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TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTY(IES) TO DOCUMENT: Hawai'i Public Television Foundation

TAX MAP KEY NO. (1) 2-3-034: 027

UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING

[Form: 2/13]

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this _____ day of _____, 2013, by the Hawai'i Public Television Foundation, whose address is 2350 Dole Street, Honolulu, Hawai'i 96822 (hereinafter referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Honolulu, consisting of approximately 28,761 square feet, described as Tax Map Key No. 2-3-034:027, 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 plans to develop a senior assisted-living facility on the Land (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 majority of the Land from the B-2 Community Business District with a 60-foot height limit, to the BMX-3 Community Business Mixed Use District with a 150-foot height limit (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 46 (2013), was held by the Council on _____ 2013; and

WHEREAS, the Council recommended by its Zoning 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, the Declarant hereby covenants and declares as follows:

1. Affordable Housing Program. Prior to building permit approval for residential use, the Declarant shall execute an agreement to participate in an affordable housing plan acceptable to the Department of Planning and Permitting (DPP) in accordance with adopted rules. The agreement shall provide for no less than 30 percent of the total residential units constructed to be affordable housing units.

2. Streetscape Environment. Prior to building permit approval, the Declarant shall submit to the DPP for review and approval a site plan that includes elements to create visual interest and support pedestrian activity at this major gateway to Waikiki. These elements may include canopy trees, seating, water features, landscape gardens, and commercial use, to activate the streetscape and support pedestrian activity along Kalākaua Avenue and the Ala Wai Promenade.

The site plan shall be based on conceptual plans submitted to the DPP with elevations and character sketches. The conceptual plans shall acknowledge, enhance and promote the pedestrian experience to benefit both commercial establishments and the community as a whole. Walkway systems shall be complemented by adjacent landscaping, open spaces, entryways, inviting uses at the ground level, street furniture, and human-scaled architectural details. Where appropriate, open spaces should be actively utilized to promote the pedestrian experience. Project designs should provide a human scale at ground level. Attention should be given to pedestrian-oriented ground level features.

The Project shall conform to the approved site plan.

3. Drainage System. Prior to building permit approval, the Declarant shall submit to the DPP for review and approval a Site Master Plan addressing appropriate Low Impact Design Strategies and appropriate Source Control Best Management Practices to the maximum extent practicable, in accordance

with the DPP's most recent Rules Relating to Storm Drainage Standards.

4. Transportation System. Prior to building permit approval or as specified below, the Declarant shall submit and obtain approval by the DPP and the Department of Transportation Services (DTS) of the following plans and reports:
 - a. A time line or phasing plan of the anticipated date to obtain major building permit(s) for construction work, including the projected date of occupancy, shall be prepared by the Declarant in a format acceptable to the DPP and the DTS. The time line shall identify when the construction management plan (CMP), the traffic management plan (TMP) and updates and/or validation to the findings of the initial traffic impact analysis report (TIAR) dated December 12, 2012 will be submitted for review and approval. Typically, the CMP should be submitted for review and approval prior to the issuance of building permits for major construction work. The TMP or subsequent updates should be submitted and approved prior to the issuance of the (temporary) certificate of occupancy (CO). The TIAR, including supplemental studies or subsequent updates, shall be submitted and approved approximately one year after the issuance of the CO, as required, or when the occupancy rate of the Project is at least at 80 percent. A new TIAR will be required if there is a significant change to the scope, from an assisted living center, or timing, more than five years from the initial projected completion date of the Project.
 - b. The CMP shall identify the type, 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 identify and limit vehicular activity related to construction to periods outside of the peak periods of traffic, utilizing alternate routes for heavy trucks, provisions for either on-site or off-site staging areas for construction related workers and vehicles to limit the use of on-street parking around the project site, and other mitigation measures related to traffic and potential neighborhood impacts. Preliminary or conceptual traffic control plans shall also be included in the CMP. The Declarant shall document the

condition of roadways prior to the start of construction activities and provide remedial measures, as necessary, such as restriping, road resurfacing, and/or reconstruction if the condition of the roadways has deteriorated as a result of the related construction activities.

- c. A TMP shall include traffic demand management (TDM) strategies to minimize the amount of vehicular trips for daily activities and large events. TDM strategies could include car pooling or ride sharing programs, transit, bicycle and pedestrian incentives (primarily directed at employees of the Project), and other similar TDM measures. A post TMP will be required approximately one year after the issuance of the CO to validate the relative effectiveness of the various TDM strategies identified in the initial report.
- d. A post TIAR will be required approximately one year after the issuance of the CO to validate the traffic projections, distribution, and assignment contained in the initial TIAR. If additional traffic mitigation measures or modifications are necessary to support related traffic impacts directly attributable to this development, the Declarant will be required to implement these measures. If the findings of the post TIAR are inconclusive, a follow up study may be required within a year of this prior study, as necessary. The updated TIAR shall include an analysis of the actual timed delays at each intersection approach to validate the intersection is not operating under constrained flow conditions.
- e. Kalakaua Avenue, which fronts the Project, shall be widened by ten feet and the roadway section should match the sidewalk and curbing on the adjacent mauka property. Construction work shall be completed prior to the issuance of the CO.
- f. A rear driveway adjacent to Makiki Stream towards Kapi'olani Boulevard shall continue to be pursued to provide an additional access to this site. The configuration of the rear parking area should include provisions in the design to provide for this additional access, should a future opportunity arise to connect directly to Kapiolani Boulevard.

- g. The driveway on Kalakaua Avenue should be designed to restrict left turns into and out of the parking area. A portion of the public sidewalk may need to be relocated into the property and access easements may need to be established. Adequate vehicular sight distance shall be provided and maintained at all driveways to pedestrians and other vehicles. Driveway grades shall not exceed 5 percent for a minimum distance of 25 feet from the back of the designated pedestrian walkway. Entry gates and ticket dispensers shall be recessed as far into the driveway as necessary to avoid any queuing onto public streets.
5. Compliance With Other Governmental Requirements. The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other 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. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction of and/or describing its progress toward complying with each condition of approval for this zone change. The 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. If a status report is not submitted within the time specified, the DPP may defer the processing of permits until a status report is submitted.
7. Noncompliance With Any Conditions. In the event of noncompliance with 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, the Declarant hereby makes the following additional Declarations:

As used herein, 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 and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting 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 and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting 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 parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANT:
