

DRAFT
4/17/13
BILL 77 (2012)
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

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

Gentry Investment Properties-Legal Dept.
P. O. Box 295
Honolulu, HI 96809

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for Conditional Zoning

PARTY TO DOCUMENT: Gentry Investment Properties, a Hawaii limited partnership

PROPERTY: Lot 17263, Map 1324, Ld. Ct. App. 1069
Certificate of Title No. 881,477

TAX MAP KEY NO. (1) 9-1-69:023

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this “Unilateral Agreement” or this “Declaration”), made this ____ day of _____, 2013, by GENTRY INVESTMENT PROPERTIES, a Hawaii limited partnership, whose post office address is P. O. Box 295, Honolulu, Hawaii 96809 (hereinafter referred to as the “Declarant”),

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of that certain parcel of land situated in Ewa, Oahu, Hawaii, consisting of approximately 67.768 acres, described as Tax Map Key No.

9-1-69:023, and more particularly described in 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, or its affiliate, Gentry Homes, Ltd., plans to develop single family detached condominium units (the "Project") on a portion of the Land consisting of approximately 22.815 acres and more particularly described in Exhibit B attached hereto and made a part hereof (the "Zone Change Area"); 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 Zone Change Area from the R-5 Residential District to the A-1 Low Density Apartment District with a 30-foot height limit (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill No. 77 (2012), was held by the Council on _____, 2013; and

WHEREAS, the Council recommended by its Zoning and Planning Committee Report No. _____ that the said zone change 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, Declarant hereby covenants and declares as follows:

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

a. Prior to the issuance of any building permits for dwellings in the Zone Change Area, the Declarant shall ensure that the future portion of Kamakana Street serving the Land shall connect to Geiger Road. All necessary roadway improvements shall be constructed at the intersection of Kamakana Street and Geiger Road, including provisions for possible future signalizations. Updates to the 2010 Traffic Impact Analysis Report (TIAR) shall be provided to the Department of Planning and Permitting (DPP) approximately every two years to determine when traffic signals will be warranted. These updates will also be reviewed in coordination with the Department of Transportation Services (DTS). Updates to the 2010 TIAR shall include the Land, and Areas 17, 16, and 16A situated in TMK: 9-1-069:021 and 022. The Declarant shall be responsible for the installation of the signals and all necessary street appurtenances and interconnect conduits. Updates to the TIAR shall continue until the entire roadway system between Ocean Pointe and Geiger Road is completed.

b. The Declarant shall fund and construct a mixed use pedestrian and bicycle pathway that connects to Kapolei Parkway in the vicinity of the 'Ewa Makai Middle School and the Land. The pathway shall be completed prior to building permit approval of the Land's 130th dwelling unit. The Declarant shall be responsible for the maintenance of this pathway until such time that this responsibility is transferred to the homeowners association.

c. The Declarant shall include traffic calming measures in the Project's street network where feasible. Traffic calming measures may consist of vehicular or pedestrian connections between the single family and multi-family areas of Area 17A.

d. Prior to subdivision approval for any roadway lot, the Declarant shall submit a roadway master plan to the DPP for review and approval. Street widths, location, traffic calming devices, if applicable, and other pertinent street information shall be provided in this plan. The roadway master plan may be amended from time to time with the approval of DPP.

e. The Declarant shall prepare and submit a vehicular parking analysis to DPP for review and approval if required to mitigate impacts to street network in the Land due to a lack of sufficient off-street parking in the Project area. The methodology and scope of the parking analysis shall be coordinated among the Declarant, DPP and DTS.

2. **Restriction on Types of Residential Units.** No residential units other than single-family detached residential condominium units shall be developed in the Zone Change Area.

3. **Prior Agreements.** The conditions established in those certain Unilateral Agreements filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on June 29, 1998 as Document No. 2467238, and incorporated in Ordinance 98-44; and on March 17, 2004 as Document No. 3084363, and incorporated in Ordinance 04-08 respectively, shall remain in effect. In the event of any conflict between said conditions and the conditions of this Unilateral Agreement, the conditions of this Unilateral Agreement shall prevail.

4. **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.

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

6. **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 Planning and Permitting shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop the Project until applicable conditions are met, including but not limited to revoking any permits issued under this zoning and withholding issuance of other permits related to the Project. 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, Declarant hereby makes 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 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 and County of Honolulu.

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, the 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 the 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 WHEREOF, the party hereto has executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANT:

GENTRY INVESTMENT PROPERTIES,
a Hawaii limited partnership
By NTM LLC
Its General Partner

By _____
Norman Gentry
Its: Member-Manager

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

On _____, before me appeared NORMAN H. GENTRY, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing instrument as the free act and deed of such person, and in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii
Printed Name of Notary: _____
My commission expires: _____

EXHIBIT A

Lot No. 17263, area 67.768 acres, as shown on Map 1324, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased, being the land described in and covered by Land Court Certificate of Title No. 881,477, issued to Gentry Investment Properties, a Hawaii limited partnership.

End of Exhibit "A"

EXHIBIT B

DESCRIPTION

Ewa by Gentry-Area 17A
Parcel 1
Residential (R-5) to Apartment (A-1)

Real property situate at Honouliuli, Ewa, Oahu, Hawaii

Being a portion of Lot 17263 as shown on Map 1324 of Land Court Application 1069, and more particularly described as follows:

Beginning at the most southerly corner of this parcel of land, on the westerly side of said Lot 17263, the direct azimuth and distance from the most southerly corner of said Lot 17263 being: 154° 02' 385.71 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 20,453.90 feet South and 12,914.67 feet East, thence running by azimuths measured clockwise from True South:

1. 154° 02' 1,390.26 feet along the westerly side of said Lot 17263;
2. 244° 02' 257.67 feet along the remainder of said Lot 17263, to a non-tangent curve to the left having a radius of 380.00 feet, its curve center bear: 265° 38' 42";
3. Thence along said non-tangent curve to the left having a radius of 380.00 feet, along the remainder of said Lot 17263, the chord azimuth and distance being:
321° 48' 51" 423.12 feet;
4. 287° 59' 100.07 feet along the remainder of said Lot 17263;
5. Thence along the remainder of said Lot 17263, on a curve to the right having a radius of 380.00 feet, the chord azimuth and distance being:
299° 23' 30" 150.33 feet;
6. 220° 48' 120.17 feet along the remainder of said Lot 17263;

7. 286° 50' 571.46 feet along the remainder of said Lot 17263;
8. 304° 24' 41.40 feet along the remainder of said Lot 17263;
9. 315° 02' 30" 18.01 feet along the remainder of said Lot 17263;
10. 325° 35' 55.73 feet along the remainder of said Lot 17263;
11. 332° 20' 400.35 feet along the remainder of said Lot 17263;
12. 67° 30' 20" 1,082.83 feet along the remainder of said Lot 17263, to the point of beginning and containing an area of 22.815 acres.