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**A BILL FOR AN ORDINANCE**

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TO REZONE LAND SITUATED AT KAPAHULU, HONOLULU, 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 Kapahulu, Honolulu, Oahu, Hawaii hereinafter described, is hereby rezoned from the R-3.5 Residential District to the B-1 Neighborhood Business District. The boundaries 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 3-1-001:027 and 068.

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

DPP012Z-1.B\_\_



A BILL FOR AN ORDINANCE

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

INTRODUCED BY:

Ernie Martin (b/r)

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DATE OF INTRODUCTION:

December 7, 2012  
Honolulu, Hawaii

\_\_\_\_\_  
\_\_\_\_\_

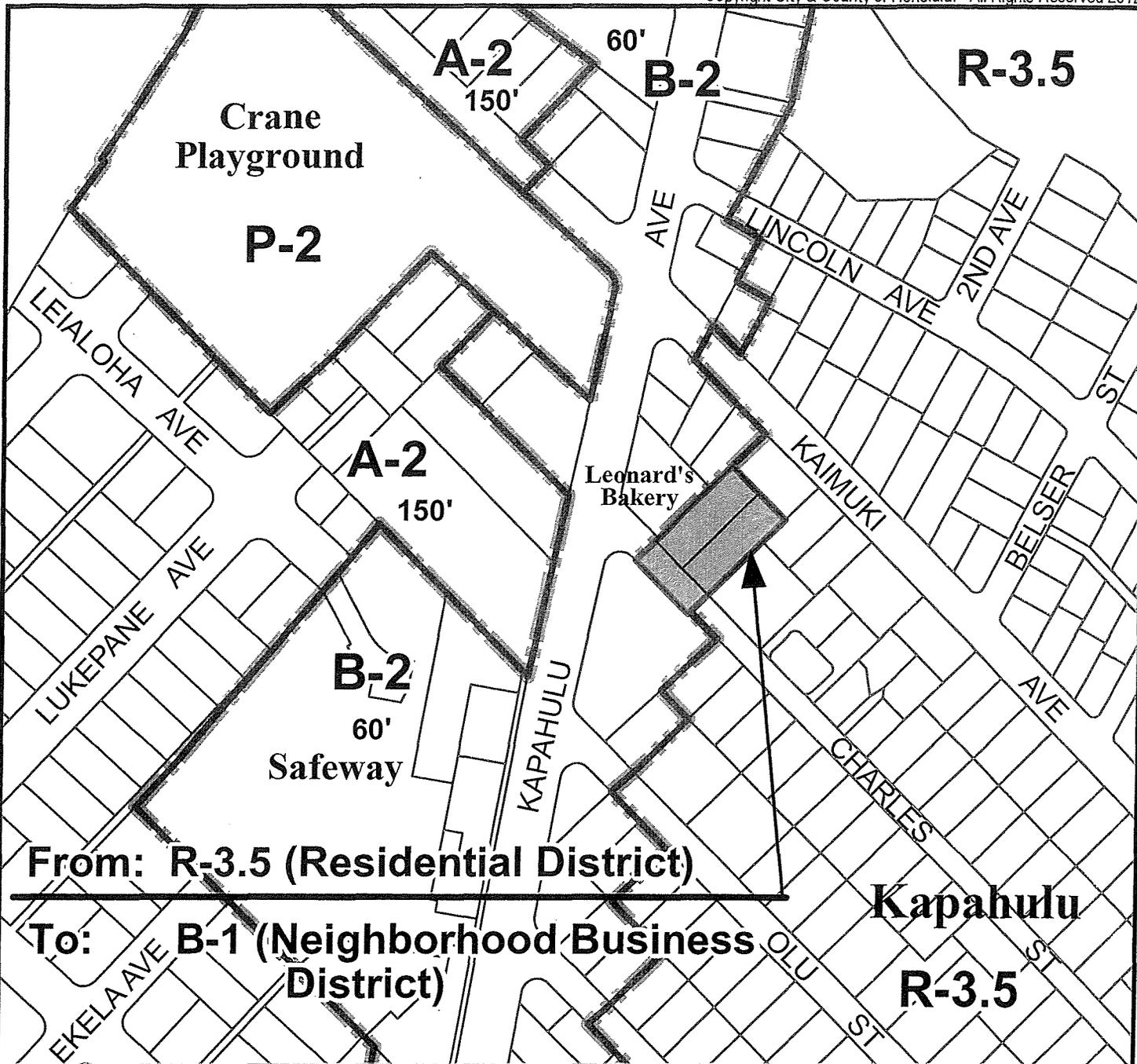
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

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

APPROVED this 19 day of April, 2013

~~PETER B. CARLISLE, Mayor~~ KIRK CALDWELL, Mayor  
City and County of Honolulu



**From: R-3.5 (Residential District)**

**To: B-1 (Neighborhood Business District)**

**Kapahulu  
R-3.5**

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

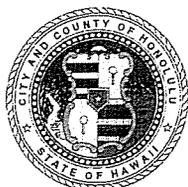
Land situated on Charles Street East of Kapaehulu Avenue and adjacent to Leonard's Bakery



0 100 200



Scale in Feet



**APPLICANT:** KEE THELMA, INC.  
**TAX MAP KEY(S):** 3-1-01: 27 & 68 and a Portion of Charles Street  
**FOLDER NO. :** 2012/Z-1  
**LAND AREA:** 17,906 S.F. (Approx.)  
**PREPARED BY:** DEPARTMENT OF PLANNING & PERMITTING  
 CITY AND COUNTY OF HONOLULU  
**PUBLIC HEARING:** PLANNING COMMISSION CITY COUNCIL

**ORD. NO.** 13-11

NOV 14 2012

FEB 20 2013 2012/Z-1

**EFF. DATE:** APR 19 2013

**EXHIBIT A**

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE\_\_ Doc A-48470809

DOCUM: April 9, 2013 3:29 PM

LAND COURT

REGULAR SYSTEM

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

Kee-Thelma, Inc.  
1533 Palolo Avenue  
Honolulu, HI 96816

Total Pages: 8

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for  
Conditional Zoning

PARTY(IES) TO DOCUMENT:

Kee-Thelma, Inc.  
1533 Palolo Avenue  
Honolulu, HI 96816

TAX MAP KEY NO. (1) 3-1-001: 027 and 068

UNILATERAL AGREEMENT AND  
DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 9th day of April, 2013, by Kee-Thelma, Inc., a Hawaii corporation, whose address is 1533 Palolo Avenue, Honolulu, HI., 96816 (hereinafter referred to as the "Declarant"),

UA Bill 76 Draft v7.

EXHIBIT B

(D-220)

**WITNESSETH:**

WHEREAS, the Declarant is the owner in fee simple of those certain parcels of land situated in Kapahulu, Honolulu, Oahu, Hawaii, consisting of approximately 14,235 square feet, described as Tax Map Key Nos. 3-1-001:027 and 068, 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 plans to develop an office and/or retail 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 Land from the R-3.5 Residential District to the B-1 Neighborhood Business District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 76 (2012), was held by the Council on February 20, 2013, and

WHEREAS, the Council recommended by its Zoning Committee Report No. 88 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 the following requirements related to traffic and transportation improvements for the Project:
  - a. The Declarant shall submit a Construction Management Plan (CMP) to the Department of Planning and Permitting (DPP) for review and approval as required prior to the issuance of demolition and/or building permits for the redevelopment of the Land. The CMP shall identify the type and frequency and routes 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 include

provisions to limit vehicular activity to periods outside the peak periods of traffic, utilize alternative routes for heavy trucks, utilize staging locations for construction workers and vehicles, and other mitigation measures related to traffic. The Declarant shall document the condition of roadways prior to the commencement of construction activities and provide remedial measures, as necessary, such as road restriping, resurfacing, and/or reconstruction if the condition of the roadways has deteriorated as a result of the construction activities.

- b. The Declarant shall submit a new Traffic Impact Analysis Report (TIAR) to the DPP for review and approval if the Project is not issued a Certificate of Occupancy within five years of the effective date of the Rezoning Ordinance; or if the site is used for a business other than office or retail, such as a fast food restaurant, which has the potential to generate a significant amount of traffic that would adversely affect area streets.
  - c. The Declarant shall consult with the DPP and the Department of Transportation Services (DTS) prior to building permit approval for the redevelopment of the Land and shall fund, construct, or cause to be constructed all necessary road widening and street improvements along the Project's frontage of Charles Street as required by DPP and DTS. Roadway improvements to the frontage of the Project shall be completed prior to the issuance of the Certificate of Occupancy for any development fronting Charles Street.
2. Relocating Solid Waste Enclosures. The Declarant shall locate outdoor solid waste enclosures away from abutting residential dwellings and Charles Street to minimize potential noise and odor impacts to adjacent residents and passersby in the Charles Street right-of-way unless the solid waste enclosure is completely enclosed.
  3. Off-Street Parking and Uses. Uses on the Land shall be limited to those which have the same or lower off-street parking standards applicable to office use.
  4. Drive-Through Facilities. Drive-through facilities shall be prohibited on the Land.

5. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction and/or describing its progress towards 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 the DPP has determined that all conditions of approval have been satisfied. Failure to do so may result in delays in processing further permits.
6. Compliance with Other Governmental Requirements. 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.
7. 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 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 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.

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:

KEE-THELMA, Inc.  
a Hawaii corporation

By *Dale E. Zane*  
Its *Vice President*  
Dale E. Zane

By \_\_\_\_\_  
Its \_\_\_\_\_

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

On 4-9-2013, before me appeared Dale E. Zane, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this 8-page **Unilateral Agreement and Declaration for Conditional Zoning** dated April 9, 2013, as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Print Name: Camille D. Adams  
Notary Public, State of Hawaii  
First Judicial Circuit

My commission expires: APR - 9 2014

*L.S.*

EXHIBIT "A"

FIRST: ALL of that certain parcel of land situated at Kapahulu, Honolulu, City and County of Honolulu, State of Hawaii, designated as LOT A, being a portion of R.P. 2576, L.C. Aw. 5873 to Kahanaumaiki, being also all of Lot 26 and a portion of Lot 5 of Block "I" of the Kapahulu Tract" File Plan 55, and more particularly bounded and described as per survey of Robert S. Torigoe, Registered Professional Surveyor, dated September 10, 1963, to-wit:

Beginning at a pipe at the South corner of this parcel of land, being also the West corner of Lot B and on the Northeast side of Charles Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIKIKI" being 93.30 feet North and 5386.80 feet East, thence running by azimuths measured clockwise from True South:

1. 134° 40' 50.69 feet along the Northeast side of Charles Street to a "→" on rock wall;
2. 223° 30' 100.18 feet along the Northeast side of Charles Street, along Lot 25 Block "I" of "Kapahulu Tract" to a nail in rock;
3. 224° 00' 40.00 feet along Lot 4, Block "I" of "Kapahulu Tract" to a "+" on rock wall;
4. 313° 45' 50.32 feet along the remainder of Lot 5 of Block "I" of "Kapahulu Tract" to a pipe;
5. 43° 30' 140.99 feet along Lot B to the point of beginning and containing an area of 7,117 square feet.

SECOND: All of that certain parcel of land situated at Kapahulu, Honolulu, City and County of Honolulu, State of Hawaii, designated as LOT B, being a portion of R.P. 2576, L.C. Aw. 5873 to Kahanaumaiki, being also all of Lot 27 and a portion of Lot 6 of Block "I" of the "Kapahulu Tract" File Plan 55, and more particularly bounded and described as per survey of Robert S. Torigoe, Registered Professional Surveyor, dated September 10, 1963, to-wit:

Beginning at a pipe at the West corner of this parcel of land, being also the South corner of Lot A and on the Northeast side of Charles Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIKIKI" being 93.30 feet North and 5386.80 feet East, thence running by azimuths measured clockwise from True South:

1. 223° 30' 140.99 feet along Lot A to a pipe;
2. 313° 45' 50.02 feet along the remainder of Lot 6, Block "I" of the "Kapahulu Tract" to a "+" on wall;

3. 43° 14' 141.80 feet along Lots 7 and 23, Block "I" of the "Kawahulu Tract" to a pipe;
4. 134° 40' 50.68 feet along the Northeast side of Charles Street to the point of beginning and containing an area of 7,118 square feet.

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

ORDINANCE **13-11**

**BILL 76 (2012), CD1**

Introduced: 12/07/12 By: ERNEST MARTIN (BR)

Committee: ZONING AND PLANNING

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

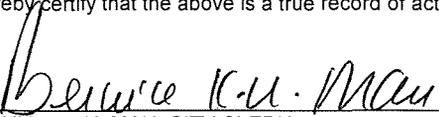
Links: [BILL 76 \(2012\)](#)  
[BILL 76 \(2012\), CD1](#)  
[CR-41 \(2013\)](#)  
[CR-88 \(2013\)](#)

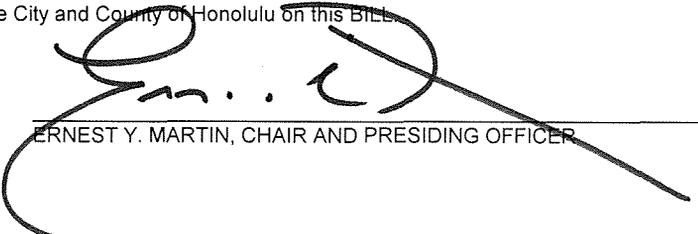
Voting Legend: Y= Aye, Y\* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

NOTE: COUNCILMEMBERS MANAHAN, MENOR AND PINE TOOK OFFICE ON WEDNESDAY, JANUARY 2, 2013

COUNCIL	01/30/13	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING AND PLANNING.				
		ANDERSON Y	CHANG Y	FUKUNAGA Y	HARIMOTO Y	KOBAYASHI Y
		MANAHAN Y	MARTIN Y	MENOR Y	PINE Y	
PUBLISH	02/09/13	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.				
ZONING AND PLANNING	02/14/13	CR-41(13) – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AS AMENDED IN <u>CD1</u> FORM AND SCHEDULING OF A PUBLIC HEARING.				
COUNCIL/PUBLIC HEARING	02/20/13	CR-41(13) ADOPTED. BILL PASSED SECOND READING AS AMENDED, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING AND PLANNING.				
		ANDERSON Y	CHANG Y	FUKUNAGA Y	HARIMOTO Y	KOBAYASHI Y
		MANAHAN Y	MARTIN Y	MENOR Y	PINE Y	
PUBLISH	02/25/13	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.				
ZONING AND PLANNING	03/28/13	CR-88(13) – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.				
COUNCIL	04/17/13	CR-88(13) ADOPTED AND BILL 76 (2012), CD1 PASSED THIRD READING.				
		ANDERSON Y	CHANG Y	FUKUNAGA Y	HARIMOTO Y	KOBAYASHI Y
		MANAHAN Y	MARTIN Y	MENOR Y	PINE 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

  
ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER