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A LIMITED LIABILITY LAW PARTNERSHIP

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LETTER OF TRANSMITTAL

To: Daniel Orodener, Executive Officer
Land Use Commission, State of Hawaii
Leiopapa A. Kamehameha Building
235 South Beretania Street, Room 406
Honolulu, Hawaii 96813

DATE: August 23, 2021

RE: Docket No. A18-806: Barry Trust
dated November 15, 2006

Via U.S. Mail

THE FOLLOWING IS (ARE) TRANSMITTED HEREWITH:

<u>COPIES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	8/3/2021	<i>Declaration of Conditions</i> (recorded at BOC on 8/3/2021)

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- | | |
|--|--|
| <input type="checkbox"/> For Payment | <input type="checkbox"/> For Review, Approval & Filing |
| <input checked="" type="checkbox"/> For Your Information and Files | <input type="checkbox"/> For Necessary Action |
| <input type="checkbox"/> Per Your Request | <input type="checkbox"/> For Signature and Return |
| <input type="checkbox"/> Per Our Telephone Conversation | <input type="checkbox"/> See Remarks Below |
-

REMARKS:

Please find enclosed a copy of the recorded *Declaration of Conditions*. Please contact Derek B. Simon, Esq. at dsimon@carlsmith.com or 523-2589 with any questions or concerns. Thank you.

Enclosure(s)

LAND USE COMMISSION
STATE OF HAWAII

2021 AUG 30 10:10 AM

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(Bureau of Conveyances)

The original of this document was
recorded as follows:

DOCUMENT NO. Doc T - 11537372
CT 865588
DATE August 3, 2021 10:10 AM

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

CARLSMITH BALL LLP
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawai'i 96813
Attention: Derek B. Simon
Telephone: (808) 523-2500

TITLE OF DOCUMENT:

DECLARATION OF CONDITIONS

PETITIONER: KEVIN M. BARRY AND MONICA S. BARRY, TRUSTEES OF THE
BARRY FAMILY TRUST DATED NOVEMBER 15, 2006
P.O. Box 247
Kea'au, Hawai'i 96749

TAX MAP KEY(S): (3) 1-5-059:059
TCT 865,588

(This document consists of 8 pages.)

DECLARATION OF CONDITIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Petitioners KEVIN M. BARRY AND MONICA S. BARRY, TRUSTEES OF THE BARRY FAMILY TRUST DATED NOVEMBER 15, 2006 (“**Petitioners**”), are the fee-simple owners of that certain parcel of land situate at Kea‘au, Puna, County, Island and State of Hawai‘i, identified as Tax Map Key No. (3) 1-5-059:059, and more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the “**Petition Area**”);

WHEREAS, Petitioners filed with the State of Hawai‘i Land Use Commission (“**Commission**”) a Petition for Land Use District Boundary Amendment in Docket No. A18-806, seeking to amend the State Land Use district boundaries for the Petition Area from the Conservation District to the Agricultural District;

WHEREAS, by Findings of Fact, Conclusions of Law, and Decision and Order filed April 21, 2021 in Docket A18-806 (“**Decision & Order**”), the Commission reclassified the Petition Area from the State Land Use Conservation District to the State Land Use Agricultural District;

WHEREAS, the Decision & Order states that said reclassification shall be subject to eight (8) conditions, which are set forth on pages 56 through 57 of the Decision & Order; and

WHEREAS, pursuant to Section 205-4(g) of the Hawaii Revised Statutes, and Section 15-15-92 of the Hawai‘i Administrative Rules, such conditions are required to be recorded in the Bureau of Conveyances of the State of Hawai‘i or the Land Court of the State of Hawai‘i, or both, so as to be imposed upon the Petition Area as covenants running with the land.

NOW, THEREFORE, Petitioners do hereby state and declare that the reclassification and redistricting of the Petition Area is made subject to those eight (8) conditions, which are more fully set forth on pages 56 through 57 of said Decision & Order and which conditions provide in their entirety as follows (capitalized terms used herein and not otherwise defined shall have the meaning assigned thereto in the Decision & Order):

1. **Compliance with Representations.** Petitioners shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in the Findings of Fact, Conclusions of Law, and Decision and Order. Absent substantial commencement of use of the land in accordance with such representations, the Commission shall issue and serve upon the party bound by the condition an order to show cause why the Petition Area should not revert to its former land use classification or be changed to a more appropriate classification.

2. **Notice of Change in Ownership.** Petitioners 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 Petition Area, prior to development of the Petition Area.

3. **Annual Reports.** Petitioners shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the Count of Hawai'i Planning Department in connection with the status of the Petition Area and Petitioners' progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

4. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioners.

5. **Notice of Imposition of Conditions.** Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioners shall: (a) record with the Bureau of Conveyances or the State of Hawai'i Land Court, or both, as appropriate, a statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area; and (b) shall file a copy of such recorded statement with the Commission.

6. **Recordation of Conditions.** Petitioners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances or the State of Hawai'i Land Court, or both, as appropriate, pursuant to HAR § 15-15-92.

7. **Vegetation Removal.** Petitioners shall refrain from construction activities that disturb or remove woody vegetation taller than 15 feet between June 1 and September 15, when Hawaiian hoary bats may be sensitive to disturbance.

8. **Exterior Lighting.** All exterior lighting shall be shielded from shining upward, in conformance with Hawai'i County Code § 14-50 et seq., to minimize the potential for disoriented seabirds.

The foregoing conditions shall run with the land and shall be binding upon the Petitioners and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer pursuant to HAR § 15-15-91.

Upon the recordation of this Declaration of Conditions in the Land Court of the State of Hawai'i, this Declaration of Conditions shall supersede the Notice of Imposition of Conditions by the Land Use Commission, which was recorded in said Land Court on May 12, 2021, as Document No. T-11454455.

[Signature page to follow]

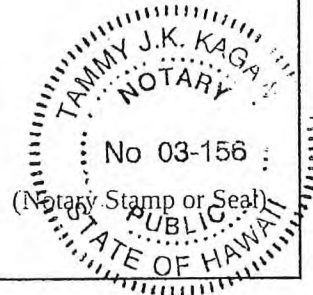
STATE OF HAWAII)
) ss.
 COUNTY OF HAWAII)

On this ____ day of July, 2021, before me personally appeared KEVIN M. BARRY, Trustee of the Barry Family Trust dated November 15, 2006, personally known/proved to me on the basis of satisfactory evidence, 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.



Tammy J.K. Kagawa
 Name: Tammy J.K. Kagawa
 Notary Public, State of Hawaii
 My commission expires: 3/23/2023


<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description:	<u>Declaration of Conditions</u>
Document Date:	<u>7/23/2021</u>
No. of Pages:	<u>8</u>
Jurisdiction (in which notarial act is performed): <u>Third</u>	
<u>Tammy J.K. Kagawa</u> Signature of Notary	<u>7/23/2021</u> Date of Notarization and Certification Statement
Printed Name of Notary <u>Tammy J.K. Kagawa</u>	
Date of Notary Commission Expiration: <u>3/23/2023</u>	



STATE OF HAWAII)
) ss.
 COUNTY OF HAWAII)

On this 23 day of July, 2021, before me personally appeared
 MONICA S. BARRY, Trustee of the Barry Family Trust dated November 15, 2006, personally
 known/proved to me on the basis of satisfactory evidence, 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.




 Name: Tammy J.K. Kagawa
 Notary Public, State of Hawai'i
 My commission expires: 3/23/2023

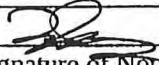
<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: <u>Declaration of Conditions</u>	
Document Date: <u>7/23/2021</u>	
No. of Pages: <u>2</u>	
Jurisdiction (in which notarial act is performed): <u>Third</u>	
 Signature of Notary	<u>7/23/2021</u> Date of Notarization and Certification Statement
Printed Name of Notary <u>Tammy J.K. Kagawa</u>	
Date of Notary Commission Expiration: <u>3/23/2023</u>	



EXHIBIT "A"

ALL OF THAT CERTAIN PARCEL OF LAND SITUATE AT KEAAU, DISTRICT OF PUNA, ISLAND AND COUNTY OF HAWAII, STATE OF HAWAII, DESCRIBED AS FOLLOWS:

LOT 463, AREA .51 ACRE, MORE OR LESS, IN BLOCK 10, AS SHOWN ON MAP 65 FILED WITH LAND COURT APPLICATION NO. 1053 (AMENDED) OF W. H. SHIPMAN, LIMITED.

TOGETHER WITH AN UNDIVIDED 1/5750TH INTEREST IN AND TO LOTS 60; 62; 8297; 8363; 8385; 8387 AND 3115 IN BLOCK 7; AND LOT 1 IN BLOCK 10; AS SHOWN ON MAPS 10, 10, 55, 56, 56, 57, 58 AND 65, RESPECTIVELY, OF SAID APPLICATION NO. 1053 (AMENDED); AND LOT 4-B, AS SHOWN ON MAP 2 OF LAND COURT APPLICATION NO. 16889 OF W. H. SHIPMAN, LIMITED; TO BE USED IN COMMON WITH OTHERS ENTITLED THERETO, FOR ROADWAY AND UTILITY PURPOSES ONLY.

BEING ALL OF THE PREMISES DESCRIBED IN AND COVERED BY TRANSFER CERTIFICATE OF TITLE NO. 865,588.
ISSUED TO: KEVIN M. BARRY AND MONICA S. BARRY, TRUSTEES OF THE BARRY FAMILY TRUST DATED NOVEMBER 15, 2006

(WARRANTY DEED RECORDED JULY 02, 2007 AS LAND COURT DOCUMENT NO. 3622615 OF OFFICIAL RECORDS.)

END OF EXHIBIT "A"