

DRAFT  
08/08/12  
BILL 52 (2012)  
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL ( ) PICKUP ( ) TO:

KAMEHAMEHA SCHOOLS  
567 South King Street, Suite 200  
Honolulu, HI 96813  
Attention:

Page 1 of \_\_\_\_

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for  
Conditional Zoning

PARTY TO DOCUMENT: Trustees of the Estate of Bernice Pauahi  
Bishop  
Kawaiaha'o Plaza, Suite 200  
567 South King Street  
Honolulu, Hawai'i 96813

TAX MAP KEY NO. (1) 6-6-004: 013, 015-019, 028, 032, por. 027

**UNILATERAL AGREEMENT AND  
DECLARATION FOR CONDITIONAL ZONING**

**THIS INDENTURE** (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by **TRUSTEES OF THE ESTATE OF BERNICE PAUHI BISHOP**, Kawaiaha'o Plaza, Suite 200, 567 South King Street Honolulu, Hawai'i 96813 (hereinafter referred to as the "Declarant"),

**WITNESSETH:**

**WHEREAS**, the Declarant is the owner in fee simple of certain parcels of land situated in Haleiwa, North Shore, Oahu, Hawaii, consisting of approximately 4 acres, described as Tax Map Key Nos. (1) 6-6-004: 013, 015 - 019, 028, 032, por. 027, and more particularly described **EXHIBIT "A"** attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

**WHEREAS**, the Declarant plans to use the Land to redevelop its commercial properties in historic Haleiwa Town (the "Project"); and

**WHEREAS**, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from the AG-2 General Agricultural District and the R-5 Residential District to the B-1 Neighborhood Business District and Country District; and

**WHEREAS**, a public hearing regarding the change in zoning, Bill \_\_\_ (2012), was held by the Council on \_\_\_\_\_, 2012; and

**WHEREAS**, the Council recommended by its Zoning Committee Report No. \_\_\_\_\_ (2012) that the said change in zoning be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

**NOW, THEREFORE**, the Declarants hereby covenant and declare as follows:

1. Transportation. The Declarant shall carry out the following requirements related to traffic and transportation improvements for the Project:

a. The Declarant shall update the Traffic Impact Analysis Report ("TIAR") approximately one year after the completion of the Project, provided at least 80 percent of the Project is

occupied or as otherwise determined by the Department of Planning and Permitting ("DPP") to validate projections to the trip generation rates and traffic assignment volumes at each driveway, as contained in the initial TIAR dated May 2011. The update shall identify whether additional traffic mitigation measures are necessary to support this Project. The cost to implement any necessary proposed mitigation measures shall be borne by the Declarant.

b. The Declarant shall submit a Construction Management Plan ("CMP") to the DPP for review and approval as required prior to the issuance of demolition and/or building permits (whichever comes first) for the redevelopment of the Project site that shall identify the type, and frequency and routing of heavy trucks and construction-related vehicles. Every effort shall be made to minimize impacts from these vehicles and related construction activities. The CMP shall include provisions to limit vehicular activity to timeframes outside of peak traffic periods, utilizing alternate routes for heavy trucks, staging locations for construction workers and vehicles, and other mitigation measures that may impact traffic. The Declarant shall document the condition of roadways in the immediate vicinity of the Project site prior to the commencement of construction activities and provide remedial measures, as necessary, such as restriping, road resurfacing, and/or reconstruction if the condition of these roadways have deteriorated as a result of the Project's construction activities.

c. The Declarant shall consult with the DPP and the Department of Transportation Services ("DTS") prior to building permit approval for the redevelopment of the Project site, and shall fund, construct, or cause to be constructed all necessary road widening and street improvements along the Project's frontage of Kamehameha Highway as required by the DPP and DTS. The roadway section may be modified to retain existing historic structures to the greatest extent practical, provided traffic flow, operations, and safety are not compromised. Further, to preserve the rural streetscape design principles for this area, the Declarant may use landscaping between the vehicular travel way and pedestrian walkway along sections of the Kamehameha Highway frontage, provided that adequate pedestrian access can be made available and maintained to the adjacent businesses. Maintenance of these landscaped areas will be the responsibility of the Declarant. Roadway improvements to the frontage of the

Project, as required by DPP and DTS, shall be completed prior to issuance of the Certificate of Occupancy for any development fronting Kamehameha Highway. Nothing herein shall be construed as a waiver or exemption from, or modification to, any requirement imposed by law or regulations, including but not limited to any requirement under ROH Chapter 14, Article 21 ("Construction of Improvements by Certain Property Owners").

d. Construction plans for all work within or affecting public streets shall be submitted to the DPP for review and approval. A Traffic Control Plan shall be submitted to the DPP for review and approval as required. Vehicular access points shall be constructed as standard city dropped driveways. Adequate vehicular sight distances shall be provided and maintained at all driveways to pedestrians and other vehicles. Driveway grades shall not exceed five percent for a minimum distance of 25 feet from the property line.

2. Compliance with Other Governmental Requirements. The Declarant acknowledges that approval of this zone change does not constitute compliance with other LUO or governmental agencies' requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the proposed Project comply with all applicable LUO and other governmental agencies' provisions and requirements.

3. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction and/or describing its progress toward complying with each condition of approval for this zone change. This status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied. Failure to do so may result in delays in processing of further permits.

4. Noncompliance or Failure to Fulfill Any Conditions. In the event of noncompliance or failure to fulfill any of the conditions set forth herein, the Director of the DPP shall inform the Council and may institute action to terminate or stop the Project until applicable conditions are met. Noncompliance also may be grounds for revocation of the permits issued under this zone change. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including

revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

**NOW, THEREFORE,** the Declarant hereby make the following additional Declarations:

As used herein, any references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety, and general welfare and the further implementation of the General Plan of the City.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, DPP may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

**AND IT IS EXPRESSLY UNDERSTOOD AND AGREED** that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that Declarant or its successors and assigns may file a petition with DPP for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

**IN WITNESS THEREOF,** this Unilateral Agreement and Declaration for Conditional Zoning is executed on the day and year first above written.

DECLARANT:  
TRUSTEES OF THE ESTATE OF  
BERNICE PAUHI BISHOP

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Their Attorney-in-Fact

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Their Attorney-in-Fact

Approved as to Content,  
Authority,  
and Compliance with KS Policy:

\_\_\_\_\_  
Director/Manager

\_\_\_\_\_  
Vice President/Director

Approved as to Form:

\_\_\_\_\_  
Legal Group

\_\_\_\_\_  
Retained Counsel

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On \_\_\_\_\_, before me appeared \_\_\_\_\_, and \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that they are two of the attorneys-in-fact for MICAH A. KANE, JANEEN-ANN AHULANI OLDS, LANCE KEAWE WILHELM, JAMES DOUGLAS KEAUKOU ING, and CORBETT AARON KAMOHAIKIOKALANI KALAMA, Trustees of the Estate of Bernice Pauahi Bishop, duly appointed under Limited Power of Attorney effective as of January 1, 2012, as extended by that certain Amendment to Extend the Limited Power of Attorney dated June 27, 2012, recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-43850675, and A-45610671, respectively, and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. T-8037300, and T-8213297, respectively; and that the foregoing instrument was executed in the name and on behalf of MICAH A. KANE, JANEEN-ANN AHULANI OLDS, LANCE KEAWE WILHELM, JAMES DOUGLAS KEAUKOU ING, and CORBETT AARON KAMOHAIKIOKALANI KALAMA, as Trustees of the Estate of Bernice Pauahi Bishop, by such persons in their capacities as attorneys-in-fact; and they acknowledged the instrument to be the free act and deed of the Trustees of the Estate of Bernice Pauahi Bishop, as aforesaid.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

(Official Stamp or Seal)

<b>NOTARY CERTIFICATION STATEMENT</b>	
Document Identification or Description: _____	
Doc. Date: _____	
No. of Pages: _____ (including exhibits)	
Jurisdiction: First Circuit	
Signature of Notary	Date of Notarization and Certification Statement
(Official Stamp or Seal)	
Printed Name of Notary	

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On \_\_\_\_\_, before me appeared \_\_\_\_\_, and \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that they are two of the attorneys-in-fact for MICAH A. KANE, JANEEN-ANN AHULANI OLDS, LANCE KEAWE WILHELM, JAMES DOUGLAS KEAUKOU ING, and CORBETT AARON KAMOHAIKIOKALANI KALAMA, Trustees of the Estate of Bernice Pauahi Bishop, duly appointed under Limited Power of Attorney effective as of January 1, 2012, as extended by that certain Amendment to Extend the Limited Power of Attorney dated June 27, 2012, recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-43850675, and A-45610671, respectively, and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. T-8037300, and T-8213297, respectively; and that the foregoing instrument was executed in the name and on behalf of MICAH A. KANE, JANEEN-ANN AHULANI OLDS, LANCE KEAWE WILHELM, JAMES DOUGLAS KEAUKOU ING, and CORBETT AARON KAMOHAIKIOKALANI KALAMA, as Trustees of the Estate of Bernice Pauahi Bishop, by such persons in their capacities as attorneys-in-fact; and they acknowledged the instrument to be the free act and deed of the Trustees of the Estate of Bernice Pauahi Bishop, as aforesaid.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

(Official Stamp or Seal)

<b>NOTARY CERTIFICATION STATEMENT</b>	
Document Identification or Description: _____	
Doc. Date: _____	
No. of Pages: _____ (including exhibits)	
Jurisdiction: First Circuit	
Signature of Notary	Date of Notarization and Certification Statement
(Official Stamp or Seal)	
Printed Name of Notary	

**EXHIBIT "A"**