



A BILL FOR AN ORDINANCE

TO REZONE LAND SITUATED AT HAWAII KAI, OAHU, HAWAII

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

SECTION I. Portion of Zoning Map No. 1, Ordinance No. 86-104, land situated at Hawaii Kai, Oahu, Hawaii, hereinafter described, is hereby rezoned from A-2 Medium Density Apartment District with a 40- and 60-foot height limit to A-2 Medium Density Apartment District with a 90-foot height limit. The boundaries and area of said Districts 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: 3-9-008: 043, 044, 045, and 067.

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



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

07 - 4 1

ORDINANCE _____

BILL 47 (2007)

A BILL FOR AN ORDINANCE

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

INTRODUCED BY:

Barton Marshall (br)

DATE OF INTRODUCTIONS:

MAY 15 2007

Honolulu, Hawaii

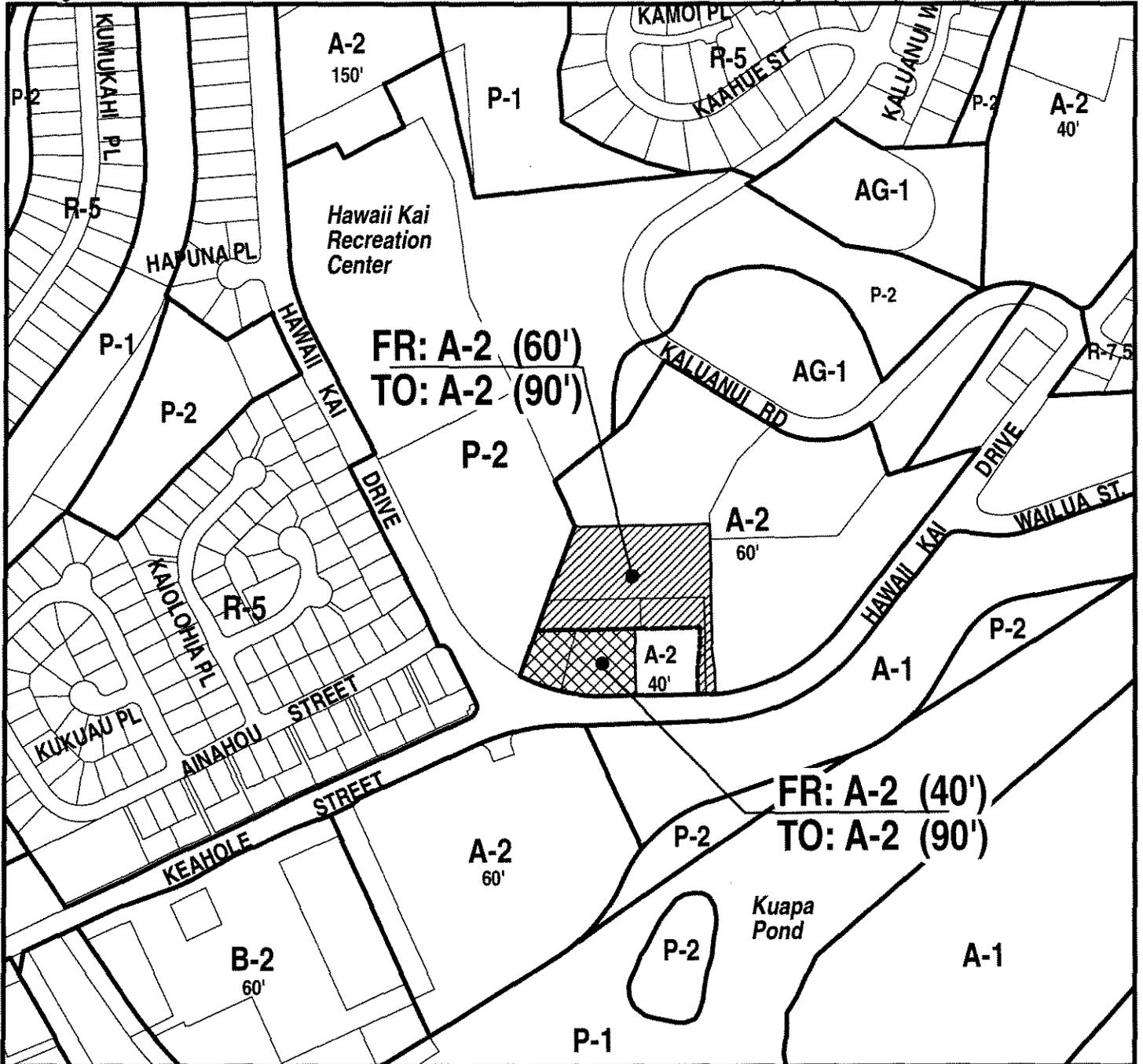
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Don S. Kitaka
Deputy Corporation Counsel

APPROVED this 29th day of October, 2007.

Mufi Hanemann
MUFU HANEMANN, MAYOR
City and County of Honolulu



PORTION OF
ZONING MAP NO. 1
 (HAWAII KAI)



0 200 400
 Scale in Feet



APPLICANT: 21ST CENTURY HOMES INC.
 TAX MAP KEY(S): 3-9-008: 043, 044, 045, 067
 FOLDER NO.: 2006/Z-15
 LAND AREA: 3.805 Ac.
 PREPARED BY: DEPARTMENT OF PLANNING & PERMITTING
 CITY AND COUNTY OF HONOLULU

ORD. NO. 07-41

PUBLIC HEARING

PLANNING COMMISSION

CITY COUNCIL

APR 18 2007

JUL 5 '07

2006/Z-11

EFF. DATE: OCT 20 2007 Exhibit A

BILL 47 (2007)

Doc 2007-183413
OCT 16, 2007 01:00 PM

LAND COURT

REGULAR SYSTEM

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

Mr. Michael Klein
21st Century Homes, Inc.
1154 Fort Street Mall, Suite 405
Honolulu, HI 96813

This document contains

pages

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTIES TO DOCUMENT:

21ST CENTURY HOMES, Inc. and WESTERN PACIFIC DEVELOPMENT, LLC

TAX MAP KEY NO.

| | | |
|-----------|-----|-------------|
| LOT 1-H | (1) | 3-9-008-043 |
| LOT 1-J-1 | (1) | 3-9-008-044 |
| LOT 1-D | (1) | 3-9-008-045 |
| LOT 1-J-2 | (1) | 3-9-008-067 |

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 16th day of October, 2007, by 21st Century Homes, Inc. ("21stCHI"), a Hawaii corporation, whose address is 1154 Fort Street Mall, Suite 405, Honolulu, Hawaii, 96813 and Western Pacific Development, LLC ("WPD"), a Hawaii limited liability company, whose address is 1003 Bishop Street, Suite 1250, Honolulu, Hawaii 96813 (hereinafter collectively referred to as the "Declarants"),

WITNESSETH:

WHEREAS, the Declarants are the owners in fee simple of those certain parcels of land situated in Maunaloa, Oahu, Hawaii consisting of approximately 3.8 acres, described as follows:

| <u>Tax Map Key No.</u> | <u>Fee Owner</u> |
|------------------------|------------------|
| (1) 3-9-008-043 | WPD |
| (1) 3-9-008-044 | 21stCHI |
| (1) 3-9-008-045 | 21stCHI |
| (1) 3-9-008-067 | 21stCHI |

and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desire to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarants plan to develop a multi-family condominium 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 Land from A-2 Medium Density Apartment District with a 40-foot and 60-foot height limit to A-2 Medium Density Apartment District with a 90-foot height limit (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 47 (2007), was held by the Council on July 5, 2007; 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 Declarants hereby jointly and severally covenant and declare as follows:

1. **Roof Stepping Pattern.** Building permit plans shall show roof heights for the building nearest Hawaii Kai Drive which start at no more than two (2) stories near the street and increase in height at least (4) times to a final height of ninety (90) feet located approximately 120 feet from the front property line.

2. **Open Space.** Prior to building permit approval, the Declarants shall submit a site plan, for review and approval, to the Department of Planning and Permitting (DPP) showing the following landscaped open space which is intended to provide a public view amenity from Hawaii Kai Drive:

- a. Along Hawaii Kai Drive, a contiguous landscaped open space that has a minimum frontage dimension of 140 feet. This open space shall have a minimum depth of 70 feet from the property line fronting Hawaii Kai Drive. Fences, waterfalls, statues and artwork, and other landscaping features may be allowed within this open space.
- b. Along the boundary between TMK:(1) 3-9-008-039, known as the Park Property, and TMK:(1) 3-9-008-043, known as the Building A Parcel, a contiguous landscape open space within the Building A Parcel that has a minimum frontage dimension of seventy-five (75) feet. This open space shall have a minimum depth of fifty (50) feet from the property line between the Park Property and the Building A Parcel. Fences, gates, waterfalls, statues and artwork, and other landscaping features may be allowed within this open space. This open space shall be oriented to allow public views of the open space from the intersection of Hawaii Kai Drive and Ainahou Street.
- c. Any perimeter fencing along Hawaii Kai Drive from the property line of Kaluanui Senior Apartments to the northwest corner of the Park Property shall be picket

or open slat style. The fence shall be set back a minimum of two (2) feet from the interior sidewalk edge with landscaping provided on the street side of the fence.

3. **Buffer Landscape and Setback.** Along the boundary between the Building A Parcel (TMK: (1) 3-9-008-043) and TMK: (1) 3-9-008-040, known as the Moana Kai Condominium Association Parcel, there shall be a five (5) foot landscape buffer strip. The landscape plan for the buffer strip shall include trees or bushes of appropriate species, size and spacing to function as an adequate buffer. Along the same boundary line there will be a twenty-four (24) foot setback from the property line for building structures. On the ground floor the Declarants will be allowed, at grade or below, fenced lanais. Declarants will also be allowed fencing, maintenance roadway, a fire roadway, gates, waterfalls, stone features, and landscaping within this setback, if permitted under the Land Use Ordinance or other government regulations.

4. **Compliance with Previous Unilateral Agreement Conditions.** All conditions of the Unilateral Agreement incorporated into Ordinance 86-88 shall remain in effect.

5. **Annual Reports.** On an annual basis, the Declarants shall submit a written status report to the DPP documenting their satisfaction of and/or describing their progress toward complying with each condition of approval for this zone change and existing Unilateral Agreement conditions affecting the Land. 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.

6. The Declarants 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 Declarants shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.

7. 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 initiate action to rezone the Land, seek civil enforcement, or take appropriate action to terminate or stop the Project until applicable conditions are met.

8. Failure to fulfill any of the conditions set forth herein may be grounds for revocation of the permits issued under this zoning and 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 Declarants 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 Declarants 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.

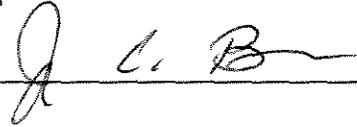
That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

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 Declarants or their 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.

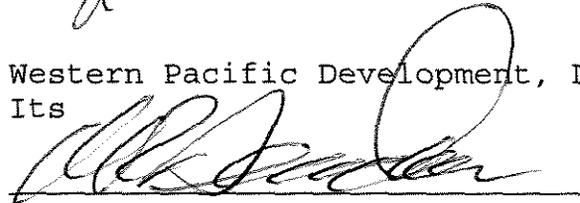
IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANTS:

21st Century Homes, Inc.
Its

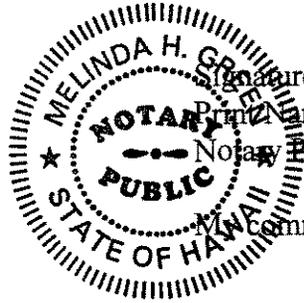


Western Pacific Development, LLC
Its



STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

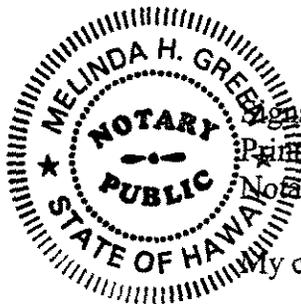
On this 16th day of October, 2007, before me personally appeared Joseph C. Brown
and _____, to me personally known, who, being by me duly sworn or
affirmed, did say that such persons executed the foregoing instrument as the free act and deed of
such persons and if applicable in the capacity shown, having been duly authorized to execute such
instrument in such capacity.



Signature: Melinda H. Green
Print Name: Melinda H. Green
Notary Public, State of Hawaii
My commission expires: 6/21/08

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 16th day of October, 2007, before me personally appeared William R. Dewcha
and _____, to me personally known, who, being by me duly sworn or
affirmed, did say that such persons executed the foregoing instrument as the free act and deed of
such persons and if applicable in the capacity shown, having been duly authorized to execute such
instrument in such capacity.



Signature: Melinda H. Green
Print Name: Melinda H. Green
Notary Public, State of Hawaii
My commission expires: 6/21/08

07-41
Exhibit A

TMK: (1)3-9-008-44

DESCRIPTION OF

LOT J-1

ALL that certain piece or parcel of land being a portion of the subdivision of Lot J, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 30 to V. Kamamalu.

Situate at Maunaloa, Honolulu, Oahu, Hawaii.

Beginning at the southeast corner of this parcel of land, the same being the southwest corner of Lot H and on the north side of Hawaii Kai Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKO HEAD 3" being 8,679.91 feet North and 3.32 feet East and thence running by azimuths measured clockwise from true South:

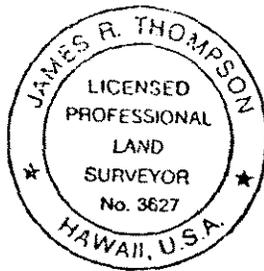
Along the north side of Hawaii Kai Drive on a curve to the right with a radius of 462.00 feet, the chord azimuth and distance being

1. 88° 54' 19.5" 1.97 feet;
2. 89° 01' 39" 20.03 feet along the north side of Hawaii Kai Drive;
3. 179° 01' 39" 63.98 feet along Lot 1-E, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
4. 185° 34' 18" 61.42 feet along Lot 1-E, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
5. 179° 01' 39" 52.00 feet along Lot 1-E, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
6. 89° 01' 39" 155.02 feet along Lot 1-E, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;

- 7. 179° 01' 39" 80.00 feet along Lot J-2, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
- 8. 269° 01' 39" 170.02 feet along Lot H, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
- 9. 359° 01' 30" 256.99 feet along Lot H, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu and containing an area of 16,917 square feet.

SUBJECT, HOWEVER, TO a portion of Easement B for Access and Utility Purposes over the easterly boundary of the above described parcel of land.

Honolulu, Hawaii
March 2, 2006



WALTER P. THOMPSON, INC.

By *James R. Thompson*
Licensed Professional
Land Surveyor 3627

TMK: (1)3-9-008-67

DESCRIPTION OF

LOT J-2

ALL that certain piece or parcel of land being a portion of the subdivision of Lot J, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 30 to V. Kamamalu.

Situate at Maunalua, Honolulu, Oahu, Hawaii.

Beginning at the southwest corner of this parcel of land, the same being the south corner of Lot G and on the north side of Hawaii Kai Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKO HEAD 3" being 8,729.45 feet North and 487.56 feet West and thence running by azimuths measured clockwise from true South:

1. 199° 57' 213.19 feet along Lot G, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
2. 269° 01' 39" 243.83 feet along Lot H, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
3. 359° 01' 39" 80.00 feet along Lot J-1, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
4. 89° 01' 39" 171.30 feet along Lot I-D, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
5. 13° 48' 50" 167.24 feet along Lot I-D, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;

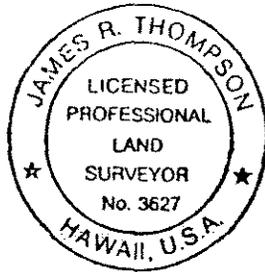
Thence along the north side of Hawaii Kai Drive on a curve to the right with a radius of 462.00 feet, the chord azimuth and distance being

6. 110° 54' 47.5"

114.20 feet to the point of beginning and containing an area of 36,618 square feet.

SUBJECT, HOWEVER, TO the Restriction of Vehicular Access along Course 6 of the above described parcel of land

Honolulu, Hawaii
March 2, 2006



WALTER P. THOMPSON, INC.

By *James R. Thompson*
Licensed Professional
Land Surveyor 3627

TMK: (1)3-9-008-43

Lot H

Being a portion of Lot A of Kaluanui Park (File Plan 2073) and Lot 1-B, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 30 to Victoria Kamamalu.

Situated at Maunaloa, Honolulu, Oahu, Hawaii.

Beginning at the Southwest corner of this parcel of land, being also the Southeast corner of Lot J and on the Northerly side of Hawaii Kai Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKOHEAD 3" being 8,679.91 feet North and 3.32 feet East, and running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|-------------|---|
| 1. | 179° 01' 39" | 256.99 feet | along Lot J, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu; |
| 2. | 89° 01' 39" | 413.85 feet | along Lot J, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu; |
| 3. | 199° 57' | 207.00 feet | along Lot G, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu; |
| 4. | 269° 01' 39" | 356.91 feet | along Lot 1-A-1, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu; |
| 5. | 359° 01' 39" | 325.35 feet | along Lots 1-F-1 and 1-F-2, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu; |
| 6. | 352° 29' | 61.42 feet | along Lot 1-F-2, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu; |
| 7. | 359° 01' 39" | 63.25 feet | along along Lot 1-F-2, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu; |

- 8. Thence along the Northerly side of Hawaii Kai Drive, on a curve to the right with a radius of 462.00 feet, the chord azimuth and distance being:
87° 17' 40" 24.01 feet to the point of beginning and containing an area of 81,179 square feet of 1.864 acres.



March 28, 2005
Honolulu, Hawaii

TMK 3-9-08: 43

Wilfred Y.K. Chin

 Wilfred Y. K. Chin
 Licensed Professional Land Surveyor
 Certificate Number 3499
 License Expires 4/06

TMK: (1)3-9-008-45

LOT 1-D

Being a portion of Lot 1 of "Kaluanui 2 and 3", being also a portion of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu.

Situate at Maunaloa, Honolulu, Oahu, Hawaii

Beginning at the Southeast corner of this parcel of land, being also the Southwest corner of Lot 1-E and on the Northerly side of Hawaii Kai Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKO HEAD 3" being 8,676.75 feet North and 182.65 feet East, and running by azimuths measured clockwise from true South:

- 1. 39° 01' 39" 80.09 feet along the Northerly side of Hawaii Kai Drive;
- 2. Thence along same, on a curve to the right with a radius of 462.00 feet, the chord azimuth and distance being: 96° 25' 14.5" 118.90 feet;
- 3. 193° 48' 50" 167.24 feet along Lot A of Kaluanui Park (File Plan 2073);
- 4. 269° 01' 39" 155.32 feet along Lot 1-C, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu;
- 5. 359° 01' 39" 177.00 feet along Lot 1-E, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu to the point of beginning and containing an area of 30,998 square feet or 0.712 acre.

November 11, 1999
Honolulu, Hawaii



Wilfred Y. K. Chin

 Wilfred Y. K. Chin
 Licensed Professional Land Surveyor
 Certificate No. 3499

CONTROLPOINT SURVEYING, INC.

1043 WONG HO LANE
Honolulu, Hawaii 96814

CITY COUNCIL
 CITY AND COUNTY OF HONOLULU
 HONOLULU, HAWAII
 CERTIFICATE

ORDINANCE ⁰⁷ - 41

BILL 47 (2007)

Introduced: 05/15/07 By: BARBARA MARSHALL (BR)

Committee: ZONING

Title: A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT HAWAII KAI, OAHU, HAWAII.

Links: [BILL 47 \(2007\)](#)
[D-402\(07\)](#)
[CR-232](#)

| | | | | | | |
|------------------------|-------------|---|-------------|--------|----------|--|
| COUNCIL | 06/06/07 | BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING. | | | | |
| | APO Y | CACHOLA Y | DELA CRUZ Y | DJOU Y | GARCIA Y | |
| | KOBAYASHI Y | MARSHALL Y | OKINO Y | TAM Y | | |
| ZONING | 06/19/07 | CR-232 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING. | | | | |
| PUBLISH | 06/23/07 | PUBLIC HEARING NOTICE PUBLISHED IN THE STAR BULLETIN. | | | | |
| COUNCIL/PUBLIC HEARING | 07/05/07 | BILL PASSED SECOND READING, CR-232 ADOPTED, PUBLIC HEARING CLOSED AND REFERRED TO ZONING COMMITTEE. (NOTE: 120 DAY EXTENSION, NEW DEADLINE 12/6/07) | | | | |
| | APO Y | CACHOLA Y | DELA CRUZ Y | DJOU Y | GARCIA Y | |
| | KOBAYASHI Y | MARSHALL Y | OKINO Y | TAM Y | | |
| PUBLISH | 07/09/07 | SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN. | | | | |
| ZONING | 09/04/07 | CR-301 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING AT THE 10/17/07 COUNCIL MEETING. (Deadline: 12/6/07) | | | | |
| COUNCIL | 10/17/07 | CR-301 ADOPTED AND BILL 47 (2007) PASSED THIRD READING. | | | | |
| | APO Y | CACHOLA Y | DELA CRUZ Y | DJOU Y | GARCIA Y | |
| | KOBAYASHI Y | MARSHALL Y | OKINO Y | TAM Y | | |

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


 DENISE C. DE COSTA, CITY CLERK


 BARBARA MARSHALL, CHAIR AND PRESIDING OFFICER