
DECLARATION OF RESTRICTIVE COVENANTS AND UNILATERAL
AGREEMENT FOR ISSUANCE OF CONDITIONAL USE PERMIT UNDER
SECTION 21-5.380 OF THE LAND USE ORDINANCE

THIS DECLARATION OF RESTRICTIVE COVENANTS AND
UNILATERAL AGREEMENT FOR ISSUANCE OF CONDITIONAL USE PERMIT
UNDER SECTION 21-5.380 OF THE LAND USE ORDINANCE (“Declaration and
Agreement”) is made this _____ of _____, 20_____, by
_____ (“Declarant”), to bind the Declarant
and its successors in interest to maintain a pattern of development that will
conform to the applicable zoning regulations in the City and County of Honolulu
(the “City”) Land Use Ordinance (“LUO”) and assure the future protection of the
public interest.

I. BACKGROUND

A. Declarant is the owner in fee simple of those certain parcels of real
property described in Exhibits “A” and “B,” attached hereto and made a part

hereof. The parcel of real property described in Exhibit "A" is hereinafter referred to as "Property A," the parcel of real property described in Exhibit "B" is hereinafter referred to as "Property B," and Properties A and B are hereinafter collectively referred to as the "Properties."

B. Property A and Property B are separate subdivision lots and separate zoning lots, as both terms are used in the LUO; they are located adjacent to one another.

C. Revised Ordinances of Honolulu ("ROH") Section 21-5.380 permits an owner of two or more adjacent subdivision lots to apply for a Conditional Use Permit (minor) to allow the joint development of the adjacent subdivision lots as one zoning lot.

D. Declarant believes that the joint development of the Properties will result in a more efficient use of land, and, therefore, wishes to avail itself of the benefits of joint development pursuant to ROH Section 21-5.380.

E. ROH Section 21-5.380 requires an applicant for a Conditional Use Permit (minor) for joint development to submit an agreement to the Director of the City Department of Planning and Permitting (the "Director") which binds the applicant to maintain a pattern of development that will comply with all applicable zoning regulations.

F. Pursuant to ROH Section 21-5.380, Declarant makes this Agreement and Declaration affecting the Properties as more particularly set forth herein below, and declares that the restrictions herein are encumbrances on the title of the Properties and shall run with the land for as long as Conditional Use Permit No. _____ ("CUP") and this Agreement and Declaration are in effect.

II. DECLARATIONS

Declarant hereby unilaterally declares, acknowledges, and agrees as follows:

A. Incorporation by reference. All of the statements, declarations, and background information above are hereby specifically incorporated herein as declarations and material terms of this Declaration and Agreement.

B. Purpose. The purpose of this Declaration and Agreement is to obligate the Declarant and the Declarant's successors in interest to maintain a pattern of development that will conform to the applicable zoning regulations of the LUO and assure the future protection of the public interest. All references to the Declarant herein shall apply to both the Declarant and the Declarant's successors in interest, including any person or entity claiming title to any of the Properties through Declarant.

C. Governing law. This Agreement and Declaration shall be governed, construed, and enforced in accordance with the LUO and the laws of the State of Hawai'i. To the extent that there are questions regarding the appropriate interpretation of the LUO in relation to this Declaration and Agreement, the opinion of the Director shall be granted deference.

D. Ambiguities. The language of this Declaration and Agreement shall be interpreted in accordance with its fair meaning and in light of its purpose. Any ambiguities or questions concerning this Declaration and Agreement shall be resolved in favor the public interest, as determined by the Director, and in favor of requiring the Declarant and its successors in interest to strictly comply with the LUO and the CUP.

E. Scope and effect. This Declaration and Agreement is made pursuant to ROH Section 21-5.380, relating to the joint development of two (2) or more adjacent subdivision lots. Upon issuance of the CUP, this Declaration and Agreement, together with the CUP shall cause the Properties to be considered and regulated as one zoning lot for the purposes of zoning and development under the LUO.

F. Use and development of the Properties. Upon issuance of the CUP, the Properties will be regulated as one zoning lot for the purposes of zoning and development under the LUO and shall be maintained in strict compliance with the LUO, this Declaration and Agreement, and the CUP.

G. Preconditions to permitting and development. A copy of this Declaration and Agreement shall be filed with any application to the City for permits or approvals concerning the Properties. Any permits or approvals affecting the Properties that are issued by the City based on an application or request that does not include a copy of this Declaration and Agreement may be deemed invalid *ab initio* by the City and may be immediately suspended or revoked by the City.

H. Responsibility for governmental requirement and conditions. Any party claiming an interest in any of the Properties will be jointly and severally responsible for complying with any and all governmental regulations affecting the Properties. As such, all parties claiming an interest in any of the Properties will be jointly and severally responsible for fulfilling any and all requirements imposed by governmental entities affecting any of the Properties regardless of whether such requirements arise from statutes, ordinances, administrative rules, or the conditions of a government-issued permit. To the extent that parties claiming an interest in any of the Properties attempt to allocate or apportion development rights or the responsibility for complying with government regulations, requirements, or permit conditions, such agreements shall have no effect as to any governmental entity that has not provided its written approval of such apportionment or allocation.

I. Results of noncompliance. In addition to criminal, civil, and administrative penalties authorized by law, the Director may, at his or her sole discretion, revoke any permits or approvals for structures or land uses on any of the Properties if the Properties are not developed and maintained in strict compliance with the LUO, this Declaration and Agreement, and the CUP. Permits and approvals subject to revocation under this provision specifically include, but are not limited to, any building permits for structures on any of the Properties and the CUP.

J. Joint and several liability for violations. Any and all parties claiming an interest in any of the Properties will be jointly and severally culpable and liable for any and all violations of governmental regulations occurring on or arising from

any of the Properties, whether such regulations arise from statutes, ordinances, administrative rules, or government-issued permits or approvals. Therefore, any and all parties claiming an interest in any of the Properties will be jointly and severally liable for any and all fines and penalties for violations of governmental regulations insofar as they arise from or occur on any of the Properties.

Pursuant to this Declaration and Agreement, all persons claiming an interest in any of the Properties will be subject to the same liability for violations and penalties that would otherwise exist if they were the sole owner of the Properties, regardless of whether the violations are of criminal, civil, or administrative laws.

K. Covenant running with the land. This Declaration and Agreement shall be a covenant running with the land, binding and inuring to the benefit of the Declarant, the Declarant's successors in interest, and any person claiming an interest in any of the Properties by, through or under the same.

L. Recordation required. Within thirty (30) days of the issuance of the CUP, the Declarant shall record a copy of this Declaration and Agreement in the Bureau of Conveyances of the State of Hawai'i (the "Bureau") or the Office of the Assistant Registrar of the Land Court of the State of Hawai'i (the "Land Court"), as appropriate. If title to any of the Properties is registered with the Land Court and title to any of the Properties is also unregistered with the Land Court, a copy of this Declaration and Agreement shall be recorded in both the Bureau and the Land Court. Recordation of this Declaration and Agreement in the Bureau or the Land Court, as appropriate, shall constitute constructive notice to Declarant's successors in interest of this Declaration and Agreement.

M. Notice upon conveyance. Any party attempting to convey, contract for, or otherwise dispose of or transfer an interest in any of the Properties, whether by lease, sale, or otherwise shall provide a copy of this Declaration and Agreement to prospective purchasers, lessees, and successors in interest prior to executing any such lease or conveyance.

N. Consent to modification or termination required. This Declaration and Agreement shall not be amended, modified, terminated, extinguished, or canceled without the express written approval of the Director.

O. Effect of termination. Upon termination of this Declaration and Agreement, the CUP shall become null and void and each of the Properties shall be considered individual zoning lots for the purposes of zoning and development under the LUO. As such, upon termination of this Declaration and Agreement, each party claiming an interest in any of the Properties will be responsible for ensuring that land uses and structures affecting their property interest comply with all applicable statutes, ordinances, administrative rules and permits issued by governmental entities. The termination of this Agreement shall not give rise to any claim that any structure or use on any of the Properties is a nonconforming structure or land use within the meaning of the LUO. Therefore, prior to the termination of this Declaration and Agreement, the Director may require the abatement of any violations of applicable statutes, ordinances, administrative rules and permits or any improvement, feature, or use of any of the Properties that would constitute such a violation when each of the Properties is treated as a separate zoning lot without compensation to any person or entity claiming an interest in any of the Properties or person or entity claiming an interest in any structure or land use on any of the Properties. Structures and land uses that may be subject to abatement as provided herein include, but are not limited to structures and land uses that encroach into required setbacks or cross the boundaries of subdivision lots or zoning lots; structures or land uses that do not comply with applicable development standards or permitting requirements upon termination of this Declaration and Agreement; and structures or land uses that violate any statute, ordinance, administrative rule, or the condition of a government-issued permit.

P. Right to enforce. The City shall have the right to enforce this Declaration and Agreement by any means necessary, including an appropriate action at law or in equity against any party claiming an interest in any of the Properties. In addition, any violation of this Declaration and Agreement or the CUP shall be a violation of ROH Section 21-2.150, as amended, and subject to criminal enforcement as provided for by ROH Section 21-2.150-1 and civil enforcement as provided for by ROH Section 21-2.150-2.

Q. Agent for service. If more than one party claims a property interest in any of the Properties, all parties claiming an interest in any of the Properties shall designate a common agent, authorized to accept legal notices and service of process on behalf of all persons claiming an interest in any of the Properties (“Agent”). The name, address, telephone number, and email address for the Agent shall be provided to the Director in writing and kept current at all times. The service of legal notices and process upon the Agent shall be effective as to all persons claiming an interest in any of the Properties at the time of service and their successors in interest.

Dated: _____

By _____

Print Name: _____

Position or Title _____

APPROVED

Deputy Corporation Counsel

Note: As required by the Bureau of Conveyances and/or Land Court, all individual names in instruments presented shall be typewritten, stamped or printed beneath all signatures. No discrepancy in any name shall exist between the printed name, as it appears in the body of the instrument and in the notary's certificate of acknowledgement.

Note: *Attach the following to the above agreement:*

1. *Notary certificate of acknowledgement for each Party member.*
2. *An **unexecuted** notary certificate of acknowledgement for the Director of Planning and Permitting, see sample below.*
3. *Exhibits (lot descriptions), labeled.*

