

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:

Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

Committee Meeting Held
August 22, 2013

Honorable Ernest Y. Martin
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Planning, to which was referred Bill 44 (2013) entitled:

"A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT ALA MOANA, HONOLULU, OAHU, HAWAII,"

transmitted by Departmental Communication No. 504 dated July 5, 2013, and which passed First Reading at the August 7, 2013 Council meeting, reports as follows:

The purpose of Bill 44 (2013) is to rezone approximately 1.77 acres of land situated in Ala Moana from the A-2 Medium-Density Apartment District with a height limit of 150 feet to the AMX-3 High-Density Apartment Mixed-Use District with a height limit of 350 feet at the request of Aloha Kai Development LLC (the "Applicant") to permit development of a new condominium building and new facilities for the Central YMCA.

Your Committee finds that the Planning Commission, after a public hearing held on June 12, 2013 at which testimony was received in support of and in opposition to the zone change request, voted to recommend approval of the rezoning in concurrence with the recommendation of the Department of Planning and Permitting (DPP) in the Attachment to Departmental Communication No. 504 (2013), with the additional recommendations that an archaeological monitoring plan be a condition of approval, and that the Applicant with the Department of Planning and Permitting hold two additional community meetings on the proposal.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON SEP 11 2013

COMMITTEE REPORT NO. 258

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

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At your Committee's meeting on August 22, 2013, testimony was received from members of the public in opposition to the Bill primarily due to concerns about traffic and visual impacts. Testimony was also received in support of the Bill from members of the public due to the project's provision of affordable housing, favorable economic impact, provision of public amenities, and favorable effect on the YMCA.

The Director of DPP stated that the DPP supports the proposal because a taller, slimmer building is expected to have less visual impact than a shorter, broader building that could be built under existing zoning. The proposal also allows for greater separation from existing buildings and has less of a visual impact to the Atkinson Drive's streetscape. The Director also noted that benefits such as affordable housing, street improvements, and the pedestrian easement leading to the Ala Wai Promenade would not be provided without the zone change.

Representatives of the Applicant stated that it intends to satisfy the 30 percent affordable housing condition by developing affordable rental units on a site within one mile of the planned Ala Moana rail transit station, with the units being affordable to households earning no more than 60 percent of the median income for a period of 60 years.

In response to questions regarding the traffic impacts of the project, the Applicant's representatives stated that current plans call for the construction of 128 dwelling units, which is only eight more than could be built with the current A-2 zoning.

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Also in response to questions from Committee members, representatives of the Applicant stated that they would include in the Unilateral Agreement for the zone change 1) a condition limiting the project to 128 residential units, and 2) amendments to the Affordable Housing condition specifying that the requirement for no less than 30 percent of the total number of dwelling units constructed to be affordable housing units would be met by the provision of rental housing units affordable to households with incomes not exceeding 60 percent of the median income for a period of 60 years.

Your Committee Chair asked the Applicant if the two community meetings requested by the Planning Commission had been held. The Applicant stated that they will be hosting meetings at the YMCA and attending Neighborhood Board meetings. Upon questioning by your Committee Chair, the DPP Director indicated that DPP staff will be available at future community meetings since the Planning Commission recommended that the community meetings be held with DPP. Your Committee Chair stated that the two community meetings should be public meetings, and that further action on the Bill by the Committee may not take place until the community meetings are held.

Your Committee has reviewed the conditions recommended by the DPP and the Planning Commission to be included in a Unilateral Agreement for this rezoning, as set forth in Departmental Communication No. 504 (2013) and the Attachment thereto. Although your Committee generally finds the proposed conditions to be appropriate, your Committee, based on the testimony of the Applicant's representatives, further recommends certain revisions and additions to the proposed conditions as discussed below.

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Affordable Housing

Your Committee recommends that the DPP's proposed Condition No. 3 be amended to read as follows:

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, except as provided herein. The agreement shall provide that no less than thirty percent (30%) of the total number of Project dwelling units shall be affordable rental units delivered to households with incomes not exceeding 60 percent of the area median income. The rental units shall remain affordable to such households for a period of 60 years. The rental units may be located on a site other than the Land, provided that the site is within a radius of two (2) miles from the Land.

Limit on Residential Units

Your Committee recommends that the following condition be added to the Unilateral Agreement:

Limit on Residential Units. No more than 128 dwelling or lodging units shall be developed on the Land.

Attached hereto is a proposed Unilateral Agreement (draft dated 9/4/13) submitted by the Applicant. The proposed Unilateral Agreement (U/A) reflects the foregoing conditions, including the archaeological monitoring plan condition recommended by the Planning Commission.

CITY COUNCIL
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HONOLULU, HAWAII

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Your Committee finds that the conditions recommended by the DPP and the Planning Commission to be included in a Unilateral Agreement for this rezoning, as set forth in Departmental Communication No. 504 (2013) and the Attachment thereto, and as amended in accordance with your Committee's recommendations herein, appear to be in conformance with the criteria specified in Section 21-2.80 (b) and (c), Revised Ordinances of Honolulu 1990, as amended (ROH). In particular, your Committee finds that the conditions appear to be necessary to prevent circumstances that may be adverse to public health, safety and welfare and fulfill needs directly emanating from the proposed project.

Your Committee has prepared a CD1 version of the bill that makes the following amendments:

1. Amends the Bill to state the applicable zoning district height limits.
2. Amends Exhibit A to reflect the successor Applicant, Aloha Kai Development LLC.
3. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee finds that the rezoning proposed in this Bill appears to be consistent with the General Plan and Development Plan of the City and is in the best interests of the people of the City and County of Honolulu. Your Committee plans to consider this matter further following the receipt of public testimony at the public hearing thereon to be held as required by law.

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Your Committee finds that the time needed for further consideration of Bill 44 (2013) could exceed the time limit provided for that consideration. It, therefore, recommends that Bill 44 (2013) be granted a 90-day extension of time subject to receipt of a written request from the Applicant. (Ayes: Anderson, Harimoto, Kobayashi, Menor, Pine – 5; Noes: None.)

Your Committee on Zoning and Planning is in accord with the intent and purpose of Bill 44 (2013), as amended herein (Ayes: Anderson, Harimoto, Kobayashi, Menor, Pine – 5; Noes: None.), and recommends that it pass second reading, be scheduled for a public hearing, and be referred back to Committee in the form attached hereto as Bill 44 (2013), CD1. (Ayes: Anderson, Harimoto, Menor, Pine – 4; Ayes with reservations: Kobayashi - 1; Noes: None.)

Respectfully submitted,



Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON SEP 11 2013

COMMITTEE REPORT NO. 258



A BILL FOR AN ORDINANCE

TO REZONE LAND SITUATED AT ALA MOANA, HONOLULU, OAHU, HAWAII.

BE IT ORDAINED by the People of the City and County of Honolulu.

SECTION 1. Zoning Map No. 4 (Nuuanu – McCully), Ordinance 86-107, is hereby amended as follows: Land situated at 401 Atkinson Drive, Ala Moana, Honolulu, Oahu, Hawaii, hereinafter described, is hereby rezoned 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 boundaries of said District shall be described as shown on the map attached hereto, marked "Exhibit A" and made a part hereof, and further identified as Tax Map Key: 2-3-036: 005.

SECTION 2. A Unilateral Agreement marked "Exhibit B" is by reference incorporated herein and made a part hereof.



A BILL FOR AN ORDINANCE

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION:

July 9, 2013
Honolulu, Hawaii

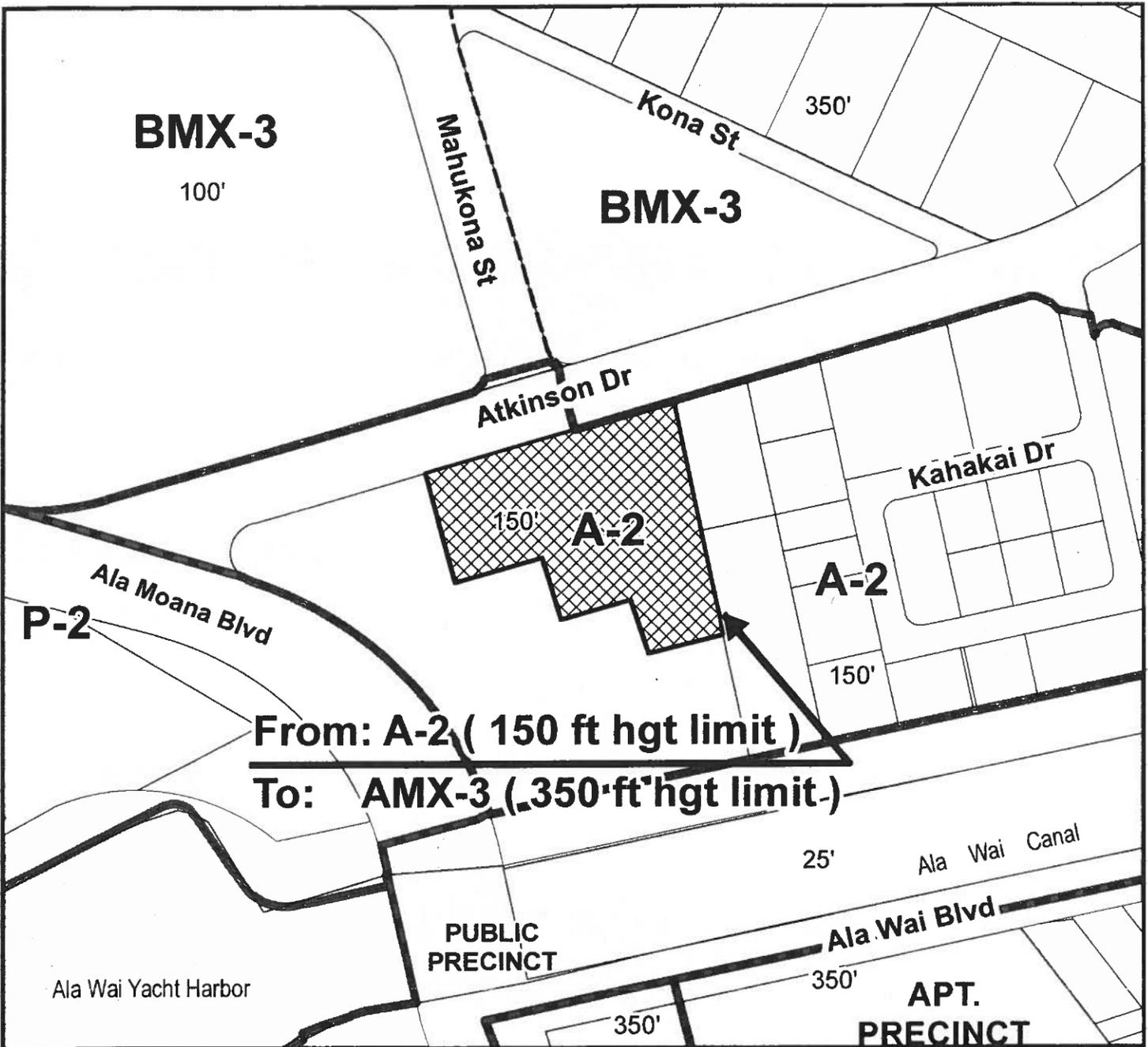
_____ Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 2013

KIRK CALDWELL, Mayor
City and County of Honolulu



**PORTION OF
ZONING MAP No. 4
(Nuuanu - McCully)**

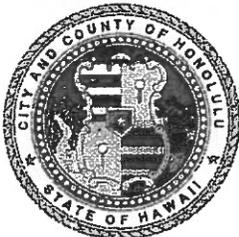
Land situated along Atkinson Drive approximately 300'
west of the Atkinson Drive / Ala Moana Blvd intersection.



0 100 200



Scale in Feet



APPLICANT: ALOHA KAI DEVELOPMENT LLC
TAX MAP KEY(S): 2-3-036:005
FOLDER NO.: 2013/Z-1
LAND AREA: 1.77 ACRES
PREPARED BY: DEPT. OF PLANNING AND PERMITTING
 CITY AND COUNTY OF HONOLULU
PUBLIC HEARING: PLANNING COMMISSION CITY COUNCIL

JUN 12 2013

ORD. NO.

2013/Z-1

EFF. DATE:

EXHIBIT A

BILL 44 (2013), CD1

EXHIBIT B
(DRAFT UNILATERAL AGREEMENT)

DRAFT
9/4/13
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]

Attachment to CR-258

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, except as provided herein. The agreement shall provide that no less than thirty percent (30%) of the total number of Project dwelling units shall be affordable rental units delivered to households with incomes not exceeding 60 percent of the area median income. The rental units shall remain affordable to such households for a period of 60 years. The rental units may be located on a site other than the Land, provided that the site is within a radius of two (2) miles from the Land.

4. Limit on Residential Units. No more than 128 dwelling or lodging units shall be developed on the Land.
5. 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.
6. 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.
7. 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.
8. 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.

9. 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.
10. 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