

DRAFT  
8/14/13  
BILL 44 (2013)  
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

---

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

---

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for  
Conditional Zoning

PARTY(IES) TO DOCUMENT:

YMCA of Honolulu  
1441 Pali Highway  
Honolulu, Hawaii 96813

Aloha Kai Development LLC  
700 Bishop Street, Suite 200  
Honolulu, Hawaii 96813

TAX MAP KEY NO. (1) 2-3-36: 5

---

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 YOUNG MEN'S CHRISTIAN ASSOCIATION OF HONOLULU, a Hawaii nonprofit corporation (hereinafter referred to as the "Declarant"), whose address is 1441 Pali Highway, Honolulu, Hawaii 96813, and joined by ALOHA KAI DEVELOPMENT LLC, a Hawaii limited liability company whose address is 700 Bishop Street, Suite 200, Honolulu, Hawaii 96813,

**WITNESSETH:**

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Honolulu consisting of approximately 1.77 acres, described as Tax Map Key No. (1) 2-3-36: 5 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 desires to have the Land developed with a residential condominium and a community meeting and recreational facility (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 A-2 Medium Density Apartment District with a 150-foot height limit to the AMX-3 High-Density Apartment Mixed-Use District with a 350-foot height limit (the "zone change"); and

WHEREAS, the Applicant for the zone change is ALOHA KAI DEVELOPMENT LLC, a Hawaii limited liability company ("AKD"), whose address is 700 Bishop Street, Suite 200, Honolulu, Hawaii 96813, which has entered into a contract with the Declarant relating to the development of the Land. Pursuant to this contract, the Declarant plans to subdivide the Land into two lots and convey the larger lot to AKD; and

WHEREAS, a public hearing regarding the change in zoning, Bill 44 (2013), was held by the Council on \_\_\_\_\_; 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, the Declarant hereby covenants and declares as follows:

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

- a. Prior to issuance of a building or grading permit for the Project, a time line or phasing plan of the anticipated date to obtain major building permit(s) for demolition/construction work, including the projected date of occupancy, shall be prepared by the Declarant in a format acceptable to the Department of Planning and Permitting ("DPP"). 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 2012, will be submitted for review and approval. Typically, the CMP shall be submitted for review and approval prior to the issuance of building permits for major demolition or construction work. The TMP or subsequent updates shall be submitted and approved prior to the issuance of the (temporary) certificate of occupancy for any major structure, such as the YMCA complex and the residential tower. The TIAR, including supplemental studies or subsequent updates, shall be submitted and approved approximately one year after the issuance of the certificate of occupancy, as required, or when the initial occupancy of the residential portion of the Project is at least at 80 percent. A new TIAR shall be required if there is a significant change from the initial project description or the 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. The TMP shall include traffic demand management (TDM) strategies to minimize the amount of vehicular trips for daily activities and possible large events, particularly for the YMCA component or any other meeting facility on the Project site. TDM strategies could include carpooling or ride sharing programs, transit, bicycle and pedestrian incentives, and other similar TDM measures, primarily directed at employees and users of the Project. A post TMP shall be required approximately one year after the issuance of the certificate of occupancy to validate the relative effectiveness of the various TDM strategies identified in the initial report.
- d. A post TIAR shall be required approximately one year after the issuance of the certificate of occupancy 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 shall be required to implement these measures at cost. 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 and include levels-of-service (LOS) for all critical movements at each intersection in the study area. The updated TIAR shall also address the State of Hawaii Department of Transportation concerns, including pedestrian-related impacts and special events on site.

- e. The Declarant will provide or cause to be provided permanent bicycle facilities on the Project site, prior to issuance of a certificate of occupancy of new buildings. The bicycle facilities shall include bicycle parking/storage that is easily accessible between site uses and the site's ingress/egress points.
2. Parking Structure Design. Prior to the issuance of building permits for the construction of any parking structure visible from Atkinson Drive, the Declarant shall submit or cause to be submitted a design plan for review and approval to the DPP that addresses how parking structures will be sited and designed in a manner supportive of the pedestrian experience at street level and which is compatible with surrounding buildings, including provisions to shield lighting to minimize glare off site.
3. Affordable Housing. Prior to issuance of any residential building permit, the Declarant shall execute or cause to be executed a binding agreement to participate in an affordable housing plan that is acceptable to the DPP, in accordance with adopted rules. The agreement shall provide for no less than 30 percent of the total number of dwelling units constructed to be affordable housing units.
4. Street Frontage Treatment. Prior to the submittal of building permits for the purpose of redeveloping the Project site, the Declarant shall submit or cause to be submitted site plans for review and approval to the DPP showing that the primary egress and ingress for the site is aligned with Mahukona Street, to the extent feasible, and

that each building fronting Atkinson Drive creates visual interest, activates the streetscape, and supports pedestrian activity. Satisfaction of these requirements shall consider: (1) the orientation of the main entrances of buildings and their relationship with Atkinson Drive; (2) situating parking, loading, and drop-off areas at the interior or rear of the site, away from Atkinson Drive; and (3) incorporating active uses, such as lobbies and meeting, fitness, and community rooms, into the ground level of buildings with storefront windows creating a visible connection between those uses and Atkinson Drive.

5. Pedestrian Easement. The Declarant shall establish and maintain or cause to be established and maintained in good repair a pedestrian easement in favor of the public. The easement shall be at least five feet wide, paved, and connect Atkinson Drive to the existing pedestrian easement located on the Yacht Harbor Towers property near the southeast corner of the Project site.
6. Archeological Monitoring Plan. Ground disturbing activities shall be monitored by a qualified archaeologist. The Declarant shall submit an archaeological monitoring plan to the Department of Land and Natural Resources, Historic Preservation Division, for its review and approval before any grading, trenching, or foundation-related building permits are issued. The required content of the plan shall be in accordance with Section 13-279-4 of the State of Hawaii Administrative Rules.
7. Compliance with Other Governmental Requirements. The Declarant and AKD acknowledge that approval of the zone change does not constitute compliance with other LUO or other governmental agencies' requirements. They are subject to separate review and approval. The Declarant and AKD shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental agencies' provisions and requirements.
8. Annual Reports. On an annual basis, the Declarant shall submit or cause to be submitted 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.

9. Noncompliance or Failure to Fulfill 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 and AKD hereby make 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.

AND ALOHA KAI DEVELOPMENT LLC hereby consents to and joins in this Declaration and agrees that the Land shall hereafter be subject to the covenants and conditions contained herein.

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: Young Men's Christian Association of Honolulu, a Hawaii nonprofit corporation

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

Date \_\_\_\_\_

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

Date \_\_\_\_\_

CONSENT AND JOINDER BY: Aloha Kai Development LLC  
A Hawaii limited liability company

\_\_\_\_\_  
Michael Blumenthal  
Its Manager

Date \_\_\_\_\_

\_\_\_\_\_  
Teruhiro Katagiri  
Its Manager

Date \_\_\_\_\_

EXHIBIT A

-PARCEL FIRST:-

All of that certain parcel of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 21-B-1, area 62,374 square feet, more or less, as shown on Map 19, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 6 of Bishop Trust Company Limited, Trustee.

-PARCEL SECOND:-

All of that certain parcel of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 75, area 14,724 square feet, more or less, as shown on Map 21, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 709 of Hawaiian Dredging Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 33,927 issued to YOUNG MEN'S CHRISTIAN ASSOCIATION OF HONOLULU, a Hawaiian eleemosynary corporation.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : BISHOP TRUST COMPANY, LIMITED, a  
Hawaiian corporation, Trustee for  
the Hobron Land Trust under  
Declaration of Trust dated August  
10, 1926  
GRANTEE : YOUNG MEN'S CHRISTIAN ASSOCIATION  
OF HONOLULU, a Hawaiian  
eleemosynary corporation  
DATED : December 15, 1945  
FILED : Land Court Document No. 81993

SUBJECT TO ALL ENCUMBRANCES OF RECORD