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**A BILL FOR AN ORDINANCE**

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REZONE LAND IN KAIMUKI, OAHU, HAWAII.

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

SECTION 1. Zoning Map No. 3, Moiliili - Kaimuki, Ordinance 86-106, is hereby amended as follows: Land situated at Kaimuki, Oahu, Hawaii hereinafter described, is hereby rezoned from R-5 Residential District to B-2 Community Business District with a 40-foot height limit. The boundaries and area 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 3-2-014:por. 064.

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:

Todd Apo (BR)

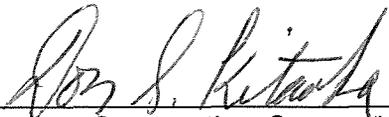
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DATE OF INTRODUCTION:

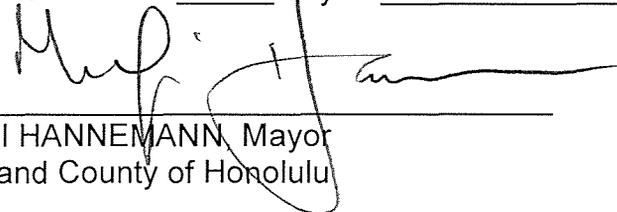
September 29, 2009  
Honolulu, Hawaii

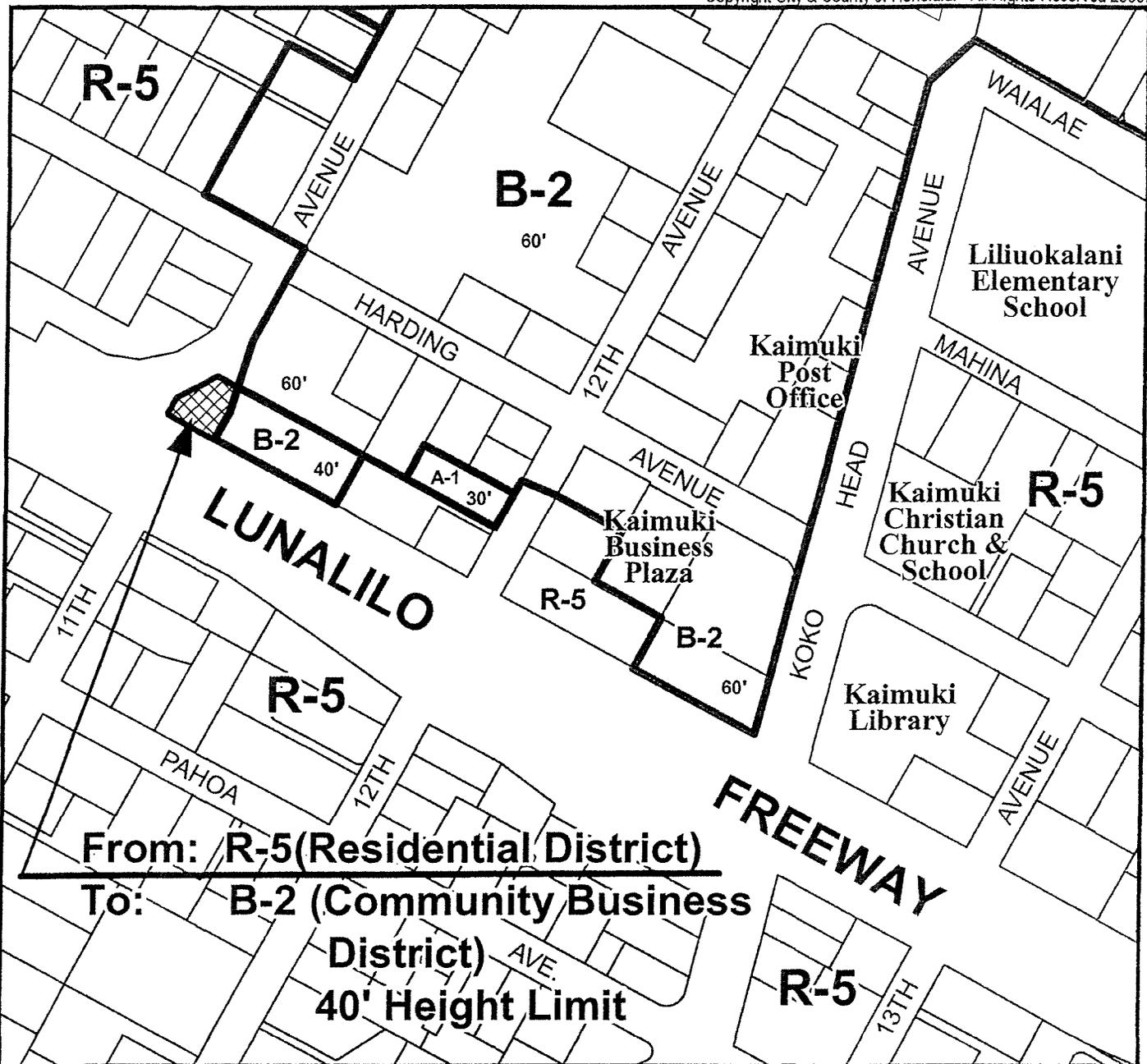
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this 31<sup>st</sup> day of December, 2009.

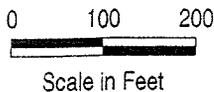
  
\_\_\_\_\_  
MUFU HANNEMANN, Mayor  
City and County of Honolulu



**From: R-5(Residential District)**  
**To: B-2 (Community Business District)**  
**40' Height Limit**

**PORTION OF ZONING MAP No. 3**  
**MOILIILI - KAIMUKI**

Land situated on 11th Avenue south of Harding Avenue and adjacent to the Lunalilo Freeway.



**APPLICANT:** MR. ROBERT E. HAZZARD  
**TAX MAP KEY(S):** 3-2-14: Por.64  
**FOLDER NO. :** 2009/Z-3  
**LAND AREA:** 4248 S.F.  
**PREPARED BY:** DEPARTMENT OF PLANNING & PERMITTING  
 CITY AND COUNTY OF HONOLULU  
**PUBLIC HEARING:** PLANNING COMMISSION

CITY COUNCIL

09-35

Sep. 09, 2009

NOV 18 2009

ORD. NO.

2009/Z-3

EFF. DATE: DEC 31 2009

EXHIBIT A

BILL 70 (2009), CD1

I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances,  
as

*Deborah Thayer*  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii

Doc 2009-189199  
DEC 11, 2009 03:29 PM

LAND COURT

REGULAR SYSTEM

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

Analytical Planning Consultants, Inc.  
928 Nuuanu Avenue, Suite 502  
Honolulu, Hawaii 96817

Page 1 of 9

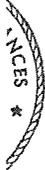
TITLE OF DOCUMENT: Unilateral Agreement and Declaration for  
Conditional Zoning

PARTY TO DOCUMENT: Robert E. Hazzard  
1039 11<sup>th</sup> Avenue  
Honolulu, Hawaii 96816

TAX MAP KEY NO. (1) 3-2-014: 064

**UNILATERAL AGREEMENT AND  
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 11<sup>th</sup> day of December, 2009, by Mr. Robert E. Hazzard, whose address is 1039 11<sup>th</sup> Avenue, Honolulu, Hawaii 96816 (hereinafter referred to as the "Declarant"),



WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Kaimuki, consisting of approximately 17,883 square feet, described as Tax Map Key No. 3-2-014:064, and more particularly described in Exhibits A and B attached hereto and made a part hereof ("Parcel 64"), and desires to make Parcel 64 subject to this Unilateral Agreement; and

WHEREAS, a portion of Parcel 64, consisting of approximately 4,248 square feet and more particularly described in Exhibit B attached hereto and made a part hereof (the "Zone Change Area") is zoned R-5 Residential District, whereas the remainder of Parcel 64 is zoned B-2 Community Business District with a 40-foot height limit; and

WHEREAS, the Declarant plans to operate a commercial business on Parcel 64 as permitted by the Land Use Ordinance (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 Zone Change Area from R-5 Residential District to B-2 Community Business District with a 40-foot height limit (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 70 (2009), was held by the Council on November 18, 2009; and

WHEREAS, the Council recommended by its Zoning Committee Report No. 381 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. Conversion. Any conversion of an existing structure to a different use will require a building permit.

2. The Declarant shall prepare a Traffic Impact Analysis Report (TIAR) for any new development or conversion in use of Parcel 64 under the B-2 District. The TIAR shall be prepared by a certified traffic engineer and submitted to the Department of Planning and Permitting (DPP) for review and approval prior to the issuance of any building permit associated with any redevelopment or conversion in use of Parcel 64.
3. Until the sewer capacity is expanded, the Declarant shall be limited to the current wastewater discharge allotment for the existing uses on Parcel 64. Any change(s) in use will require confirmation of sewage capacity from the Department of Planning and Permitting ("DPP"), prior to building permit submittal. To increase the wastewater discharge allotment for the Parcel 64, the Declarant shall be responsible for mitigating/remediating the downstream deficiencies prior to DPP approval.
4. 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. Failure to do so may result in delays in processing of further permits.
5. 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. 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 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 Parcel 64 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 Parcel 64, 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 Parcel 64 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 Parcel 64, 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.

09-35

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:

ROBERT E. HAZZARD

By Robert E. Hazard  
Robert E. Hazard  
Hazard R.E.H. ↙

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

On this 11TH day of December, 2009, before me appeared Robert E. Hazzard to me personally known, who, being by me duly sworn, did say that he is the fee owner of that certain parcel of land described in Exhibit A" and "B".

Brenda M. K. Au

Name: BRENDA M. K. AU

Notary Public of and for said State

My commission expires: MAY 17 2012

LS-

Document Date	<u>DEC 11 2009</u>	# Pages	<u>9</u>
Notary Name:	BRENDA M.K. AU	First Circuit	
Doc. Description:	<u>Unilateral Agreement and Declaration for Conditional Zoning</u>		
Notary Signature	<u>Brenda M. K. Au</u>	Date	<u>DEC 11 2009</u>

LS-

## EXHIBIT A

ALL that certain piece or parcel of land being portions of Land Patent 8165, Portion B, Land Commission Award 8559-B, Apana 32 to William C. Lunalilo and Land Patent 8188, Land Commission Award 10613, Apana 3 to A. Paki.

Situate at Kapahulu and Waialae-Iki, Honolulu, Oahu, Hawaii.

Beginning at the west corner of this parcel of land the same being the southeast corner of 11th Avenue and being on the northerly boundary of Lunalilo Freeway (Federal Aid Project F-59(2) Section "L", the coordinates of said point of beginning referred to a City and County Street Monument at the intersection of 11th and Harding Avenues being 241.14 feet South and 79.84 feet West and thence running by azimuths measured clockwise from true South:

1. 208° 31' 30" 40.55 feet along 11th Avenue;
2. 197° 02' 30" 35.15 feet along 11th Avenue;
3. 298° 31' 30" 187.20 feet along the remainder of L. P. 8165, Por. B, L. C. Aw. 8559-B, Ap. 32 to William C. Lunalilo and L. P. 8188, L. C. Aw. 10613, Ap. 3 to A. Paki;
4. 28° 31' 30" 75.00 feet along Lot 5, Block 15, Kaimuki Tract;
5. 118° 31' 30" 180.20 feet along Lunalilo Freeway (FAP No. F-59(2) Sec. "L") to the point of beginning and containing an area of 13,636 square feet.

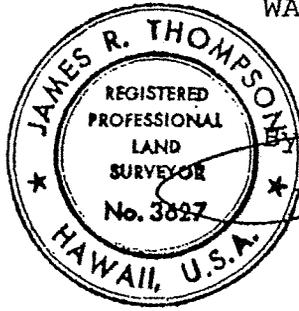
09-35

SUBJECT, HOWEVER, TO the restriction of access along course (5) five of the above described parcel of land.

SUBJECT, ALSO, HOWEVER, TO Sewer Parcel 76 along the southerly boundary of the above described parcel of land.

WALTER P. THOMPSON, INC.

Honolulu, Hawaii  
March 23, 1990



*James R. Thompson*  
Registered Professional  
Land Surveyor 3627-S

09-35

## EXHIBIT B

## PARCEL R-1

**BEING PARCELS 78 and 79, AND A PORTION OF PARCEL 73-A  
OF INTERSTATE HIGHWAY (F.A.P. NO. I-H1-1(1)) and PARCEL L-208 OF  
LUNALILO FREEWAY (F.A.P. NO. F-59 (2), SECTION L),  
BEING ALSO A PORTION OF LAND PATENT 8165, PORTION B,  
LAND COMMISSION AWARD 8559-B,  
APANA 32 TO WILLIAM C. LUNALILO  
SITUATE AT KAPAHULU, HONOLULU, OAHU, HAWAII**

Beginning at the South corner of this parcel of land, being also the West corner of Lot A and on the Northerly side of Interstate Highway (F.A.P. No. I-H1-1 (1)), the coordinates of which referred to Government Survey Triangulation Station "KAIMUKI" being 1085.78 feet North and 588.65 feet West and running by azimuths referred to Government Survey Triangulation Station "PUNCHBOWL", measured clockwise from true South:

- |    |              |            |   |
|----|--------------|------------|---|
| 1. | 118° 31' 30" | 54.99 feet | along Interstate Highway (F.A.P. No.I-H1-1 (1));  |
| 2. | 120° 46'     | 14.25 feet | along Interstate Highway (F.A.P. No.I-H1-1 (1));  |
| 3. | 208° 31' 30" | 24.49 feet | along Interstate Highway (F.A.P. No.I-H1-1 (1));  |
| 4. | 241° 50'     | 59.77 feet | along Interstate Highway (F.A.P. No.I-H1-1 (1));  |
| 5. | 298° 31' 30" | 29.41 feet | along Interstate Highway (F.A.P. No.I-H1-1 (1));  |
| 6. | 17° 02' 30"  | 35.15 feet | along Lot A, along remainder of Land Patent 8165, Portion B, Land Commission Award 8559-B, Apana 32 to William C. Lunalilo;   |
| 7. | 28° 31' 30"  | 40.55 feet | along Lot A, along remainder of Land Patent 8165, Portion B, Land Commission Award 8559-B, Apana 32 to William C. Lunalilo to the point of beginning and containing an area of 4,248 square feet. |

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

ORDINANCE **09-35**

**BILL 70 (2009), CD1**

Introduced: 09/29/09 By: TODD APO (BR)

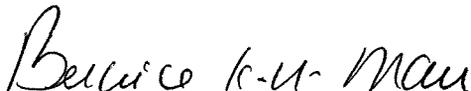
Committee: ZONING

Title: A BILL FOR AN ORDINANCE TO REZONE LAND IN KAIMUKI, OAHU, HAWAII.

Links: [BILL 70 \(2009\)](#)  
[BILL 70 \(2009\), CD1](#)  
[CR-354](#)  
[CR-381](#)

COUNCIL	10/27/09	BILL PASSED FIRST READING AND REFERRED TO ZONING COMMITTEE.				
	ANDERSON Y	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	
	GARCIA A	KOBAYASHI Y	OKINO Y	TAM A		
ZONING	11/03/09	CR-354 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.				
PUBLISH	11/07/09	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.				
COUNCIL/PUBLIC HEARING	11/18/09	CR-354 ADOPTED. BILL PASSED SECOND READING PUBLIC HEARING CLOSED AND REFERRED TO ZONING COMMITTEE.				
	ANDERSON Y	APO Y	CACHOLA A	DELA CRUZ Y	DJOU Y	
	GARCIA Y	KOBAYASHI Y	OKINO Y	TAM Y		
PUBLISH	11/25/09	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.				
ZONING	12/01/09	CR-381 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AS AMENDED IN CD1 FORM. (CURRENT DEADLINE: 12/23/09)				
COUNCIL	12/16/09	CR-381 ADOPTED AND BILL 70 (2009), CD1 PASSED THIRD READING AS AMENDED.				
	ANDERSON Y	APO Y	CACHOLA A	DELA CRUZ Y	DJOU Y	
	GARCIA Y	KOBAYASHI 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.

  
BERNICE K. N. MAU, CITY CLERK

  
TODD K. APO, CHAIR AND PRESIDING OFFICER