

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING AND SUSTAINABLE LAND**  
**USE COMMITTEE**

October 23, 2020

**Committee**  
**Report No. \_\_\_\_\_**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning and Sustainable Land Use Committee, having met on June 3, 2020, June 17, 2020 (reconvene), July 9, 2020, and July 16, 2020 (reconvene) makes reference to County Communication 20-191, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM OPEN ZONE TO R-1 RESIDENTIAL DISTRICT FOR 6.943 ACRES IN KIHEI, MAUI, HAWAII, IDENTIFIED AS TAX MAP KEY (2) 3-9-004:141."

The purpose of the proposed bill is to change zoning from Open Zone to R-1 Residential District for approximately 6.943 acres at South Kihei Road and Kilohana Drive, Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:141 ("the property") to facilitate development of the Kilohana Makai Workforce Housing project.

Your Committee notes the property's State Land Use District classification is Urban, County zoning designation is Open Zone, and Kihei-Makena Community Plan designation is Single Family. The property is located within the Special Management Area and Maui Island Plan's Urban Growth Boundary. The proposed bill would make the property's zoning consistent with its other land use designations. Consistency is generally required for Special Management Area Major permits, subdivision applications, and other discretionary permits approving development.

The proposed bill was referred to the Maui Planning Commission by Resolution 18-195. Developer representatives informed the Maui Planning Commission of their intent to develop the property in accordance with the Residential Workforce Housing Policy requirements in Chapter 2.96, Maui

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County Code, if the Change in Zoning is granted. The project would consist of 28 single-family units, with lot sizes ranging from 6,000 to 7,499 square feet, including roadway, infrastructure, and landscaping improvements.

By correspondence dated June 17, 2020, the Director of Housing and Human Concerns informed your Committee a residential workforce housing agreement had been executed with Aina Lani Pacific LLC. The agreement requires marketing and selling all 28 single-family units to residents with terms and conditions that qualify each unit as a Residential Workforce Housing Unit, as defined in Chapter 2.96, Maui County Code. To qualify as a Residential Workforce Housing Unit, the unit must be marketed and sold at certain area median income ("AMI") categories to residents in accordance with Chapter 2.96, Maui County Code, and the executed residential workforce housing agreement. The agreement requires the following AMI category breakdown:

- Nine units will be marketed to below-moderate income residents.
- Fourteen units will be marketed to moderate income residents.
- Five units will be marketed to above-moderate income residents.

Your Committee notes below-moderate income means households whose gross annual family income is more than 80 percent, but not more than 100 percent of the AMI, as established by the United States Department of Housing and Urban Development. Moderate income means those households whose gross annual family income is more than 100 percent, but not more than 120 percent, of the AMI. Above-moderate income means households whose gross annual family income is more than 120 percent, but not more than 140 percent, of the AMI.

Your Committee notes Ferreira Family Partners, L.P. is the property's current owner, but another firm will be the project's developer.

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Zoning conditions are initially imposed on the property's landowner, but will be enforceable against the developer and all succeeding property owners.

Your Committee concluded the need for residential workforce housing units near job centers in the Kihei-Makena Community Plan Area and the property's community plan designation for single-family development are compelling reasons to support the Change in Zoning with appropriate conditions of zoning to mitigate development impacts.

Your Committee, therefore, recommended approval of the bill, subject to the following conditions of zoning to mitigate circumstances that may be averse to public health, safety, convenience, and welfare will be mitigated by the following conditions, each of which is followed by a brief explanation:

1. Ferreira Family Partners, L.P. must develop the property to include only residential workforce housing units and no other dwelling units.

*Your Committee finds the condition is necessary to ensure Residential Workforce Housing units are developed.*

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.

*Your Committee finds the condition is necessary to ensure long-term affordability.*

3. Ferreira Family Partners, L.P. must ensure that all units in the project are only used for long-term residential use.

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*Your Committee finds the condition is necessary to alleviate the critical shortage of long-term affordable housing units within the County.*

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.

*Your Committee finds the condition is necessary to ensure the project's affordable-housing objectives are fulfilled.*

5. Ferreira Family Partners, L.P. may not allow accessory dwelling units.

*Your Committee finds the condition is necessary to mitigate traffic concerns by the neighboring community.*

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.

*Your Committee finds the condition is necessary to ensure all units are developed outside the tsunami evacuation zone. The approximate location of Lot 14 is entirely within a tsunami evacuation zone. The National Oceanic and Atmospheric Administration defines the tsunami evacuation zone as the minimum safe evacuation distance in the event of a tsunami.*

7. Ferreira Family Partners, L.P. may not place any restriction on homebuyers in their choice of lenders or in the pre-qualification process.

*Your Committee finds the condition is necessary to ensure homebuyers may choose their lenders.*

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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.

*Your Committee finds the condition is necessary to allow residents already living or working in in the Kihei-Makena Community Plan Area an opportunity to be selected as a homebuyer.*

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.

*Your Committee finds the condition is necessary to ensure appropriate traffic mitigation and compliant intersection improvements. Additionally, your Committee recognizes the condition implements the following policy of the Countywide Policy Plan: "Ensure that infrastructure is built concurrent with or prior to development."*

10. Ferreira Family Partners, L.P. must comply with all applicable laws in developing and managing the project.

*Your Committee finds the condition is necessary to ensure full compliance with laws.*

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.

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*Your Committee finds the condition is necessary to ensure the representations made to obtain the Change in Zoning are fulfilled.*

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.

*Your Committee finds the condition is necessary to improve walkable connectivity of the property to the surrounding neighborhood.*

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.

*Your Committee finds the condition is necessary to preserve residents' quality of life.*

14. Ferreira Family Partners, L.P. must ensure a homeowners' association is established in accordance with Chapter 421J, Hawaii Revised Statutes.

*Your Committee finds the condition is necessary to ensure sufficient management of the project.*

15. Ferreira Family Partners, L.P. must construct a rough-in for a future photovoltaic system prior to final building permit inspection

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approval by the Department of Public Works for each unit of the project.

*Your Committee finds the condition is necessary to ensure the units are compatible with energy efficient photovoltaic systems.*

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.

*Your Committee finds the condition is necessary to ensure the project's affordable-housing objectives are fulfilled.*

Your Committee voted 6-0 to recommend passage of the revised proposed bill on first reading, recordation of the Unilateral Agreement and Declaration for Conditional Zoning, and filing of the communication. Committee Chair Paltin, Vice-Chair Sinenci, and members King, Lee, Molina, and Sugimura voted "aye." Councilmember Rawlins-Fernandez was excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, entitled "A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM OPEN ZONE TO R-1 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR 6.943 ACRES IN KIHAI, MAUI, HAWAII, IDENTIFIED AS TAX MAP KEY (2) 3-9-004:141," incorporating your Committee's amendments and nonsubstantive revisions.

Your Planning and Sustainable Land Use Committee RECOMMENDS the following:

1. That Bill \_\_\_\_\_ (2020), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM OPEN ZONE TO R-1 RESIDENTIAL

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DISTRICT (CONDITIONAL ZONING) FOR 6.943 ACRES IN  
KIHEI, MAUI, HAWAII, IDENTIFIED AS TAX MAP KEY  
(2) 3-9-004:141," be PASSED ON FIRST READING and be  
ORDERED TO PRINT;

2. That the County Clerk RECORD the Unilateral Agreement and Declaration for Conditional Zoning; and
3. That County Communication 20-191 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



\_\_\_\_\_  
TAMARA PALTIN, Chair



ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2020)

A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM OPEN ZONE TO R-1 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR 6.943 ACRES IN KIHEI, MAUI, HAWAII, IDENTIFIED AS TAX MAP KEY (2) 3-9-004:141

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. In accordance with Chapters 19.08 and 19.510, Maui County Code, a change in zoning from Open Zone to R-1 Residential District (conditional zoning) is granted for the certain real property situated at South Kihei Road, Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:141, more particularly described in Exhibit "A," and subject to the conditions established in Exhibit "B," both of which are attached and incorporated into this ordinance.

SECTION 2. In accordance with Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the Unilateral Agreement and Declaration of Conditional Zoning, which is attached and incorporated into this ordinance as Exhibit "C."

SECTION 3. This ordinance takes effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

/s/ Michael J. Hopper

Department of the Corporation Counsel  
County of Maui

pslu:misc:056abill02a:alkl

## EXHIBIT "A"

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 F. 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 Kihai 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. 246° 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** : WAILUA IRI 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 Kamaole 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 "A"**

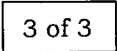


## **EXHIBIT "B"**

### **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.



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 5<sup>th</sup> 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*

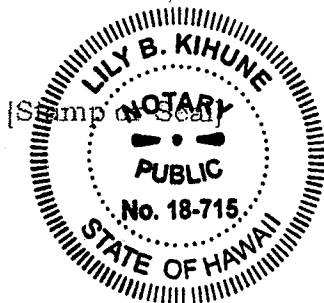
Everett Ferreira

Its: Manager

STATE OF Hawaii )  
County of Maui ) SS.

On this 5<sup>th</sup> 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

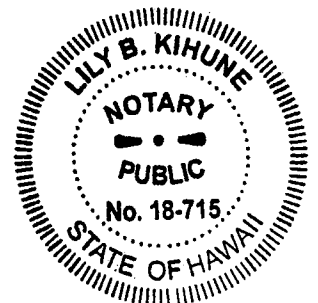
Print Name: Lily B. Kihune

My Commission Expires: 12/30/2022

APPROVED AS TO FORM AND LEGALITY:

*Michael J. Hopper*  
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 549 to J. Y. Kanehwa;
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. 246° 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 Kamaole 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.



