DRAFT
5-7-21
Bill 94 (2020)
Proposed UA

LAND COURT | **REGULAR SYSTEM**

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

Lyons Law LLLC
1110 Nuuanu Avenue
Honolulu, Hawaii 96817

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for Conditional Zoning

PARTY(IES) TO DOCUMENT:

Lily Katherine Hatsuko Ochoco
Garret Isao Watanabe
Carolyn Akemi Ochoco Watanabe
Wayne Tetsuo Okubo, Trustee of the Wayne Tetsuo Okubo Revocable Living Trust dated April 22, 2015
Ann Shirai Okubo, Trustee of the Ann Shirai Okubo Revocable Living Trust dated April 22, 2015

TAX MAP KEY NOS. (1) 2-8-030:038 & (1) 2-8-030:058

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this _____ day of _____, 2021, by LILY KATHERINE HATSUKO OCHOCO, unmarried, whose mailing address is 2835 Dole Street, Honolulu, Hawaii 96816; GARRET ISAO WATANABE and CAROLYN AKEMI OCHOCO WATANABE, husband and wife, whose mailing address is 2835 Dole Street, Honolulu, Hawaii 96816; and WAYNE TETSUO OKUBO, Trustee of the Wayne Tetsuo Okubo Revocable Living Trust dated April 22, 2015, and ANN SHIRAI OKUBO, Trustee of the Ann Shirai Okubo Revocable Living Trust dated April

22, 2015, whose mailing address is 2829 Dole Street, Honolulu, Hawaii 96816 (hereinafter referred to as the "Declarants"),

WITNESSETH:

WHEREAS, Lily Katherine Hatsuko Ochoco and Garret Isao Watanabe and Carolyn Akemi Ochoco Watanabe are co-owners holding fee simple title in and to that certain real property located at 2835 Dole Street, Honolulu, Hawaii 96816, TMK No. (1) 2-8-030:038, and more particularly described in Exhibit A attached hereto and made a part hereof;

WHEREAS, Wayne Tetsuo Okubo, Trustee aforesaid, and Ann Shirai Okubo, Trustee aforesaid, hold fee simple title in and to that certain real property located at 2829 Dole Street, Honolulu, Hawaii 96816, TMK No. (1) 2-8-030:058, and more particularly described in Exhibit B attached hereto and made a part hereof;

WHEREAS, the properties located at 2835 Dole Street, Honolulu, Hawaii 96816, TMK No. (1) 2-8-030:038 and 2829 Dole Street, Honolulu, Hawaii 96816, TMK No. (1) 2-8-030:058 shall collectively be referred to as the ‘‘Land’’;

WHEREAS, Declarants desire to make the Land subject to this Agreement;

WHEREAS, Declarants seek a rezoning of the Land to remove the nonconforming status of the residential use and structures thereon; the Declarants are not proposing any new structures on or new uses of the Land; 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 P-2 General Preservation District to the R-5 Residential District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 94 (2020), was held by the Council on _____, 2021; and

WHEREAS, the Council recommended by its Zoning and Planning Committee Report No. _____ (2021) 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, Declarants hereby covenant and declare as follows:

1. Compliance with Conditions. The owners of the parcel identified as TMK No. (1) 2-8-030:038 shall submit to the Department of Planning and Permitting for review and approval a draft superseding Declaration of Restrictive Covenant that removes the condition set forth in the Declaration of Restrictive Covenant, recorded with the Bureau of Conveyances of the State of Hawaii on August 30, 1996, as Document No. 96-126147. Upon approval of the superseding Declaration of Restrictive Covenant by the Department of Planning and Permitting, the owners of the parcel identified as TMK No. (1) 2-8-030:038 shall record the document with the Bureau of Conveyances of the State of Hawaii and the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and submit conforming copies of the recorded documents to the Department of Planning and Permitting.

2. Compliance With Other Governmental Requirements. The Declarants acknowledge that approval of the zone change does not constitute compliance with 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.

3. Annual Reports. On an annual basis, the Declarants shall submit a written status report to the Department of Planning and Permitting 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 Department of Planning and Permitting by December 31 of each year until such time as the Department of Planning and Permitting has determined that all conditions of approval have been satisfied.

4. Noncompliance With 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 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.

[REMAINDER OF THIS PAGE LEFT BLANK; SIGNATURE PAGES TO FOLLOW]

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

LILY KATHERINE HATSUKO OCHOCO

GARRET ISAO WATANABE

CAROLYN AKEMI OCHOCO WATANABE

WAYNE TETSUO OKUBO, Trustee aforesaid

ANN SHIRAI OKUBO, Trustee aforesaid

STATE OF ***HAWAI'I***)
) SS.
CITY AND COUNTY OF HONOLULU)

On _____, 2021, before me personally appeared **LILY KATHERINE HATSUKO OCHOCO**, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Print name: _____
Notary Public, State of ***Hawai'i***
My commission expires: _____

Date of Doc: _____	No. of Pages: _____
Name of Notary: _____	Notes: _____
Doc. Description: Unilateral Agreement and Declaration for Conditional Zoning	(stamp or seal)
Notary Signature Date:	
First Circuit, State of Hawai'i	
N O T A R Y C E R T I F I C A T I O N	

STATE OF ***HAWAI'I***)
) SS.
CITY AND COUNTY OF HONOLULU)

On _____, 2021, before me personally appeared **GARRET ISAO WATANABE,** to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Print name: _____
Notary Public, State of ***Hawai'i***
My commission expires: _____

Date of Doc: _____	No. of Pages: _____
Name of Notary: _____	Notes: _____
Doc. Description: Unilateral Agreement and Declaration for Conditional Zoning	(stamp or seal)
Notary Signature Date	
First Circuit, State of Hawai'i	
N O T A R Y C E R T I F I C A T I O N	

STATE OF ***HAWAI'I***)
) SS.
CITY AND COUNTY OF HONOLULU)

On _____, 2021, before me personally appeared **CAROLYN AKEMI OCHOCO WATANABE,** to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Print name: _____
Notary Public, State of ***Hawai'i***
My commission expires: _____

Date of Doc: _____	No. of Pages: _____
Name of Notary: _____	Notes: _____
Doc. Description: Unilateral Agreement and Declaration for Conditional Zoning	(stamp or seal)
Notary Signature Date	
First Circuit, State of Hawai'i	
N O T A R Y C E R T I F I C A T I O N	

STATE OF ***HAWAI'I***)
) SS.
CITY AND COUNTY OF HONOLULU)

On _____, 2021, before me personally appeared **WAYNE TETSUO OKUBO**, Trustee aforesaid, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Print name: _____
Notary Public, State of ***Hawai'i***
My commission expires: _____

Date of Doc: _____	No. of Pages: _____
Name of Notary: _____	Notes: _____
Doc. Description: Unilateral Agreement and Declaration for Conditional Zoning	(stamp or seal)
Notary Signature Date	
First Circuit, State of Hawai'i	
N O T A R Y C E R T I F I C A T I O N	

STATE OF ***HAWAI'I***)
) SS.
CITY AND COUNTY OF HONOLULU)

On _____, 2021, before me personally appeared **ANN SHIRAI OKUBO**, Trustee aforesaid, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Print name: _____
Notary Public, State of ***Hawai'i***
My commission expires: _____

Date of Doc: _____	No. of Pages: _____
Name of Notary: _____	Notes: _____
Doc. Description: Unilateral Agreement and Declaration for Conditional Zoning	(stamp or seal)
Notary Signature Date First Circuit, State of Hawai'i **N O T A R Y C E R T I F I C A T I O N**	

EXHIBIT A

All of that certain parcel of land situate at Kalaepohaku, Honolulu, City and County of Honolulu, State of Hawai‘i, described as follows:

LOT 5-A, area 4,912 square feet, more or less, as shown on Map 6, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai‘i with Land Court Application No. 1412 of Clarence Chuck Tan Loo and Sun Luke Loo, widow;

TOGETHER WITH Easements ‘‘R’’ and ‘‘S,’’ as shown on Map 21, across Lot 82, as shown on Map 13, for a pedestrian right-of-way, as set forth by Land Court Order No. 15845.

Being the land described in Transfer Certificate of Title No. 306,048 issued to Lily Katherine Hatsuko Ochoco and Garret Isao Watanabe and Carolyn Akemi Ochoco Watanabe, and also being the premises described in Warranty Deed dated November 27, 1987, filed in said Office as Land Court Document No. 1516413.

SUBJECT, HOWEVER, to the following:

1. Any and all real property taxes assessed for the current tax year but not yet due and payable.

2. Designation of Easement ‘‘P’’ as shown on Map 6, as set forth by Land Court Order No. 7526, filed June 27, 1947.

3. Grant to the City and Court of Honolulu dated October 4, 1947, filed in said Office as Land Court Document No. 97334, granting as easement over said Easement ‘‘P.’’

4. Designation of Easement ‘‘W’’ as show on Map 31 as set forth by Land Court Order No. 90292 filed June 24, 1988.

5. Grant to the City and County of Honolulu dated March 23, 1988, filed in said Office as Land Court Document No. 1563265, granting an easement over said Easement ‘‘W.’’ Consent given by AMERICAN SAVINGS BANK, F.S.B., a federal savings bank by instrument dated May 4, 1988, filed in said Office as Land Court Document No. 1563266.

6. The terms and provisions, including the failure to comply with any covenants, conditions, and reservations, contained in Declaration dated August 29, 1996, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-126147.

EXHIBIT B

All of that certain parcel of land situate at Kalaepohaku, Honolulu aforesaid, described as follows:

LOT 5-B, area 4,920.0 square feet, as shown on Map 6, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1412 of Clarence Chuck Tan Loo and Sun Luke Loo, widow;

TOGETHER with an easement over Lot 2 as shown on Map 1, filed with said Land Court Application No. 1412 as reserved in that certain deed to Hawaiian Trust Company, Limited, Trustee, dated July 14, 1944, filed as Document No. 74129.

Being all of the land described in Transfer Certificate of Title No. 1,094,164 issued to Wayne Tetsuo Okubo and Ann Sachiko Shirai Okubo.

SUBJECT, HOWEVER, to any and all encumbrances of record.

END OF EXHIBIT B