



February 24, 2017

**IMPORTANT MESSAGE FROM THE PRESIDENT  
ON BEHALF OF THE BOARD OF DIRECTORS  
OF THE ASSOCIATION OF APARTMENT OWNERS  
OF KIHAI KAI NANI**

**ALOHA, FELLOW OWNERS:**

As you are aware, Victory Development Nani Loa LLC announced its intention to develop a 39-unit hotel complex on the property directly above our property ("Lot 1A"), including a plan to use our parking lot for construction traffic, and for its utilities, as well as for long-term access for the hotel occupants.

The construction and long-term use of the hotel complex would seriously harm our property and each individual owner.



***The whole landscape barrier belongs to Lot 1A.  
It would be destroyed and replaced with two horizontal buildings,  
3 and 4 stories high + parking, beginning at our property line,  
just 10 feet from our buildings 8 and 9.***



## RESOLUTION REACHED THAT BENEFITS ALL OUR OWNERS

After more than two years of public hearings and litigation relating to the anticipated impacts of Victory's proposed hotel complex, the Board, through a court-sanctioned mediation, has secured the right to purchase Lot 1A at an attractive price.

### A. THE BENEFITS ARE SIGNIFICANT

Purchasing Lot 1A will permit us to . . .

- ☐ maintain our trees and buffer area at the top of the parking lot, including our carwash, and walkway and rail at B8 that Victory proposes to destroy as part of its development plans;
- ☐ eliminate the use of our parking lot for construction traffic and as a permanent thoroughfare for the proposed hotel complex;
- ☐ maintain our peace and tranquility, rather than face years of noisy, dusty construction taking place next to us;
- ☐ avoid a likely substantial loss of rental income as vacationers consider other properties during the extensive construction phase; and
- ☐ avoid potentially years of contentious and expensive litigation, with an uncertain outcome.

### B. WE MUST ACT NOW.

**We must decide SOON and we need YOUR INPUT.**

**Currently, our opportunity to purchase Lot 1A expires APRIL 27, 2017.**

**We would like you to participate—in person or by telephone conference call—in one of our two information sessions, scheduled for the following days and times.**

**Friday, March 3, 2017, from 1 to 2 pm    Hawai'i Time**

**Thursday, March 9, 2017, from 3 to 4 pm    Hawai'i Time**

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**IN PERSON:**      Kihei Destination Maui, Inc, Kihei Office (formerly APMI Office)  
Second floor, next to South Maui Motors  
Aloha Plaza, 380 Huku Li'l Place, Suite 206, Kihei, Hi

**BY TELEPHONE:    Call (712) 775-7035 and use participant access code 555679#.**

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The Lot 1A Committee and representatives from the Board will be there to answer your questions.

We will describe the efforts and expand on the background information, including how and why we have negotiated to purchase Lot 1A and the benefits to our acquiring the property.



## **C. SUMMARY OF THE EFFECTS OF THE DEVELOPMENT**

If we fail to purchase Lot 1A, we anticipate the following potential effects to Kihei Kai Nani.

1. There will be at least a two-year construction period, during which heavy-equipment trucks, construction vehicles, materials, contractors and subcontractors, suppliers, and various tradespeople will be consistently traveling through our property.
2. A major portion of our driveway and parking spaces will need to be bulldozed to accommodate the water, sewer, and utilities the hotel complex will need, during which we must endure not only the construction nuisance but also the loss of substantial parts of our parking area for periods of time.
3. Invasive and protracted noise will emanate from the project site off and on for two years (legally, the work can start at 7 am and go to 8 pm in the evening, every day except Sunday).
4. For owners who rent out their units, property rental during construction will be virtually lost—as will all rental revenue—during the two-year construction period. It won't take long for negative word to get around on social media about the noisy, dusty daily construction going on at our resort property.
5. There will be total destruction of all our beautiful trees because they stand on Lot 1A. They currently provide a strong visual buffer at the rear of our resort. Along with the loss of the trees, we will lose a significant portion of property including half the circle, our landscape barrier, car wash, and walkway and rail at B8 because they are all part of Lot1A.
6. With the completion of the hotel complex, our private driveway will become a permanent through-road not only for all of the hotel occupants but also for all the workers at the hotel, and associated delivery vans and utility trucks.
7. If you would like to see the proposed plan for the hotel development, you may go here.  
[http://oeqc.doh.hawaii.gov/Shared%20Documents/EA\\_and\\_EIS\\_Online\\_Library/Maui/2010s/2015-05-08-MA-5E-DEA-Nani-Loa-Condominium-Hotel.pdf](http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Maui/2010s/2015-05-08-MA-5E-DEA-Nani-Loa-Condominium-Hotel.pdf)

## **D. BENEFITS OF PURCHASING LOT 1A**

1. We can terminate access and other significant rights currently running in favor of Lot 1A that were originally granted by the developer of Kihei Kai Nani in 1969. (When you purchased your unit, you were given the restated declaration from 2002 that identifies those rights. For more background and detail, see Appendix 1 attached to this letter.)
2. No more threats of harm to our driveway and property usage
3. No loss of income for approximately 150 owners for two years
4. No loss of our landscape barrier including the car wash, mango tree, and other old-growth trees, and the walkway and the rail at Building 8
5. No worry about potential impact to property values
6. Potential expanded uses of portions of Lot 1A for the benefit of our owners (e.g., garden/park)
7. Certainty: All owners secure in knowing there will be no dense hotel development on Lot 1A
8. Freedom to exclusively determine uses for Lot 1A that are compatible with our condominium, whether that be based on long-term ownership of Lot 1A or based on a near term sale to a new owner

## **E. SUMMARY OF LITIGATION AND SETTLEMENT EFFORTS**

1. To make certain our interests were protected and heard by Victory regarding its proposed hotel plans, as well by as by the County of Maui that would be granting permits, your Board of Directors, in 2015, retained the services of Tom Pierce, an experienced land-use attorney.
2. In 2015 and 2016, Mr. Pierce
  - a) worked with the Board to investigate and evaluate its claims, as well as potential settlement options;
  - b) filed a judicial challenge against the environmental assessment prepared for the proposed hotel development;
  - c) defended our position in hearings before the Maui Planning Commission;
  - d) appealed an early procedural decision made by the Maui Planning Commission to the court.
3. As a result of our litigation efforts, early this year Victory requested that the court set an early settlement conference. The court granted this request and assisted the parties in participating in a court-sanctioned mediation mediated by an extremely experienced and well-known mediator who lives part-time on Maui, Antonio Piazza.
4. On January 27, 2017, after almost a full day of unsuccessful mediation, the mediator suggested the best remaining option would be for Victory to sell Lot 1A to KKN at a price that KKN's representatives believed would be affordable by its owners. After further negotiation, KKN and Victory agreed on a purchase price for Lot 1A of \$1.5 million.
5. The Maui Real Property Tax Division website reports that Victory paid \$2.41 million for Lot 1A in 2007. Victory's representatives had also previously stated at public hearings that they had incurred development costs of over \$600,000. Based on that and other considerations, we believe the purchase price of \$1.5 million is fair. Additionally, your Board has investigated a number of purchase and/or financing options for owners that we believe will be reasonable, under the circumstances. (We will provide greater details during our information meetings.)
6. Before making this recommendation to the owners, your Board of Directors has investigated and considered many options. Continued costly litigation and appeals with Victory could take two to four years of litigation that the owners would need to pay for, but with an uncertain outcome. In contrast, if we purchase Lot 1A, litigation will cease and significant encumbrances on our title relating to Lot 1A can be removed, including the ability to make sure there will never be a dense hotel or multi-family development on Lot 1A. After careful consideration, we believe the option to purchase Lot 1A best benefits our present and future owners.
7. Considering the two-year disruption of our property, loss of income, potentially lowered property values, loss of property amenities, and the permanent increase in traffic if Lot 1A is developed and considering the purchase of Lot 1A will permit us to specifically determine compatible uses for Lot 1A for the future, we believe the cost of purchase of Lot 1A results is a very reasonable solution for all of us.

**IF YOU HAVE QUESTIONS,  
PLEASE CONTACT ME BY EMAIL.**

**Thank you,**

**Ethel Belway, President**

**[president@kknaoao.com](mailto:president@kknaoao.com)**

**YOUR BOARD OF DIRECTORS**

Ethel Belway	President
Andy Ticker	Vice President
Jose Plancenia	Finance Chair, Treasurer
Carole Eiserloth	Secretary
DiAnne Durossette	Director
Pat Hoskin	Director
Wayne Braid	Director

**Appendix 1 provides the reservation of rights in favor of Lot 1A that currently exists as set forth in the KKN governing documents.**

**Appendix 2 provides The History of the Property.**



# APPENDIX 1

## EXISTING RIGHTS IN FAVOR OF LOT 1A

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*Each unit within the Kihei Kai Nani Condominium is subject to the Restated Declaration of Condominium Property Regime, dated Aug. 13, 2002, recorded in the Bureau of Conveyances of the State of Hawai'i ("Bureau") as Document No. 2002-165763 ("2002 Restated Declaration"), and the Amendment to Restated Declaration of Condominium Property Regime of Kihei Kai-Nani, Phase One, recorded in the Bureau as Document 2008-013361 on Jan. 29, 2008. Section 5 of the 2002 Restated Declaration reserves certain rights in favor of the owner of Lot 1A. **These could be eliminated or revised if the KKN Association purchases Lot 1A. Otherwise, the following rights would likely continue to remain.***

### Section 5: Reservation of Rights, Powers and Privileges for the Use and Benefit of Lot 1A

The Owners and the Developer reserve to themselves, their respective successors and assigns, in perpetuity and for the use and benefit of Lot 1A and all owners, occupants, lessees and tenants of Lot I-A and all buildings and other improvements hereafter constructed thereon at any time, and all portions thereof, and their respective guests, invitees, licensees and business visitors, the following rights and powers:

2. (a) To construct any and all types of buildings and improvements on Lot 1A, such as hotels, apartments and condominium apartments.
3. (b) To enter the above-described easement area whenever necessary or desirable and install, repair, maintain and replace therein, all pipes, wires, ducts, cables, conduits, chases or other utility or service lines necessary, useful or desirable for the use or benefit of Lot 1A and all buildings and improvements constructed thereon.
4. (c) To use any and all common elements of the Kihei Kai-Nani, Phase One located or installed within the above-described easement area, including without limitation all roads, driveways, sidewalks, pipes, wires, ducts, cables, conduits, chases, and other utility and service lines. (prior amendment dated January 25, 1997, recorded as Document No. 97-0249-06)

Provided, however, that so long as such use shall continue, the owners, occupants, lessees and tenants of Lot 1A shall contribute to and pay a proportionate share of all costs of repair and maintenance of the facilities so used. In the event apartments or condominium apartments are constructed on Lot 1A, the proportionate share shall be the ratio of the total number of apartments on Lot 1A against the total number of apartments in Kihei Kai Nani, Phase One. In the event a hotel is constructed on Lot 1A, the proportionate share shall be the ratio of the total number of hotel rooms on Lot 1A against the total number of apartments in Kihei Kai Nani, Phase One.

Provided, further, that during the construction of any and all buildings and improvements on Lot 1A, all roads, roadways and sidewalks in the easement area may be used by contractors, sub-contractors, tradesmen, material suppliers and their agents, servants and employees, including without limitation, heavy equipment, trucks and private vehicles, at all times necessary or convenient for such construction and no claim, demand or charge shall be made for such use, except for the repair of actual damages caused by such use, if any; nor shall any claim, demand or charge be made for any nuisance created by such construction or the abatement thereof. (prior amendment dated December 15, 1969, recorded in Liber 6821, Page 433)

5. (d) To subdivide and sell, lease, assign, pledge, mortgage, or otherwise dispose of, or encumber, in any manner, by any form of document or instrument, in any amounts and for any reason or purpose, Lot 1A and all buildings and improvements constructed thereon, together with all rights, powers, privileges and easements appertaining thereto, including all rights, powers and privileges and easements reserved in this Declaration.

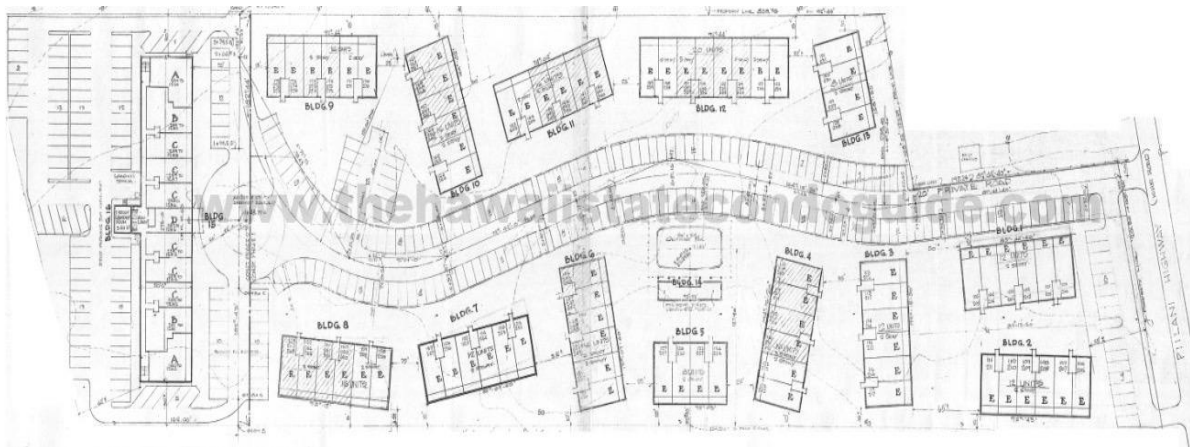
## **APPENDIX 2**

### **THE HISTORY OF THE PROPERTY**

In 1969, Kihei Kai Nani was planned as a 6.370-acre development. The original owner stopped after building on just 5.192 acres. The original plan showed a 10-story building to be built across the remaining 1.438-acre parcel designated as Lot 1A. The center of the building's footprint would have been over the gulch. It is likely the owner ceased development of the building due to danger of flooding. KKN has experienced serious flooding down our driveway over the years including water, mud, and debris entering parked cars, our pool, office, and first-floor units.

The original owner, instead of leaving the remaining land for Kihei Kai Nani as open space, gave rights benefiting Lot 1A that burden our Kihei Kai Nani property interests. Since 1969, these reservation of rights have been included in the governing documents for KKN through the Declaration, which is now the 2002 Restated Declaration, discussed in Appendix "1." Among the rights granted to Lot 1A is a perpetual easement over our driveway for anyone purchasing and developing Lot 1A in the future.

Over the past 48 years, Lot 1A has been bought by a number of different owners who tried to develop it. They each discovered the flooding problems and that the property's water and sewer and utilities must utilize our driveway easement. KKN's litigation costs to halt the efforts of those past developers was over \$250,000.



#### **Lot 1A** **(old development design)**

- ☐ The current Kihei Kai Nani property is 5.192 acres.
- ☐ The granted perpetual easement for Lot 1A over our driveway is 1.178 acres.
- ☐ The easement represents almost 25% of KKN's 5.192 acres.

That is the amount of land along our driveway, up to our sidewalks, that Victory Development Nani Loa LLC can disrupt during their construction.