

REQUEST FOR LEGAL SERVICES

Date: October 9, 2020
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee


TRANSMITTAL

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

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

Background Data: Please review the attached Unilateral Agreement.

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

Requestor's signature  Tamara Paltin	Contact Person Richard E. Mitchell or Ana Lillis (Telephone: 270-7662 or 270-7660, 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): October 14, 2020
REASON: For posting on October 16, 2020 for the October 23, 2020 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:056acc03:alkl

Attachments

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: 14
(including exhibits, notary certification pages, and all other components)

AffectsTaxMapKey(Maui) (2) 3-9-004:141

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, referred to as "Declaration" or "Unilateral Agreement," is made this 5th day of OCTOBER, 2020, by the "Declarant," who is the owner of real property located on South Kihei Road, Kihei, Hawai'i, referred to as "the Property," comprised of 6.94 acres, and identified for real property tax purposes as Tax Map Key (2) 3-9-004:141:

Ferreira Family Partners, L.P., a Hawai'i domestic limited partnership whose principal place of business is at 317 Moi Place, Kihei, Hawai'i, and whose agent is EG & Associates, LLC.

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i is considering the establishment of zoning for the Property, described in Exhibit "1"; and

WHEREAS, the Planning and Sustainable Land Use Committee recommended passage on first reading of a Conditional Zoning bill in accordance with Section 19.510.050, Maui County Code; and

WHEREAS, the Declarants have agreed to execute this Unilateral Agreement in accordance with Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarants make the following Declaration:

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

2. 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 Declarants, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and 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. 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. That the term "Declarants" 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 the Declarants, the Declarants' heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That this Declaration is fully effective on the effective date of the Conditional Zoning ordinance approving the establishment of a Change in Zoning from Open Zone to R-1 Residential District for the Property;

6. That the Declarants agree to develop the Property in conformance with the conditions stated in Exhibit "2" and the Conditional 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 fulfill the need for the public service demands created by the Property's proposed use;

8: AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, 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 Declarants further understand and agree 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 Declarants or their successors and assigns may at any time file a petition with the Council or the Department for the removal of the conditions and termination of this Unilateral Agreement, which will be processed in the same manner as petitions for Change in 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 represents and warrants that they are duly authorized and have 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 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.

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

DECLARANTS:

Ferreira Family Partners, L.P.

By: EG & Associates, LLC

Its: General Partner

By *Everett Ferreira*

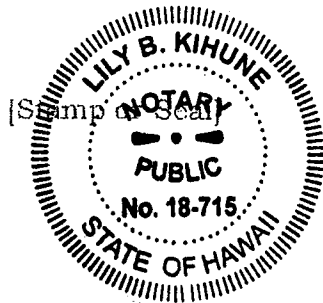
Everett Ferreira

Its: Manager

STATE OF Hawaii)
County of Maui) SS.

On this 5th day of OCTOBER, 2020, before me personally appeared EVERETT FERREIRA, 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.



Lily B. Kihune
Notary Public, State of Hawaii

Print Name: Lily B. Kihune

My Commission Expires: 12/30/2022

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

Doc. Date: 10/5/2020 # Pages: 14
Lily B. Kihune Second Circuit
Doc. Description Unilateral
agreement & Declaration
for conditional zoning

Lily B. Kihune 10/5/2020
Notary Signature Date

NOTARY CERTIFICATION

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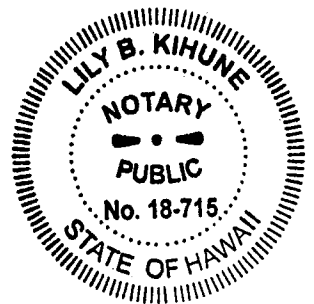


EXHIBIT 1

All of that certain parcel of land (being all of the land(s) described in and covered by Land Patent Grant Number S-15,636 issued to Seibu Hawaii, Inc., a Hawaii corporation) situate, lying and being at Kamaole, Wailuku (Kula), Island and County of Maui, State of Hawaii, being PARCEL 7, same being a portion of the government land of Kamaole and thus bounded and described:

Beginning at the southwest corner of this parcel of land, the northwest corner of Grant A-14699 to Robert H. and Nadine Hughes and on the east side of Kihei Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POU-O-KALI" being 9982.31 feet south and 19,955.43 feet west, thence running by azimuths measured clockwise from true South:

1. Along the east side of Kihei Road on a curve to the right with a radius of 1879.86 feet, the chord azimuth and distance being: 172° 38' 25" 80.47 feet;
2. 265° 23' 100.00 feet along Sewerage Pump Station No. 8;
3. 175° 23' 99.51 feet along Sewerage Pump Station No. 8;
4. 85° 23' 100.00 feet along Sewerage Pump Station No. 8;
5. Thence along the east side of Kihei Road on a curve to the right with a radius of 1879.86 feet, the chord azimuth and distance being: 180° 00' 30" 203.87 feet;
6. 183° 07' 696.26 feet along the east side of Kihei Road;
7. Thence along the remainder of Government Land of Kamaole on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 215° 00' 21.13 feet;
8. 246° 53' 197.85 feet along remainder of the Government Land of Kamaole;
9. 354° 54' 1292.80 feet along Grant 5008 to Henry Waterhouse Trust Co., Ltd.;

- | | | | | |
|-----|------|-----|--------|--|
| 10. | 65° | 52' | 63.47 | feet along Grant 548 to J. Y. Kanehoa; |
| 11. | 174° | 54' | 164.06 | feet along Grant 10297 to H. F. Rice; |
| 12. | 84° | 54' | 257.09 | feet along Grant 10297 to H. F. Rice and Grant S-14699 to Robert H. and Nadine Hughes to the point of beginning and containing an area of 6.943 acres, more or less. |

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : SEIBU HAWAII, INC., a Hawaii corporation

GRANTEE : GEORGE P. FERREIRA, JR. and ELEANOR B. FERREIRA, husband and wife, as Tenants by the Entirety

DATED : September 6, 1990

RECORDED : Document No. 90-139471

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : LAND PATENT GRANT NUMBER S-15,636

The foregoing includes, but is not limited to, matters relating to reservation in favor of State of Hawaii of all minerals, surface and ground waters and prehistoric and historic remains

3. Perpetual non-exclusive access and utility easements as shown on plan attached to Land Patent Grant Number S-15,636.

4. Reserving to the State of Hawaii, its successors and assigns, perpetual non-exclusive access and utility easements as shown on plan attached to Land Patent Grant Number S-15,636.

5. GRANT

TO : JEROME S. KATZIN, as Trustee of Tower Development Corporation Liquidating Trust

DATED : January 14, 1988

RECORDED : Liber 21527 Page 650

GRANTING : a perpetual and non-exclusive easement in, over, under and across that certain parcel of land, being more particularly described as follows:

PERPETUAL NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT
Kamaole, Wailuku (Kula), Maui, Hawaii

Being a portion of Government Land of Kamaole.

Beginning at the northwest corner of this easement and on the east side of South Kihei Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being 8,792.90 feet south and 19,929.79 feet west, thence running by azimuths measured clockwise from true South:

1. Along the remainder of the Government Land of Kamaole, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

305° 00'	33.96	feet;
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2. 245° 53' 168.09 feet along the remainder of the Government Land of Kamaole;
3. 354° 54' 503.09 feet along Grant 5008 to Henry Waterhouse Trust Company, Limited;
4. 84° 54' 44.00 feet along the remainder of the Government Land of Kamaole;
5. 174° 54' 384.39 feet along the remainder of the Government land of Kamaole;

6. Thence along the remainder of the Government Land of Kamaole, on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being;

120° 53' 30" 48.55 feet;

7. 66° 53' 110.28 feet along the remainder of the Government Land of Kamaole;

8. Thence along the remainder of the Government Land of Kamaole, on a curve to the left with a radius of 20.0 feet, the chord azimuth and distance being;

35° 00' 21.13 feet;

9. 183° 07' 111.48 feet along the east side of South Kihai Road to the point of beginning and containing an area of 32,016 square feet, more or less.

ABOVE GRANT BY NESHE ASSIGNMENTS WAS ASSIGNED

TO : KILohana MAUKA ASSOCIATION, INC., a Hawaii non-profit corporation
DATED : January 9, 2003
RECORDED : as Document No. 2003-228679
CONSENT : Given by the STATE OF HAWAII, by its Board of land and Natural Resources, by instrument dated October 16, 2003, recorded as Document No. 2003-228680

6. GRANT

TO : WAILEA IKI SUBDIVISION PARTNERSHIP, a Hawaii Limited Partnership
DATED : July 14, 1993
RECORDED : Document No. 93-136165
GRANTING : non-exclusive and perpetual easement for access and utility purposes, in, over, under and across Part B, being more particularly described as follows:

Being a portion of Grant S-15636 to Seibu Hawaii, Inc.

Being also portion of the perpetual non-exclusive access and utility easement and on the west boundary of Grant 5008 to Henry Waterhouse Trust Company, Limited, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POU O KALI" BEING 8,809.23 feet south and 19,741.77 feet west, thence running by azimuths measured clockwise from true South:

1. 354° 54' 191.09 feet along Grant 5008 to Henry Waterhouse Trust Company, Limited;
2. 84° 54' 44.00 feet along the remainder of Grant S-15636 to Seibu Hawaii, Inc.;
3. 174° 54' 135.48 feet along the remainder of Grant S-15636 to Seibu Hawaii, Inc.;
4. Thence along the remainder of Grant S-15636 to Seibu Hawaii, Inc., on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being;
120° 53' 30" 48.55 feet;
5. 246° 53' 87.57 feet along the Government Land of Kamaele to the point of beginning and containing an area of 8,484 square feet, more or less.

ABOVE GRANT WAS MESNE ASSIGNMENTS ASSIGNED

TO : KEAWAKAPU VIEWS COMMUNITY ASSOCIATION, a Hawaii non-profit corporation

DATED : November 1, 1994

RECORDED : Document No. 95-088722

CONSENT : Given by the STATE OF HAWAII, by its Board of Land and Natural Resources, by instrument dated March 31, 1995

7. Pending Civil No. 98-0863 filed in the Circuit Court of the Second Circuit, State of Hawaii; COUNTY OF MAUI, by and through its Director of Finance, "Plaintiff", vs. GEORGE P. FERREIRA, JR. and ELEANOR B. FERREIRA, ET AL, "Defendant"; re: Foreclosure.

8. GRANT

TO : TOWNE BROWN LLC, a Hawaii limited liability company
DATED : July 16, 2001
RECORDED : Document No. 2001-122656
GRANTING : an easement for roadway and utility purposes

ABOVE GRANT AMENDED BY INSTRUMENT

DATED : May 10, 2002
RECORDED : Document No. 2002-088790
RE : description of easements

ABOVE GRANT AMENDED BY INSTRUMENT

DATED : March 26, 2003
RECORDED : Document No. 2003-066248
RE : adding to the Roadway Easement area

9. GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED and VERIZON HAWAII INC.
DATED : March 18, 2003
RECORDED : Document No. 2003-088355
GRANTING : an easement for utility purposes

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : WATERLINE EASEMENT AGREEMENT

DATED : June 17, 2003
RECORDED : Document No. 2003-137108
PARTIES : TOWNE BROWN LLC, a Hawaii limited liability company and COUNTY OF MAUI

11. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

(Note: The death of George P. Ferreira, Jr. on November 6, 2000 at Wailuku, Maui, Hawaii)

END OF EXHIBIT "1"

EXHIBIT 2

CONDITIONS OF ZONING

1. Ferreira Family Partners, L.P. must develop the property to include only residential workforce housing units and no other dwelling units.
2. Ferreira Family Partners, L.P. must ensure each unit on the property is owner-occupied for a period of 20 years from the date of the unit's initial purchase date.
3. Ferreira Family Partners, L.P. must ensure that all units in the project are only used for long-term residential use.
4. Ferreira Family Partners, L.P. may not allow the conversion of the project or any unit into a condominium or further subdivision of any lot.
5. Ferreira Family Partners, L.P. may not allow accessory dwelling units.
6. Ferreira Family Partners, L.P. must maintain Lot 14, approximately 7,900 square feet, as identified on the Conceptual Subdivision Plan below, for open space or park use.
7. Ferreira Family Partners, L.P. may not place any restriction on homebuyers in their choice of lenders or in the pre-qualification process.
8. To minimize the need for lengthy commutes and promote smart-growth development and jobs-housing balance, Ferreira Family Partners, L.P. may give homebuyer preference to applicants employed or residing in the Kihei-Makena Community Plan Area.
9. To lessen the traffic burden on Wela Street caused by the project, Ferreira Family Partners, L.P. must provide a second ingress and egress to and from the project by extending Wela Street to Kilohana Drive which complies with the intersection improvements requirements as approved by the Department of Public Works. Ferreira Family Partners, L.P. must construct the second ingress and egress prior to final building permit inspection approval by the Department of Public Works for the first unit of the project.
10. Ferreira Family Partners, L.P. must comply with all applicable laws in developing and managing the project.
11. Ferreira Family Partners, L.P. must develop and manage the project in substantial compliance with all representations made to the Council and its Planning and Sustainable Land Use Committee to obtain this Change in Zoning.

12. Ferreira Family Partners, L.P. must construct one or more publicly accessible footpaths, at least four feet wide, connecting the project with the surrounding neighborhood. Ferreira Family Partners, L.P. must inform the Department of Planning, prior to final subdivision approval, of the footpaths' precise location. Ferreira Family Partners, L.P. must construct the footpaths prior to final building permit inspection approval by the Department of Public Works for the first unit of the project.
13. Ferreira Family Partners, L.P. must inform the Department of Planning, prior to final subdivision approval, of the location of fencing and landscaping around the project to maintain residents' privacy and security. Ferreira Family Partners, L.P. must install the fencing and landscaping prior to final building permit inspection approval by the Department of Public Works for the first unit of the project.
14. Ferreira Family Partners, L.P. must ensure a homeowners' association is established in accordance with Chapter 421J, Hawaii Revised Statutes.
15. Ferreira Family Partners, L.P. must construct a rough-in for a future photovoltaic system prior to final building permit inspection approval by the Department of Public Works for each unit of the project.
16. Ferreira Family Partners, L.P. must comply with Chapter 2.96, Maui County Code, except that the 90-day initial sales period in Section 2.96.090(D)(4), Maui County Code, is extended to 180 days.

