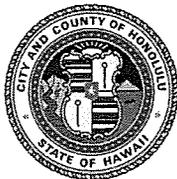


DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR



DONNA Y. L. LEONG
CORPORATION COUNSEL

SHERYL L. NICHOLSON
FIRST DEPUTY CORPORATION COUNSEL

November 1, 2013

The Honorable Ernest Y. Martin, Chair
and Members of the City Council
City and County of Honolulu
Honolulu, Hawaii 96813

Dear Council Chair Martin and Councilmembers:

Re: Bill No. 46 (2013), CD1 – Unilateral Agreement and Declaration for Conditional Zoning--Kalakaua Avenue Zone Change (2012/Z-7)

This letter is to advise you that the above-referenced Unilateral Agreement and Declaration for Conditional Zoning (hereinafter called the "Unilateral Agreement," a copy of which is attached) has been recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-8697263.

The recordation is required by Section 21-2.80, Revised Ordinances of Honolulu 1990, as amended. We have reviewed the property description and data attached to the Unilateral Agreement and conclude that the Unilateral Agreement has been recorded in the appropriate recording system (Land Court), that the property description is complete, and that the document has been signed by the proper parties.

In view of the above, we conclude that the Unilateral Agreement has been appropriately recorded as required by Section 21-2.80, Revised Ordinances of Honolulu 1990, as amended, and the Council may consider further action on Bill 46, CD1 (2013), as it deems appropriate.

Very truly yours,,

Handwritten signature of Don S. Kitaoka in black ink.

DON S. KITAOKA
Deputy Corporation Counsel

APPROVED:

Handwritten signature of Donna Y.L. Leong in black ink.

DONNA Y.L. LEONG
Corporation Counsel

DSK:ml
Attach.

13-08376/307918

DEPT. COM. 813

RECEIVED
CITY CLERK
C & C OF HONOLULU
2013 NOV -5 AM 8:14

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(Bureau of Conveyances)

The original of this document was
recorded as follows:

DOCUMENT NO. _____ Doc T-8697263
DATE _____ CT 672489
October 24, 2013 3:29 PM

LAND COURT

REGULAR SYSTEM

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

Plaza at Waikiki, LP
900 Fort Street Mall, Ste. 1188
Honolulu, Hawaii 96813

No. of Pages:11

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTY(IES) TO DOCUMENT: Hawaii Public Television Foundation
Plaza at Waikiki, LP

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

UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 23rd day of October, 2013, by the Hawaii Public Television Foundation, a Hawaii nonprofit corporation, whose address is 2350 Dole Street, Honolulu, Hawaii 96822 (hereinafter referred to as the "Declarant") and joined by Plaza at Waikiki, LP, a Hawaii limited partnership, whose address is 900 Fort Street Mall, Suite 1188, Honolulu, Hawaii 96813 ("Plaza").

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 Applicant for the zone change is MW Group, Ltd., a Hawaii corporation, whose address is 900 Fort Street Mall, Suite 1188, Honolulu, Hawaii 96813, which is an affiliate of Plaza; and

WHEREAS, Plaza has entered into a contract with the Declarant for the Declarant to convey the Land to Plaza, which 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 September 11, 2013; and

WHEREAS, the Council recommended by its Zoning and Planning Committee Report No. 293 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 or cause to be executed 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 or cause to be submitted 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, and landscape gardens 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 the Project 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 or cause to be submitted 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 or the Declarant's successor-in-interest 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 or the Declarant's successor-in-interest 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 or the Declarant's successor-in-interest 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 or the Declarant's successor-in-interest 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. Kalākaua 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. The configuration of the rear parking area adjacent to Makiki Stream should include provisions in the design to provide an additional access to the site, should a future opportunity arise to connect directly to Kapiolani Boulevard. Documentation from the Declarant, or the Declarant's successor-in-interest and/or the adjacent property owner on any future reasonable opportunity to obtain additional access should be provided periodically either every five years from the effective date of the Rezoning Ordinance or at the written request from the City. A change in ownership of the adjacent property could serve as justification for the City to request this documentation.
- 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 and Plaza acknowledge 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 or the Declarant's successor-in-interest 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 or the Declarant's successor-in-interest 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 and Plaza 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 or the Declarant's successor-in-interest, 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 PLAZA AT WAIKIKI, LP, hereby consents to and joins in this Declaration and agrees that the Land shall hereafter be subject to the covenants and conditions contained herein.

This Unilateral Agreement may be executed in counterparts.

- The remainder of this page is intentionally left blank; the next page is the signature page. -

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: HAWAII PUBLIC TELEVISION
FOUNDATION, a Hawaii nonprofit
corporation

Leslie Wilcox
Name: _____
Its President and CEO
Date 10/22/2013

CONSENT AND JOINDER BY: PLAZA AT WAIKIKI, LP, a Hawaii
limited partnership

By Its General Partner:

Plaza at Waikiki Holdings, LLC,
a Hawaii limited liability company,

Name: _____
Its _____
Date _____

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: HAWAII PUBLIC TELEVISION
FOUNDATION, a Hawaii nonprofit
corporation

Name:
Its _____
Date _____

CONSENT AND JOINDER BY: PLAZA AT WAIKIKI, LP, a Hawaii
limited partnership

By Its General Partner:

Plaza at Waikiki Holdings, LLC,
a Hawaii limited liability company,



Name: Michael B. Wood
Its Manager
Date 10/09/2013

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

On this 22nd day of October, 2013, before me personally appeared Leslie Wilcox, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).

Faauuga Sataraka
(Print or Type Name of Notary)

Faauuga Sataraka
(Signature of Notary)

Notary Public, State of Hawaii
My Commission Expires: March 4, 2016

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Unilateral Agreement and Declaration for Conditional Zoning

Doc. Date: _____ or Undated at time of notarization.

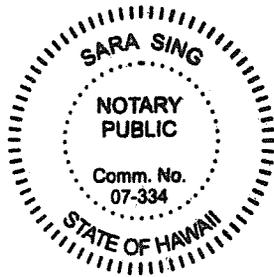
No. of Pages: 11 Jurisdiction: 1st Circuit
(in which notarial act is performed)

Faauuga Sataraka 10/22/2013
Signature of Notary Date of Notarization and Certification Statement

Faauuga Sataraka (Official Stamp or Seal)
Printed Name of Notary

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

On this 9th day of October, 2013, before me personally appeared Michael B. Wood, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



Sara Sing
(Print or Type Name of Notary)

[Signature]
(Signature of Notary)

Notary Public, State of Hawaii
My Commission Expires: 07/15/2015

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>Unilateral Agreement and Declaration for Conditional Zoning</u>
Doc. Date: _____	or <input checked="" type="checkbox"/> Undated at time of notarization.
No. of Pages: <u>11</u>	Jurisdiction: <u>First</u> Circuit (in which notarial act is performed)
<u>[Signature]</u> Signature of Notary	<u>10/09/2013</u> Date of Notarization and Certification Statement
<u>Sara Sing</u> Printed Name of Notary	 (Official Stamp or Seal)

EXHIBIT A

All of those certain parcels of land situate at Kalia and Pahoā, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS: 4, area 2,031 square feet, more or less, as shown on Map 1, and
5-A, area 26,730 square feet, more or less, as shown on Map 2,

the maps referred to above are on file in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1256;

Being land(s) described in Transfer Certificate of Title No. 672,489 issued to HAWAII PUBLIC TELEVISION FOUNDATION, a Hawaii nonprofit corporation.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : HAWAII CONVENTION CENTER PARTNERS, a Hawaii limited partnership

GRANTEE : HAWAII PUBLIC TELEVISION FOUNDATION, a Hawaii nonprofit corporation

DATED : November 6, 2003

FILED : Land Court Document No. 3023933

END OF EXHIBIT A