

R-782

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

FEB 19, 1993 08:02 AM

Doc No(s) 93-027389

/s/ S. FURUKAWA
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

LAND COURT SYSTEM

Return by Mail (X) Pickup () To:

PAUL R. MANCINI
CASE & LYNCH
33 Lono Avenue, Suite 470
Kahului, Maui, Hawaii 96732

16859-3/4695J

DECLARATION OF CONDITIONS

THIS DECLARATION made this 22nd day of January,
1993, by 3521 CORP., a Hawaii corporation, having its principal
place of business and mailing address at 505 Front Street,
Lahaina, Hawaii 96761, hereinafter called the "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real
property situated at Kahana, Island and County of Maui, State
of Hawaii, consisting of approximately 44.684 acres, identified
as Tax Map Key No. 4-3-01:por. 70, and approximately identified
in Exhibit "A" attached hereto and incorporated herein by
reference, (hereinafter "Property"); and

WHEREAS, by Findings of Fact, Conclusions of Law, and Decision and Order dated January 19, 1993 in Docket No. A91-671, the State Land Use Commission amended the land use district boundaries and reclassified the Property from the Agricultural District to the Urban District; and

WHEREAS, pursuant to Section 205-4(g), Hawaii Revised Statutes, and Section 15-15-92 of the State Land Use Commission Rules, the conditions imposed by the State Land Use Commission in Docket No. A91-671 are to run with the land and are to be recorded by the Declarant at the State of Hawaii Bureau of Conveyances;

NOW, THEREFORE, Declarant hereby declares that the reclassification of the Property shall be subject to the following conditions, which conditions were imposed by the State Land Use Commission in Docket No. A91-671:

1. Petitioner shall provide affordable housing opportunities for low, low/moderate and gap group residents of the State of Hawaii to the satisfaction of the State Housing Finance and Development Corporation in accordance with the Affordable Housing Guidelines, adopted by the Housing Finance and Development Corporation, effective July 1, 1992, as periodically amended. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable among Petitioner, the State Housing Finance and Development Corporation and the County of Maui.

2. Petitioner shall inform all prospective purchasers of the proximity of the Property to an existing airport.

3. Petitioner shall inform all prospective occupants of: (a) possible odor, noise, and dust pollution resulting from surrounding agricultural operations, and (b) the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, which limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

X 4. Petitioner shall preserve site T-1, and submit a detailed archaeological preservation plan for the platform (site T-1), which plan will be reviewed and approved by the State Historic Preservation Division, County of Maui Planning Department and the Maui/Lanai Islands Burial Council.

Petitioner shall immediately stop work on any impacted area and contact the State Historic Preservation Division should any archaeological resources such as artifacts, shell, bones or charcoal deposits, human burials, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development of the Property.

5. Petitioner shall fund, design and construct the necessary roadway improvements within the Project area to the satisfaction of the State Department of Transportation ("DOT") and the County of Maui.

Petitioner shall submit a schedule for a traffic signal warrant study and traffic signal plan for the State DOT's review and approval, and if required, shall fund and install traffic signals.

Petitioner shall address the impact of the cane haul road on the proposed Project and vice versa, as well as pedestrian safety for the crossing of Honoapiilani Highway to the makai commercial and recreational areas to the satisfaction of the Department of Public Works, County of Maui.

Petitioner shall re-evaluate the roadway access locations in consultation with the State DOT to ensure that there are no conflicts with adjacent existing and proposed developments.

Petitioner shall submit construction plans for work within the State right-of-way to the State DOT Highway Division for review and approval. Required roadway improvements shall be constructed at no cost to the State and in accordance with all applicable State design standards and specifications.

6. Petitioner shall participate in the funding and construction of regional highway improvements, on a pro rata basis as determined by the State Department of Transportation.

7. Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works.

8. Petitioner shall not dispose of clearing and grubbing material at the County sanitary landfill. Petitioner shall submit a solid waste management plan acceptable to the County of Maui Department of Public Works.

9. Petitioner shall fund the development of the necessary water source, storage, and transmission facilities to provide an adequate supply of potable water to the Property.

10. Petitioner shall submit a final detailed drainage and erosion control plan to the State Department of Health and County of Maui Department of Public Works for review and approval. Petitioner shall provide verification that the grading and runoff water generated by the proposed Project will not have an adverse effect on the adjacent and downstream properties.

11. Petitioner shall implement effective soil erosion and dust control measures both during and after construction of the proposed Project, and shall contribute a pro rata share of funding for a nearshore water quality monitoring program to the satisfaction of the State Department of Health.

12. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

13. Petitioner shall provide its pro rata share for school facilities as may be required by and to the satisfaction of the State Department of Education.

14. Petitioner shall participate in formulating and implementing an emergency preparedness and evacuation plan for the Project area, in consultation with City and State civil defense agencies.

15. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

16. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

17. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.

18. The Land Use Commission may fully or partially release these conditions as to all or any portions of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

19. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a Statement to the effect that the Property is subject to conditions imposed

by the Land Use Commission in the reclassification of the Property, and (b) file a copy of such recorded statement with the Commission.

20. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Title 15, Chapter 15, Section 92, Hawaii Administrative Rules.

The above stated conditions contained in this Declaration shall operate as covenants running with the land and shall be binding upon all owners and their respective heirs, personal representatives, successors and assigns.

The limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect at all times with respect to all property included in this Declaration until such time that the State Land Use Commission removes or releases the conditions relating to the subject property established through its order dated January 19, 1993 in Docket No. A91-671.

The term "Petitioner", as and when used herein shall mean and include the Declarant herein, and the terms "Declarant" and "Petitioner", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the day and year first above written.

3521 CORP.

By ~~_____~~
J. J. Elkin
Its Secretary-Treasurer

STATE OF HAWAII
COUNTY OF MAUI

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) SS.

On this 22nd day of January, 1993, before me appeared J. J. Elkin, to me personally known, who, being by me duly sworn, did say that he is the Secretary-Treasurer of 3521 CORP., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Officer acknowledged said instrument to be the free act and deed of said corporation.

Helmy Ann Fernandez LS
Notary Public, State of Hawaii.
My commission expires: 7/13/94

