For the development and sale of all of the units in the Development, the Developer shall be entitled to receive twenty-one (21) residential workforce housing credits that may be applied on a unit-for-unit basis to satisfy the workforce housing requirements for any single-family or multi-family unit on Maui. Credits shall be issued in accordance with Section 2.96.050 MCC.
5. Deed Restrictions – Ownership Units. The ownership units within each income group shall be subject to the restrictions contained in this Agreement for a period of 10 years. ("Restriction Period")
6. Residential Workforce Housing Restrictions –Ownership Units: Each of the twenty-eight (28) Residential Workforce Housing Units shall be subject to a deed restriction that shall expire at the end of the Restriction Period that is applicable to said unit that shall state the following:

- a. Subject to the requirements of Chapter 2.96, MCC.
  - b. The unit shall be owner-occupied.
  - c. Upon a decision by the unit owner to sell the unit within the Restriction Period applicable to said unit, the unit owner shall obtain a current appraisal of the unit by an independent professional appraiser and shall notify DHHC in writing of the owner's intention to sell, together with a copy of said appraisal.
  - d. The County, acting through DHHC, shall have the first option to purchase the unit from the unit owner by giving the unit owner written notice within ninety (90) days of DHHC's receipt of the unit owner's notice to sell. Failure by DHHC to respond in a timely manner shall be deemed a waiver of the County's option to purchase. If the County opts to purchase the unit from the unit owner, DHHC shall make its reasonable best efforts to close the sale in a timely manner.
  - e. The maximum resale price of the unit shall be established by DHHC using the following guidelines: the owner's purchase price, plus twenty-five percent (25%) of any increase in value from the Initial Appraisal to the value stated in the appraisal mentioned in c. above. The purchaser of the unit must be an income-qualified household. The selling owner must notify DHHC of the sale. DHHC shall verify the sale price.
  - f. In the event that the unit owner sells the unit, the new owner shall be required to comply with all deed restrictions for the remainder of the Restriction Period applicable to said unit; provided, however, that under special circumstances, unit owner may appeal to DHHC for a waiver of the owner-occupancy deed restriction. Upon a sale to a new owner, the appraisal mentioned in subparagraph c. above shall then become the "Initial Appraisal" for the new owner's resale purposes.
  - g. If during the Restriction Period the holder of any mortgage on the unit shall file in the Circuit Court of the Second Circuit, State of Hawaii (the "Court") an action of judicial foreclosure under HRS Chapter 667, or any successor statute, the provisions of subparagraphs c. through f. of this Section 6 shall not apply to any sale of the unit pursuant to said foreclosure, or to any deed given by the unit owner to the lender (or lender's designee) in lieu of said foreclosure, or to any subsequent resale of said unit by the foreclosure purchaser or his or her successor(s) in interest.
7. Designation of Units. A list and an accompanying map identifying the specific units in the Development and the income group that each unit will be made available to shall be provided by the Developer to DHHC.
8. Sales Price. The initial sales price of the units shall be approved by DHHC at the time Developer is ready to market the unit pursuant to the then current HUD price guidelines.

9. Appraisal Required. Prior to occupancy of each workforce housing unit, the Developer shall provide to DHHC and to the buyer of said unit a written appraisal of the fair market value of said unit prepared by an independent professional appraiser (the "Initial Appraisal").
10. Marketing and Sales: Developer shall be required to use its reasonable best efforts to effectively market the Residential Workforce Housing Units. Developer shall create a marketing plan, and DHHC shall approve said marketing plan prior to the issuance of any building permits for the Development. In marketing and selling all workforce housing units, Developer shall comply with all requirements of MCC Section 2.96.090, including, but not limited to, those relating to publication, wait list, lottery, applicant eligibility, verifications, applicant selection, and reporting to DHHC.
11. Permits: The Development shall be entitled to receive the expedited processing by County agencies of development and construction permits under Section 2.96.140, MCC. Developer may be entitled to an exemption from, or reduction of, certain permit fees as set forth in Ordinance 3572 (2007).
12. Indemnification. Developer shall indemnify, defend, and hold harmless County and its officers, employees, and agents from and against any and all claims, including bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from this Agreement.
13. Amendments: This Agreement, or any provision thereof, may not be modified, altered or changed except by written instrument executed by Developer and County.
14. Notices: All notices, demands, requests, consents, approval, or other communications ("notices") required or permitted to be given under this Agreement or which are given with respect to this Agreement shall be in writing and shall be delivered by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the following address, or to such other address as the party to be notified shall have specified most recently by like notice:

If to County, then to:

Mayor  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

cc: Director of Housing and Human Concerns  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

If to Developer, then to:

Aina Lani Pacific LLC  
360 Papa Place, #203  
Kahului, Hawaii 96732

Notices given as provided in this Section shall be deemed given on delivery or upon receipt if by personal delivery.

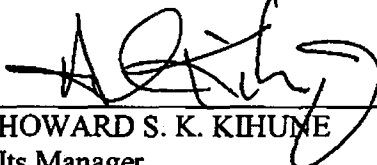
15. **Severability:** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.
16. **Recordation:** As required by MCC Section 2.96.080(B), this Agreement shall be recorded in the Bureau of Conveyances or the Land Court of the State of Hawai'i, as the case may be, so that the terms and conditions of this Agreement run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the property.
17. **Effective Date:** The effective date of this Agreement shall be the date on which the last party signs this Agreement. This Agreement is made as of the day and year first above written.
18. **Governing Law:** This Agreement and the rights and obligations of Developer and County shall be interpreted in accordance with the laws of the State of Hawaii and any applicable federal law.

*[Signatures on next page]*



IN WITNESS WHEREOF, Aina Lani Pacific LLC and the County of Maui have executed this Agreement the day and year first above written.

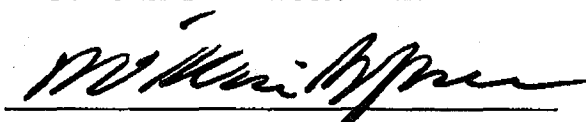
AINA LANI PACIFIC LLC

By   
HOWARD S. K. KIHUNE  
Its Manager

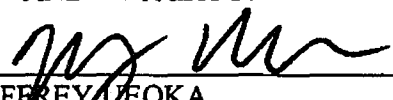
COUNTY OF MAUI

By   
~~MICHAEL VICTORINO~~ SANANDA BAZ  
Its Mayor  
ACTING MAYOR  
COUNTY OF MAUI

RECOMMENDED APPROVAL:

  
William R. Spence  
Acting Director of Housing and Human Concerns

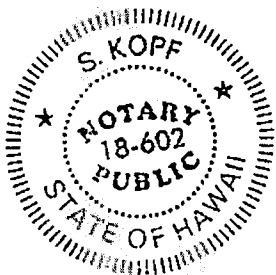
APPROVED AS TO FORM  
AND LEGALITY:

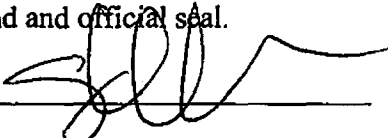
  
JEFFREY UEOKA  
Deputy Corporation Counsel

STATE OF HAWAII       )  
                                      ) SS:  
COUNTY OF MAUI       )

On this \_\_\_\_\_ day of JAN 11 2019, 20\_\_\_\_, before me appeared  
HOWARD S. K. KIHUNE, to me personally known, who, being by me duly sworn, did say  
that such person executed the foregoing instrument as the free act and deed of such person, and  
if applicable, in the capacity(ies) shown, having been duly authorized to execute such  
instrument in such capacity(ies).

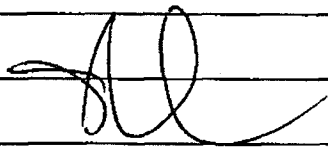
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

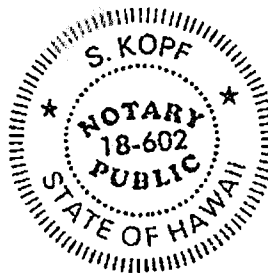


  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

S. KOPF  
EXPIRATION: November 4, 2022

NOTARY PUBLIC CERTIFICATION

Doc. Date: \_\_\_\_\_ # Pages: 8  
Notary Name: S. Kopf Judicial Circuit: Second  
Doc. Description: Residential  
Workforce Housing Agmt.  
\_\_\_\_\_  
\_\_\_\_\_  
Notary Signature:   
Date: JAN 11 2019



STATE OF HAWAII       )  
                                  ) SS.  
COUNTY OF MAUI       )

On this 23rd day of January, 2019, before me appeared Sananda Baz, to me personally known, who being by me duly sworn did say that he is the Acting Mayor of the County of Maui, a political subdivision of the State of Hawaii, in the capacity shown, having been duly authorized to execute such instrument in such capacity, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed in behalf of said County of Maui by authority of its Charter, and the said Sananda Baz, acknowledged the said instrument to be the free act and deed of said County of Maui.

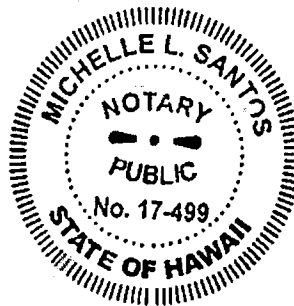
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.




Notary Public, State of Hawaii

Print Name: Michelle L. Santos

My commission expires: 12-3-21



NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>1/23/19</u>	# Pages:	<u>8</u>
Notary Name:	<u>Michelle L. Santos</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:			
<u>Execution of Residential Workforce Housing Agreement</u>			
<u></u>			
<u></u>			
Notary Signature:			
Date:	<u>1/23/19</u>		

