

**SOLICITATION DOCUMENT NO. RFQ-DHLM-25-03**



**NOTICE TO OFFERORS  
REQUEST FOR QUALIFICATIONS**

**Description:** Redevelopment of City-Owned Property  
Kapolei Parkway

**Request Agency:** Department of Housing and Land Management ("DHLM")  
City & County of Honolulu ("City")

**RFQ Responses:** Shall be received no later than:


Close Time: 1:00 PM HST

Close Date: Friday, July 25, 2025

Location: Department of Housing and Land Management  
650 South King Street, 3rd Floor  
Honolulu, Hawai'i 96813

**NON-MANDATORY PRE-PROPOSAL CONFERENCE:** A non-mandatory Pre-Proposal conference will be held electronically on Friday, June 13, 2025, from 3:00 PM – 3:30 PM HST. Please see Notice to Offerors – Special Instructions to Offerors, Section 6 for additional information. Prospective Offerors are encouraged to attend this conference, but attendance is not mandatory. The purpose of this meeting is to familiarize potential Offerors with the scope of the project and to answer questions regarding the requirements of this RFQ. Prospective Offerors should review the RFQ and associated documents, and are encouraged to submit written questions, in advance of this conference.

**QUESTIONS:** Questions relating to this solicitation shall be emailed to [dhlm@honolulu.gov](mailto:dhlm@honolulu.gov) by the deadline indicated in the Notice to Offerors – Schedule of Events.

  
KEVIN D. AUGER,  
Department of Housing and Land Management,  
Director Designate

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## NOTICE TO OFFERORS – SCHEDULE OF EVENTS

All times indicated are Hawai'i Standard Time ("HST").

Non-Mandatory Pre-Proposal Conference at: Join from the meeting link <a href="https://cchnl.webex.com/meet/landmanagement">https://cchnl.webex.com/meet/landmanagement</a>  Meeting number 968 899 681  Video address <a href="mailto:landmanagement@cchnl.webex.com">landmanagement@cchnl.webex.com</a>  Audio connection United States Toll +1-408-418-9388 United States Toll (Los Angeles) +1-213-306-3065  Access code 968 899 681	June 13, 2025 3:00 PM – 3:30 PM
Deadline for Written Requests for Clarifications, Interpretations, and Exceptions:  Written requests shall be emailed to: <a href="mailto:dhlm@honolulu.gov">dhlm@honolulu.gov</a>  <b>Subject header must read: RFQ-DHLM-25-03</b>	June 27, 2025 3:00 PM
Deadline to Post Final Amendment:	July 7, 2025 3:00 PM
Submittal Deadline:	July 25, 2025 1:00 PM

## EXECUTIVE SUMMARY

Opportunity	<p>The City seeks to enter into a public-private partnership to redevelop City-owned land along Kapolei Parkway (the “Property”), by a qualified person(s) or firm(s) who meet the qualifications described herein (each, an “Offeror”). At its sole discretion, the City may select an Offeror to redevelop the Property. The City and the Offeror may enter into a pre-development contract, and will enter into a development contract and ground lease for the design, financing, construction, and operation of a future mixed-use, transit-oriented development project with a significant affordable housing component on the Property.</p>
Authority	<p>The City is issuing this RFQ pursuant to authority granted under the Twelfth Proclamation Related to Affordable Housing, issued pursuant to the emergency powers conferred on the Governor of the State of Hawai‘i under Chapter 127A, Hawai‘i Revised Statutes (“HRS”).</p> <p>Offerors to this RFQ are charged with presumptive knowledge of all requirements of the cited authorities and other applicable regulations. Submission of a valid submittal by any Offeror shall constitute admission of such knowledge on the part of such Offeror.</p> <p>All provisions of the General Instructions to Offerors (the “General Instructions”) and/or General Terms and Conditions (the “GTC”) shall apply to the RFQ, except to the extent that any requirement, condition, or procedure in the General Instructions/GTC relies upon or is meant to conform with Hawai‘i Revised Statutes 103D, Hawai‘i Administrative Rules Title 3, or any other state procurement law. The limited applicability of the General Instructions/GTC expressed herein acknowledges and confirms that state procurement statutes and rules shall not apply to the RFQ. Any reference in the General Instructions/GTC which cites the Division of Purchasing, Department of Budget and Fiscal Services (“BFS”) shall hereby be amended to reference the Department of Housing and Land Management and any section of the General Instructions which directs prospective Offerors to contact BFS for requests shall be amended to direct prospective Offerors to contact the Department of Housing and Land Management (“DHLM”) at <a href="mailto:dhlm@honolulu.gov">dhlm@honolulu.gov</a>. If notice or a deliverable to the City is required by the GTC, then it shall be made to DHLM. In accordance with Section 1.2 of the General Instructions and Section 1.2 of the GTC, the RFQ’s provisions shall govern in the event they conflict with the General Instructions and/or the GTC.</p>
Property	<p>The Property, identified by TMK (1) 9-1-160:064 (por.), includes the development areas commonly referred to as Lots 2, 3, 4, and 5, as shown in Appendix C (Development Area Map).</p> <p>The Property has been subdivided into two separate lots:</p> <ul style="list-style-type: none"> <li>• The lots commonly referred to as Lots 2 and 3 are identified as Lot 1 (7.404 acres) as shown on the map (Subdivision No. 2013/SUB-24 approved on August 29, 2014), attached as Appendix D.</li> <li>• The lots commonly referred to as Lots 4 and 5 are identified as Lot 3-A (7.788 acres) as shown on the map (Subdivision No. 2020/SUB-82</li> </ul>



	<p>approved on April 30, 2021), attached as Appendix D.</p> <p>The Property to be offered by and through this RFQ shall be subject to certain reservations of land to be identified by the City in its absolute and sole discretion, but generally such reservations shall be for future roadways, pedestrian connections, and to otherwise facilitate the potential high-capacity transit station development along the Kapolei Parkway corridor to the planned future Kapolei Transit Center site bordered by Kama'aha Avenue, 'Alohikea Street, and Kapolei Parkway.</p> <p>The Selected Offeror may propose, subject to negotiation with the City, further subdivision or changes to the Property.</p>
Special Funding Conditions	N/A
Land Offering	The City will provide a 75-year ground lease for the Property. The Offeror shall propose Ground Lease rent as part of its submission. Ground rent proposals should take into consideration different rental proposals for different uses.
Potential City Funding	The Offeror may include a request for funding in its proposal. The City is in no way obligated to grant such request and reserves ultimate and sole discretion over any funding grant.
Selection Process	<ol style="list-style-type: none"> <li>1. RFQ is issued.</li> <li>2. Non-Mandatory Pre-Proposal conference is held.</li> <li>3. Submission of proposals by Offerors.</li> <li>4. Selection Committee will evaluate, after which the committee will recommend an Offeror development team for exclusive negotiations.</li> <li>5. Negotiation of a Pre-Development Contract, Development Contract, and Ground Lease.</li> <li>6. Public Hearing pursuant to City Charter § 6-1803.</li> <li>7. City and County of Honolulu City Council ("City Council") approval of the Offeror, the City's execution of the Pre-Development Contract, the Development Contract, and Ground Lease, all in substantially the form as presented to City Council.</li> <li>8. Execute Pre-Development Contract.</li> <li>9. Execute Development Contract.</li> <li>10. Offeror's successful completion of all obligations under the Development Contract.</li> <li>11. Execute Ground Lease.</li> </ol>
Proposal Submittal	<p>All Final Proposals must be submitted to:</p> <p>Department of Housing and Land Management  Attention: Kevin D. Auger, Director Designate  650 South King Street, 3rd Floor  Honolulu, Hawai'i 96813</p>
RFQ Response Format	Submit one (1) original Proposal marked "ORIGINAL", one (1) hard copy, and five (5) digital copies on a Universal Serial Bus ("USB") thumb drive. On the submittal, include: the (1) RFQ Number; (2) Offeror Name; (3) Offeror Contact Person; and (4) Address.

## **NOTICE TO OFFERORS – SPECIAL INSTRUCTIONS TO OFFERORS**

### **1. Preparation of Proposals.**

Proposals shall be prepared in conformance with Appendix B – Proposal Format and submitted by the date and time as stated in the Notice to Offerors – Schedule of Events, as amended.

### **2. Method of Award.**

Submittals received in response to this solicitation may be evaluated using a two-stage evaluation process. Stage I of the evaluation process will be used to determine the Offerors that will comprise the competitive range from which final selection for contract award will be made. Stage II of the evaluation process, if required, will be reserved for the competitive range Offerors only. Scoring will be based on how well the submittal meets the criteria established in this RFQ.

During Stage I of the evaluation process, all responsible and responsive submittals will be evaluated and scored by an Evaluation Committee approved by the Officer in Charge or designee. Scoring will be based on evaluation criteria contained in this solicitation. The available points associated with each criterion of consideration are provided. The results of the evaluation will be used to determine those Offerors to be included in the competitive range.

The competitive range shall include those Offerors determined to be most qualified through the evaluation process and due diligence review. These Offerors may be requested to supply additional information to assist in completing the due diligence review. Failure to satisfactorily complete the request for additional information for the due diligence review within the timeframe established by the City may result in exclusion from the short list to proceed to Stage II of the evaluation process.

Stage II of the evaluation process will entail presentation/interviews with the Offerors on the short list. Offerors not in the competitive range will not proceed to Stage II of the evaluation process. The purpose of the presentations/interviews is to provide the Evaluation Committee an opportunity to pose questions emanating from their review of the submittals and obtain clarifications. The City may also provide an opportunity for Offerors to submit Best and Final Offers based on questions and discussion at the interviews. The Evaluation Committee reserves the right to schedule property visits to existing projects completed by the short-listed Offerors. Stage II evaluation will be conducted upon completion of the presentations/interviews in accordance with the same procedures and criteria outlined above for Stage I evaluation.

The Offeror with the highest score from Stage II of the evaluation process will be selected to proceed to the negotiation stage. Negotiations will be terminated with the highest scored Offeror if a Pre-Development Contract, Development Contract, and/or Ground Lease cannot be negotiated. The City will then initiate negotiations with the next highest rated Offeror on the short list. This process will continue until a mutually satisfactory Pre-Development Contract, Development Contract, and Ground Lease have been negotiated.

The City reserves the right to not issue an award or decline to enter into negotiations should it believe that Offeror(s) to this RFQ will not be capable of delivering the necessary level of services within an acceptable price range and/or time period. The City further reserves the right

to forego Stage II of the evaluation process and enter into negotiations with the highest ranked Offeror from Stage I of the evaluation process. Execution of the Pre-Development Contract, Development Contract, and Ground Lease will be subject to approval by the City and County of Honolulu City Council.

The City shall enter into negotiations with the highest ranked Offeror according to the evaluation criteria contained herein for a Pre-Development Contract, Development Contract, and Ground Lease describing the Offeror's role and responsibilities, provided the award is in the best interest of the City. The highest-ranked Offeror will be notified at the earliest practical date. No award may be made to Offerors that are on or suspended and/or debarred by the State Procurement Office to do business in the State of Hawai'i. The City reserves the right to not award a contract if Offerors are deemed not qualified or not responsive to the submittal requirements of this RFQ. The City also reserves the right to request replacement of specific members of the Offeror's team. If the City is unsuccessful in contract negotiations with the highest ranked Offeror, the City reserves the right to enter into negotiations with the next highest ranked Offeror.

### 3. Pre-Development Contract

The form of Pre-Development Contract will be negotiated between the Selected Offeror and City.

### 4. Development Contract.

The form of Development Contract will be negotiated between the Selected Offeror and City.

### 5. Ground Lease.

The form of Ground Lease will be negotiated between the Selected Offeror and City.

### 6. Definitions.

The terms stated below shall have the same meaning throughout this document, unless specifically stated otherwise or clearly inappropriate in context.

- a) "Amendment" means an amendment, addendum, or other modification to this Request for Qualifications amending, or clarifying or interpreting one or more provisions.
- b) "City" means the City and County of Honolulu, a municipal corporation of the State of Hawai'i.
- c) "DHLM" means the Department of Housing and Land Management of the City and County of Honolulu.
- d) "Development Contract" means the agreement to be negotiated and executed by the City and Selected Offeror, establishing the terms and conditions pursuant to which the City will make available to the Selected Offeror, and the Selected Offeror will accept from the City, the Property upon which the Selected Offeror shall construct the Project. Such agreement shall detail all covenants, obligations, restrictions, requirements, and conditions to govern the proposed development and subsequent operation

of the Project; provided that such agreement shall indicate the studies, financing, and design work, and any other requirements that must be satisfactorily carried out and approved as a condition to the execution of the Lease.

- e) "Lease" or "Ground Lease" means the written agreement stating the rights and obligations of the City and the Selected Offeror pertaining to the use of the Property.
- f) "Offeror" means the person and/or entity submitting a Proposal.
- g) "Officer in Charge" means the Director of the DHLM or designee.
- h) "Pre-Development Contract" means the agreement to be negotiated and executed by the City and Selected Offeror, establishing the terms and conditions for the framework for the Selected Offeror to collaborate with the City for the conceptual, preliminary, and final planning for the Project, together with performance of certain services relating to the development of the Project.
- i) "Project" means the activities and responsibilities described in this Request for Qualifications, including, but not limited to, the development, financing, leasing, operation, maintenance, and management of the Property, the payment of a lease premium and other compensation to the City, and compliance with the terms of the Lease for the Property and all other conditions or requirements therein.
- j) "Proposal" or "Offer" means the executed document submitted by an Offeror in response to this Request for Qualifications.
- k) "Property" means the property more particularly described in Appendix C, attached hereto.
- l) "Request for Qualifications" or "RFQ" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- m) "Selected Developer" means the Offeror selected by the City who has the capability, integrity, and reliability, in all respects, to assure good faith performance in executing and undertaking the project.

#### 7. Pre-Proposal Conference.

The City will hold a conference for prospective proposers as stated in the Notice to Offerors – Schedule of Events Non-Mandatory Pre-Proposal Conference.

The City will provide an overview of the solicitation process and respond as needed to questions from meeting attendees. Offerors are informed that responses to the oral questions will not be binding. If an Offeror wishes to receive a formal answer to oral questions raised at the Non-Mandatory Pre-Proposal Conference, the Offeror shall submit such questions to [dhlm@honolulu.gov](mailto:dhlm@honolulu.gov) by the Deadline for Written Requests for Clarifications, Interpretations, and Exceptions.

#### 8. Written Questions.

Written questions concerning this RFQ after the Pre-Proposal Conference must be submitted to the City and County of Honolulu as indicated in this RFQ up until the date

specified in the Notice to Offerors – Schedule of Events. Written questions shall reference the RFQ number noted on the first page of this solicitation (RFQ-DHLM-25-03).

9. Site Visitations.

The City will not conduct an escorted site visit of the Property.

10. Submission of Proposals.

One (1) original Proposal labeled “Original”, one (1) hard copy, and five (5) digital copies on a USB thumb drive shall be submitted on or before the Notice to Offerors – Schedule of Events Submittal Deadline to:

Department of Housing and Land Management  
Attention: Kevin D. Auger, Director Designate  
650 South King Street, 3rd Floor  
Honolulu, Hawai‘i 96813

Each Proposal must include all information, forms, and exhibits required by this RFQ and be prepared in conformance with the Proposal Format stated in Appendix B.

The original Proposal and hard copy shall be contained in separate binders.

The original Proposal must be signed in ink by a person authorized to act for the Offeror. Evidence clearly establishing the signer’s authority to act on behalf of the Offeror must be submitted with the Proposal.

The original Proposal submitted must be date and time-stamped by the Offeror with the DHLM date and time stamp.

Each Proposal must remain valid and available for a period of at least one-hundred eighty (180) calendar days subsequent to the Notice to Offerors – Schedule of Events Submittal Deadline date.

An Offeror may submit only one (1) Proposal. An Offeror shall be considered to have submitted more than one (1) Proposal if the Offeror submits more than one Proposal either (i) in the same name; (ii) by an agent of the Offeror; (iii) by a partnership or a joint venture of which the Offeror is a member in which the Offeror holds more than 25% interest in the Offeror’s name or in the name of others for the Offeror in any manner; (iv) by an entity in which the Offeror owns more than 25% of the membership interests or shares of stock in the Offeror’s name or in the name of others for the Offeror in any manner; or (v) by any combination of the entities described in (iii) and (iv), of this paragraph, in which the Offeror holds a total of more than 25% combined interest in the Offeror’s name or in the name of others for the Offeror in any manner.

If circumstances become known to the City by which the City may reasonably conclude that two (2) or more Offerors are in collusion to restrict competition or have otherwise engaged in anticompetitive practices pertaining to this RFQ, the Proposals submitted by each Offeror shall be rejected and each Offeror shall be barred from submitting Proposals or receiving any award of a subsequent contract with the City for a period of three (3) years.

The City shall reject any Proposal:

- a) which is not date- and time-stamped in the manner stated above;
- b) which is date- and time-stamped after the Notice to Offerors – Schedule of Events Submittal Deadline unless failure to timely submit the Proposal is due to the action or inaction of a City officer or employee directly involved in this RFQ;
- c) which is submitted by an Offeror which has submitted more than one (1) Proposal, as identified above;
- d) which is submitted by an Offeror which is believed by the City to have acted in collusion with another Offeror to restrict competition or to have participated in anticompetitive practices;
- e) which is not submitted in accordance with the format stated;
- f) which is not submitted in accordance with the instructions stated in this RFQ;
- g) which modifies, adds, or deletes any material required as stated in this RFQ;
- h) which contains any omissions, erasures, alterations, additions, or irregularities which are not crossed out and corrected by insertions printed in ink or typewritten and initialed in ink by the person signing the Proposal; or
- i) which contains any conditions not contemplated in the RFQ.

The City reserves the right to (i) reject any or all Proposals; (ii) undertake discussion with one or more Offerors; or (iii) accept that Proposal which, in the City's sole and absolute judgment, will be most advantageous to the City. The City reserves the right to consider any specific Proposal that is conditional or not prepared in accordance with the instructions and requirements of the RFQ. The City reserves the right to waive any defects in any Proposal. After opening all proposals solicited by this RFQ, the City may reject all submitted proposals.

#### 11. Offeror's Responsibilities.

Offerors shall have the following obligations ("Obligations"):

- a) to review and fully understand (i) all of the provisions of this RFQ, including all Exhibits and attachments; (ii) all Amendments, clarifications, interpretations, and exceptions to this RFQ; (iii) all Federal, State, and City statutes, laws, ordinances, rules, regulations, and guidelines applicable to this RFQ and to the Project; and (iv) all other published standards and requirements applicable to the Project;
- b) to request the necessary and appropriate clarifications, interpretations, and exceptions applicable to this RFQ;
- c) to understand that the submission of a Proposal by any Offeror is an acknowledgment of an Offeror's understanding, acceptance, and fulfillment of its Obligations;
- d) to understand that an Offeror's failure to fully comprehend or fulfill the Obligations shall not relieve an Offeror from completing the Project in accordance with the provisions of its Proposal. An Offeror may not claim

any additional compensation or accommodations based upon its failure to fulfill the Obligations;

- e) to review, understand, and have the ability to comply with all applicable statutes, ordinances, rules, and regulations of any governmental authority or agency having jurisdiction over the Project, or any part of it, as they are passed, adopted, and promulgated from time to time, including, but not limited to, the Hawai'i Revised Statutes ("HRS"), the Revised Ordinances of Honolulu 2021 ("ROH"), Code of Federal Regulations ("CFR"), and other applicable law;
- f) to respond fully, adequately, and in a timely manner to all reasonable requests for information by the City; and
- g) to designate in writing those portions of its Proposal which the Offeror believes to contain trade secrets or other proprietary information and shall request that these portions of the Proposal be held confidential. An Offeror's designation and request shall be subject to review by the City to evaluate its validity. The trade secrets or other proprietary information shall accompany the Proposal, but shall be readily separable from the remaining portions of the Proposal in order to facilitate eventual public inspection of the non-confidential portions of the Proposal. After all contracts pertinent to the Project have been executed by the parties, all Proposals, except those validly designated as containing trade secrets or other proprietary information, shall be open to public inspection.

#### 12. Requests for Clarifications, Interpretations, and Exceptions.

Prospective Offerors may submit a request to the City for clarification or interpretation of any provision stated in this RFQ. If there is an apparent conflict or inconsistency between provisions stated in this RFQ, or if this RFQ violates any Federal, State, or City law, statute, ordinance, rule, regulation, or other requirement, a prospective Offeror may submit a request for clarification or interpretation of that apparent conflict, inconsistency, or violation.

Prospective Offerors may request an exception to any provision stated in this RFQ. Technical data and other pertinent information shall be provided by and at the expense of the prospective Offeror with the request to support the conclusion that a condition equal to or better than that required by the provisions stated in the RFQ will result if the exception is granted. The City may request additional information from the prospective Offeror.

#### 13. Submission of Requests of Clarifications, Interpretations, and Exceptions.

Requests for clarification, interpretation, and exceptions to this RFQ shall be submitted in written form and emailed to the RFQ Administrator no later than the date and time indicated in the Notice to Offerors – Schedule of Events Deadline for Written Requests for Clarifications, Interpretations, and Exceptions. The City is not obligated to respond to a request which is submitted after the date and time as stated in the Notice to Offerors – Schedule of Events, as amended.

#### 14. Clarifications and Interpretations by the City.

The City will respond to a request for clarification or interpretation through the issuance of an Amendment to the Request for Proposals. Only clarifications or

interpretations contained in written Amendments shall be binding on the City. No other communication with any employee or agent of the City shall be binding on the City or may be relied upon by an Offeror.

15. Extension of Deadline for Offer.

The City may extend the Deadline for Offers on its own initiative and using its absolute and sole discretion. Any extension of the Deadline for Offers shall be issued as an Amendment to this RFQ.

16. Modifications to Proposal.

Proposal may be modified and must be received by the DHLM no later than the date and time indicated in the Notice to Offerors – Schedule of Events Submittal Deadline. Modifications to a Proposal by an Offeror must be in written form in the same format as the initial Proposal and must be executed on behalf of the Offeror by the person who signed the initial Proposal. One (1) original Proposal Modifications, one (1) hard copy, and five (5) digital copies on USB flash drive shall be submitted. The date and time of the receipt of the Proposal Modifications shall be evidenced by the date/time stamp furnished by the DHLM on a Proposal Modification. No other form of communication modifying a Proposal will be accepted.

17. Withdrawal of Proposals.

Prior to the Submittal Deadline, the Offeror may submit a request to withdraw a Proposal in written form specifying the Project, the name of the Offeror, the date and time that the Proposal was stamped and received by the DHLM, and a definitive statement that the Offeror requests the withdrawal of the Proposal. The request will be reviewed for acceptance by the City and the Proposal withdrawn if the request is received by the DHLM no later than the date and time indicated in the Notice to Offerors – Schedule of Events Submittal Deadline. The date and time of the receipt of request shall be evidence by the date/time stamp furnished by the DHLM on the Offeror's request for withdrawal. The Offeror may submit a new Proposal prior to the Submittal Deadline.

18. Responsibility for Expenses In Preparing a Proposal.

Offerors will be solely responsible for all costs and expenses incurred in connection with submitting a Proposal, including rejection of a Proposal.

19. Opening of Proposals.

Proposals will not be publicly opened. The contents of all Proposals and the evaluations shall be kept confidential during the selection process. Only City officers and employees having a legitimate reason to review the Proposals shall have access to them during the selection process.

AFTER OPENING OF ALL PROPOSALS SOLICITED BY THE REQUEST FOR QUALIFICATIONS, THE CITY MAY IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ITS BEST INTEREST, REJECT ANY AND/OR ALL SUBMITTED PROPOSALS.



## 20. Errors in Proposals.

If an error is discovered in a Proposal after all of the Proposals are opened, but prior to the award of the Development Contract, the City may reject the Proposal.

## 21. Mistake in Offers.

- a) The City reserves the right to correct or waive minor mistakes in a submitted offer under the following conditions: The mistake is attributable to an arithmetical error, where in the case of error in extension of bid price, the unit price shall governs;
- b) If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions. Examples of minor informality mistakes include typographical errors and transposition errors; and
- c) An obvious mistake that if allowed to be corrected or waived is in the best interest of the City and is fair to other Offerors.

## 22. City's Right to Amend or Supplement the Request for Qualifications.

The City may amend any provision stated in this RFQ at any time prior to or after the Notice to Offerors – Schedule of Events Submittal Deadline date, but prior to selection of a Proposal, by issuing a written Amendment to the RFQ.

## 23. Waiver of Irregularities.

The City may waive a minor irregularity, deviation, or defect in a Proposal or in the requirements stated in this RFQ if the City determines that the waiver is in the best interest of the City.

## 24. Negotiation with Most Qualified Offeror(s).

The City shall examine all proposals from interested Offerors and determine those Offerors the City deems qualified to perform the services for the specific project under consideration. The City may negotiate with Offerors submitting the best proposals in making a final selection. If no qualified proposals are received in response to the notice, the City may negotiate with and select an Offeror.

## 25. Negotiation of Agreement(s) with Selected Offeror.

Upon final selection, the selected Offeror shall be given the exclusive right for one hundred twenty (120) calendar days to negotiate and finalize terms of the Pre-Development Contract. If this deadline cannot be met, the City, in its sole and absolute discretion, reserves the rights to extend the deadline, rescind the selection, and make another selection from the remaining proposals, or reject any and/or all proposals.

## 26. Public Hearing; Public Report.

Upon successful negotiation of the Pre-Development Contract, Development Contract, and Ground Lease, the City will hold a public hearing, in the Council district where the Property is located, to determine whether the development of the Property through the Pre-Development

Contract, Development Contract, and Ground Lease serves the public interest. At this public hearing, the Selected Offeror will make a brief presentation regarding the proposed Project. Following the public hearing, DHLM will prepare a public report which will be submitted to the City Clerk for posting for public inspection in City Hall where other public notices and meeting agendas of the Council are posted. The report shall be a public report. The public report will also be transmitted to City Council with a request for approval of the Pre-Development Contract, Development Contract, and Ground Lease.

27. Approval of Pre-Development Contract, Development Contract and Form of Ground Lease.

The negotiated Pre-Development Contract, Development Contract, and form of Ground Lease shall be submitted in substantially final form to the City Council for review and approval via the adoption of a Resolution authorizing its execution. City Council may, in its sole and absolute discretion, reject or modify the forms of the Pre-Development Contract, Development Contract, and Ground Lease. The Resolution authorizing the execution of the Pre-Development Contract, Development Contract, and Ground Lease will be considered at one (1) or more meetings of a standing City Council committee. City Council also may, in its sole and absolute discretion, elect to schedule additional committee meetings, public hearings, and/or informational workshops to consider the proposed transaction. City Council will make final approval of the Resolution at a scheduled City Council meeting. The Pre-Development Contract, Development Contract, and Ground Lease may be executed by the City and Selected Offeror after the applicable Resolution authorizing such documents execution is adopted by City Council.

28. Due Diligence.

The Selected Offeror may conduct, at its sole expense and risk, any due diligence it deems necessary with respect to the Property to identify any objection to any conditions, circumstances, contingencies, facts, physical conditions, financial, or operating results, or other matters relating to the Property. The Selected Offeror may begin due diligence only upon issuance of a Right-of-Entry issued by the City. The Selected Offeror shall conclude due diligence within ninety (90) calendar days of the issuance of the Right-of-Entry.

Due diligence shall be conducted in accordance with the terms of the Right-of-Entry.

At the conclusion of the due diligence period, the Offeror shall give written notice to the City of its approval or disapproval of the results of its due diligence investigation. Should the Selected Offeror disapprove of the results of its due diligence investigation, the Selected Offeror shall include in its notice of written description of the objectionable conditions which form the basis for its disapproval. Upon receipt of the description of objectionable conditions from the Selected Offeror, the City shall have sixty (60) calendar days to either (i) cure such conditions and proceed to negotiation of definitive agreements with the Selected Offeror, or if any condition cannot be reasonably cured within sixty (60) days then such cure period may be extended as needed, by agreement of the Parties for good cause shown, so long as the City is pursuing a cure with reasonable diligence; or (ii) cancel the selection of the Selected Offeror. Such cancellation shall be without penalty to the City or compensation to the Selected Offeror. If the City elects not to cure such objectionable conditions within such period, the Selected Offeror may either: (a) elect to terminate the Development Contract, or (b) elect to waive the objectionable conditions and continue to proceed under the terms of the Development Contract and Ground Lease.

29. Cancellation of Request for Proposals.

The City may cancel the RFQ at any time if, in the City's judgment, such cancellation would be in the best interest of the City.

30. Unauthorized Communication.

Except as otherwise authorized in this RFQ, Offerors and their agents shall not make any contact or have communication with any City officer, employee, or agent directly involved with this RFQ.

31. Reservation of Rights by the City.

The City expressly reserves the right at any time, and for its own convenience, to do any of the following where it is in its best interests:

- a) Waive or correct any immaterial defect or technical error in any response, Proposal, or Proposal procedure, as part of the solicitation or any subsequent negotiation process.
- b) Waive any of the requirements contained in this solicitation, provided that the waiver and the reasons for it are specified in writing.
- c) Reject any and all Proposals.
- d) Request Offerors to supplement or modify all or certain aspects of the information or proposals submitted.
- e) Cancel and/or re-issue this RFQ.
- f) Amend this RFQ.
- g) Extend deadlines for accepting Proposals, requesting amendments to or clarifications of Proposals, and/or approving final documents.
- h) Withdraw this RFQ or any award prior to entering into final agreement(s) with any Offeror.

32. Costs.

Under no circumstances, including the rejection of Proposals, will the City reimburse any costs incurred in connection with this RFQ by any Offeror or prospective Offeror or any other person during this selection, including, but not limited to, costs with respect to the preparation of a Proposal.

33. Disclaimers.

The City makes no warranty, guarantee, or representation whatsoever, express or implied, (i) that the Property is free from hazardous material as it is defined in any statute, law, ordinance, rule, or regulation passed, adopted, or promulgated by any governmental authority having jurisdiction over the subject matter; (ii) that the Property is classified under the State Land Use laws and regulations for the use for which an Offeror may propose; (iii) that the Property is classified under the City Land Use Ordinance and regulations for the use which a Offeror may propose; (iv) that either the State Land Use classification or the zoning applicable to the Property will be amended or a variance granted by any governmental body having

jurisdiction over the subject matter for the use which an Offeror may propose; (v) that the title to the Property is free and clear of liens, encumbrances, easements, and restrictions including those which appear of record and those which are not shown on the record which may have an adverse impact on the use which an Offeror may propose; (vi) that the City will exercise its power of eminent domain to acquire any other Property by the initiation of a condemnation action, and (vii) the Property is free from any buried utility lines, structures, and/or other man-made objects.

#### 34. Disclosure of Proposals.

Proposals shall be subject to disclosure as public government records upon completion of the award process. The award process will be deemed complete upon the recordation of the Ground Lease. Certain records may be exempt from disclosure. Offerors are responsible for segregating and marking materials that contain Confidential Information and are clearly marked "CONFIDENTIAL" in their Proposal, which they claim may be exempt. The term "Confidential Information," as used herein, does not include any information which at the time of disclosure: (i) is generally available to and known by the public; (ii) can be shown by documentary evidence to have been known by City through lawful means prior to disclosure by the Offeror; (iii) lawfully becomes available to City on a non-confidential basis from a source other than the Offeror, provided that such source is not bound by a confidentiality agreement with the Offeror, or any of them, or otherwise prohibited from transmitting the information to City by a contractual, legal, or fiduciary obligation; (iv) is independently developed by the Offeror without use of the Confidential Information; or (v) the City is required to disclose pursuant to Chapter 92F, HRS, or as a matter of law, or pursuant to subpoena, interrogatories, or other such demand for information in any judicial, quasi-judicial, or administrative proceedings.

## NOTICE TO OFFERORS – OFFEROR’S MINIMUM QUALIFICATIONS

### 1. Qualified Organization.

At the Submittal Deadline, Offerors must meet the following organizational requirements:

- a) At a minimum, at least one (1) of the individuals within the Offeror must have ten (10) years’ experience in the development, management, and operation of mixed-use and affordable housing development.
- b) Offeror must be authorized to do business in the State of Hawai’i as evidenced by a Certificate of Good Standing (“COGS”) issued by the State of Hawai’i, Department of Commerce and Consumer Affairs current to within 30 calendar days of the Notice to Offerors – Schedule of Events Submittal Deadline.
- c) Offeror must be compliant with the State Department of Labor and Industrial Relations (“DLIR”) as evidenced by a Certificate of Compliance with DLIR to within 30 calendar days of the Notice to Offerors – Schedule of Events Submittal Deadline.
- d) Offeror must be registered to do business, in the United States of America, and in possession of a current Federal Tax Identification Number.
- e) Offeror must be current on all Federal and State taxes as evidenced by a Tax Clearance Certificate current to within 30 calendar days of the Notice to Offerors – Schedule of Events Submittal Deadline.
- f) Offeror must not be in arrears on the payment of taxes, rents, or other obligations owing to the City, nor may an Offeror be a party to any pending litigation against the City.
- g) Offeror shall not be excluded, suspended, or debarred from doing business with any Federal, State, or City government agency or employ any Contractor(s) suspended under Chapter 104, HRS.

To comply with the requirements in Section b, c, and e, Offerors may obtain compliance on the State of Hawai’i’s Compliance Express System (“HCE”) (<http://vendors.ehawaii.gov>).

### 2. Insurance Requirements.

Offeror shall provide evidence of commercial general liability insurance with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. If awarded, Offeror shall procure and maintain any and all insurance covering its business as may be required under any applicable federal, state, or local law, statutes, ordinance, or rules and regulations, including but not limited to property insurance, professional liability, workers compensation, and automobile liability, as applicable. The City shall be named under each insurance policy as an additional insured and a waiver of subrogation where applicable. The City reserves the right to require additional kinds and amounts of insurance as may be reasonable based upon the selected Offeror’s Proposal.

### 3. Sexual Harassment Policy.

Offerors shall comply with Article 18 of Chapter 1, ROH, as amended. Provisions to that effect will be included in the Development Contract and/or the Lease, as appropriate.

### 4. Non-Discrimination.

Offerors shall not discriminate against any employee or applicant for employment based on race, color, national origin, religion, sex, sexual orientation, familial status, or disability. The Selected Offeror shall comply with the provisions included in any agreement with the City pertaining to discrimination.

### 5. Lease Terms.

The City, as Lessor, shall convey a Ground Lease to the Selected Offeror for the Property upon the Offeror's completion of due diligence and acceptance of the Property, completion of all requirements and conditions precedent to the award of a ground lease as identified in the Development Contract, and closing of all the interim financing for the Project. The Lease for the Property shall be offered under the following conditions:

Term: Seventy-five (75) years.

Rent: Rent shall be proposed by the Selected Offeror, and as negotiated between the parties.

### 6. Affordable Rent Guidelines.

Honolulu County Multifamily Tax Subsidy Income Limits and Tenant Contribution Rates established by the Hawai'i Housing Finance and Development Corporation can be found available at: <https://dbedt.hawaii.gov/hhfdc/files/2024/04/HUD-MF-AMI-Tables-Only-2024.pdf>

### 7. Potential City Funding.

Offeror may include a request for funding for the Project in its proposal. The City is in no way obligated to grant such request and reserves ultimate and sole discretion over any funding grant.

### 8. City's Objectives.

The City recognizes the urgent need for affordable housing throughout Honolulu and is seeking a development partner to redevelop the Property described in the RFQ. It is anticipated that the development partner would develop, and manage the project, retaining an ownership position in the Project under the terms of the Development Contract and Ground Lease.

Additional objectives include:

- a) Advanced Sustainable Design – Project proposals shall consider sustainable and energy efficient practices, such as solar power, advanced metering, “daylighting” (i.e., light from windows penetrating interior spaces), natural ventilation, water conservation initiatives, passive solar heating, and efficient building systems and products.

- b) Sustainable Development Standards – To the extent possible, the Project shall comply with Chapter 196-9, HRS, as amended, regarding energy efficiency and environmental standards for state facilities.
- c) Complete Streets – The Project should embrace the “Complete Streets” design approach, creating conditions that encourage walkability and facilitate transportation choices by providing safe and convenient pedestrian and bicycle access to community amenities and public transportation services.
- d) Climate Change Design Guidelines – To the extent possible, the Project shall comply with the terms of the Climate Change Design Guidelines, a link to the guidelines is provided below.  
<https://hands.ehawaii.gov/hands/api/opportunity-attachment?id=25411&attachmentId=44474>
- e) Transit-Oriented Development (“TOD”) Design Guidelines – To the extent possible, the Project shall comply with the terms of the TOD Design Guidelines, a link to the guidelines is provided below.  
[https://www4.honolulu.gov/docushare/dsweb/Get/Document-350456/TOD\\_Design\\_Guidelines.pdf](https://www4.honolulu.gov/docushare/dsweb/Get/Document-350456/TOD_Design_Guidelines.pdf)

#### 9. Responsibilities of the Selected Offeror.

The Selected Offeror will be responsible for all aspects of the project, including, but not limited to, the following:

- a) Lease the Property from the City for a term of 75 years in an “AS IS, WHERE IS” condition, without any express or implied warranties or representations.
- b) Keep the DHLM informed and involved in decision-making as a partner to expedite the redevelopment process.
- c) Execute and record the Ground Lease, which must include an affordability requirement of the Project as a land use restriction throughout the Term.
- d) Conduct robust community engagement throughout the development, including hosting and participating in meetings and presentations to tenants, the City Council, community organizations, the Neighborhood Board, and other organizations as required by the City.
- e) Obtain potable water for the Project from the Board of Water Supply (BWS) and the payment of BWS water facilities charges.
- f) Comply with all applicable environmental review laws, including but not limited to, Chapter 25, ROH, Chapter 343, HRS, National Environmental Policy Act (NEPA), and Section 106 of the National Historic Preservation Act, as required, at its sole cost.
- g) Secure zoning, entitlements, subdivision, deregistering, and/or Condominium Property Regime (“CPR”) approvals, sewage capacity and connection approvals, and any other approvals or permits required for development.

- h) Maintain the Project site as well as the area from the Project boundary to the adjacent street curb, subject to the terms of the Development Contract.
- i) Comply with Chapter 104, HRS, for the payment of minimum prevailing wages to mechanics and laborers employed on the Project for the corresponding work classifications as determined by the Department of Labor and Industrial Relations.
- j) Ensure that the Project be accessible to and usable by persons with disabilities in compliance with Section 103-50, HRS, and the Selected Offeror shall submit written evidence to the City that the Project plans have received final document review by the Disability and Communication Access Board prior to start of construction. This requirement is in addition to any other applicable requirement for accessibility, such as the Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) and the Fair Housing Accessibility Guidelines (24 CFR Chapter 1).
- k) Comply with all Federal requirements relating to fair housing, equal opportunity, and affirmative marketing, as applicable.
- l) Comply with the Special Funding Conditions related to the Property.
- m) Comply with, Article 18, ROH Chapter 1, as amended to sexual harassment.
- n) Comply with all other applicable City, State, and federal laws, statutes, ordinances, rules, and regulations.
- o) Maintain and execute complete and accurate project schedules and deadlines providing periodic updates to the DHLM and the City Council.
- p) Secure all interim and permanent financing necessary to undertake the proposed Project.
- q) Demolish, remove, and dispose of existing improvements on the Property required to undertake redevelopment of the Property.
- r) Plan, design, and construct the Project in conformance with all local, State, and federal rules, statutes, and ordinances, and in a manner substantially consistent with the Selected Offeror's approved Proposal and in conformance with the Development Contract executed by the Selected Offeror and the City.
- s) Provide an estimated construction budget supported by an independent construction cost estimator along with proposed sources of financing. In addition, the Selected Offeror shall provide all necessary real estate services including, but not limited to, rental agents and property management services.
- t) Assume sole and complete risk and liability for the development of the Project during the term stated in the Developer Contract, and shall defend, indemnify, and hold harmless the City, their employees, officers, agents, representatives, successors and assigns against any loss, cost, action, claim, damage, or injury arising out of any activity conducted in the planning, design, hazardous materials removal, construction, and management of the Project. The Selected Offeror shall maintain insurance acceptable to the City in full force and effect throughout the term of the Development Contract.



- u) Manage and oversee predevelopment and ultimately the development activities and project consultants, General Contractors, and co-developers (if any).
- v) Complete financial closing, construction, lease-up, and management of the completed projects.

10. Responsibilities of the City & County of Honolulu.

To facilitate the development of responsive proposals and the transition of the Property to the Selected Offeror, the City shall undertake the following activities:

- a) Provide the Selected Offeror a revocable right of entry to conduct due diligence activities on the Property.
- b) Cooperate with the Selected Offeror to the extent reasonable to facilitate the development of the proposed Project. Such cooperation shall include, but not be limited to, the timely review and approval of financing and other real estate documents necessary to implement the proposed Project.
- c) Lease the Property to the Selected Offeror, upon completion of all prerequisite actions identified herein.
- d) Issue any funding grant(s).

11. Disclaimer.

While the City invites Offerors to include a request for funding for the Project in its proposal, the City is in no way obligated to grant such a request and reserves ultimate and sole discretion over any funding grant.

## NOTICE TO OFFERORS – EVALUATION, SELECTION, AND APPROVAL

### 1. Evaluation Period.

During the evaluation period, Offerors may be required to make such oral presentations or submit additional information as required to clarify their Proposals.

### 2. Evaluation Criteria.

The evaluation of submittals will be solely based on the evaluation criteria set forth as follows:

<b><i>Evaluation Criteria</i></b>	<b><i>Points</i></b>
<p><b>A. Experience</b></p> <p>The degree to which the submittal demonstrates the Offeror's and the Offeror's team experience and professional qualifications relevant to the project. Points will be awarded based on the following:</p> <ol style="list-style-type: none"><li>1. The Offeror and the team's experience with developing high-density affordable housing and transit-oriented development projects, with a particular emphasis on leading multidisciplinary teams, and facilitating community engagement, and demonstrating the capacity to expedite project delivery.</li><li>2. The Offeror and team's experience in efficiently planning, entitling, constructing, and managing of projects similar to those proposed in the RFQ and familiarity with Hawai'i development requirements and challenges.</li><li>3. The Offeror and team's experience with management of affordable housing rental developments of similar size, either directly or through supervision of property management provided by a third party.</li><li>4. The Offeror and team's experience in executing projects with public agencies.</li><li>5. The extent to which the Offeror and team has no program violations issued by a state housing finance agency, terminated contract(s), and/or lawsuits.</li><li>6. The Offeror and team's experience with utility alignment.</li></ol>	<b>65</b>
<p><b>B. Project Finance Experience</b></p> <p>The degree to which the submittal demonstrates the Offeror's and the Offer team's experience in obtaining, structuring, and implementing layered financing for projects similar to those proposed in the RFQ, including federal Low Income Housing Tax Credits (LIHTC), Hawai'i State LIHTC, Hawai'i Rental Housing Revolving Fund (RHRF) and RHRF Tier 2 funding, General</p>	<b>25</b>

Obligation Bonds, Multi-family revenue bonds, and other potential financing alternatives, particularly in Hawai'i.	
<p><b>C. Conceptual Project Plan</b></p> <p>For each proposal, the Offeror shall provide a conceptual project plan describing the proposed use of the Property, proposed rent, site plan, floor plans, parking, special features and amenities, affordable unit programming, how the project will address the needs of lower income individuals and families, how the project would integrate with the neighborhood, proposed financing scheme for the project and overall projected timeline for securing entitlements, environmental and historic preservation clearance, building permits, and construction completion. Proposed project illustrations and/or elevations are encouraged.</p>	<b>10</b>
Evidence that the Offeror and Offeror's professional team are currently licensed in Hawai'i (DCCA certification).	<b>Mandatory</b>
Evidence that the Offeror is currently registered to conduct business in the State of Hawai'i. Provide a compliant Certificate of Vendor Compliance.	<b>Mandatory</b>
Evidence that the Offeror carries Errors and Omissions insurance of at least \$1,000,000 per claim and \$2,000,000 in the aggregate. Provide a valid Certificate of Insurance.	<b>Mandatory</b>
Signed certified statement that the firm is not debarred, suspended, or otherwise prohibited from professional practice by any federal, state, or local agency.	<b>Mandatory</b>

### 3. Selection and Approval.

The Officer-in-Charge will notify the Selected Offeror in writing of their selection as the preferred developer partner. Upon such notification, the negotiation period for the Pre-Development Contract terms set forth in Notice to Offerors – Special Instructions to Offerors, Paragraph 25 above shall immediately commence.

## **APPENDIX A: PROPERTY DESCRIPTION**

### **1. Introduction**

The City and County of Honolulu (“City”) is seeking proposals from qualified individuals or firms to enter into a ground lease and real estate development contract for the redevelopment of City-owned land located along Kapolei Parkway, commonly referred to as Lots 2, 3, 4, and 5 (the “Property”). The Property consists of Lot 1 and Lot 3-A, as reflected in approved subdivision maps (Subdivision Nos. 2013/SUB-24 and 2020/SUB-82, respectively). The entire parcel is identified as TMK (1) 9-1-160:064 (por).

Located along Kapolei Parkway between Wakea Street and Kamokila Boulevard, the site is situated in the heart of East Kapolei’s regional growth corridor. The surrounding area includes a mix of residential, commercial, institutional, and civic uses, including schools, government buildings, and retail centers. The site is approximately 2.6 miles by road from Kualaka’i Station—the western terminus of the Skyline rail system—which is scheduled to extend service in October 2025 to major employment centers such as the Daniel K. Inouye International Airport and Joint Base Pearl Harbor-Hickam. This multi-modal context positions the Property to support a high-density, transit-connected housing community with the potential to serve a range of income levels.

The Property was acquired by the City in 2010 through Resolution 10-49, a copy of which is attached hereto as Appendix E. Today, the Property remains undeveloped, with scrub vegetation and exposed soil. The City has identified the Property as a high-priority redevelopment opportunity due to its location, readiness for activation, and alignment with infrastructure investments already in place.

While the City continues to explore new acquisitions and broader policy tools to address O’ahu’s housing crisis, this initiative reflects a focused effort to unlock the potential of existing City-owned assets. As outlined in the 2025–2028 Strategic Housing Plan, activating public lands through strategic partnerships is central to accelerating housing production, promoting mixed-income communities, and expanding long-term affordability for residents across income levels.

### **2. Desired Outcomes of the Redevelopment Effort**

Similar to many other regions across the United States, the State of Hawai’i and the City and County of Honolulu are currently experiencing an affordable housing crisis. An increasingly high demand for housing, coupled with a decades-low housing supply, limited land, and high production cost, has resulted in Honolulu consistently ranking among the most expensive residential rental markets in the nation. As housing costs in Hawai’i continue to increase, the number of available affordable apartments continues to decline, leaving low- to moderate-income households with limited housing options. Consequently, many of these households are forced to relocate greater distances from their place of work in urban Honolulu, resulting in secondary impacts such as lengthening commute times, exacerbating traffic congestion, increasing pollution, social and environmental impacts associated with traffic congestion, and a decreasing quality of life for commuters. In a growing worst-case scenario, many of these residents may be displaced altogether or leave the islands permanently.

Housing is considered “affordable” when a household spends less than 30% of their income on shelter and utilities. However, finding housing that is affordable is a serious challenge for Hawai‘i’s low-income residents, who face one of the highest housing costs in the country. In a market with some of the most expensive for-sale homes in the country, 43% of the state’s households are renters. Prior to the COVID-19 pandemic, many of these renter households were already “housing cost burdened”, whereby households with lower incomes expend a larger proportion of their income on housing and may suffer from housing-induced poverty, particularly as housing costs have continued to increase, but wages have not.

The major beneficial impact of the redevelopment of these parcels will be the delivery of urgently needed new housing units to help address the critical demand for affordable housing in the City.

The Property is an excellent candidate for redevelopment for the following reasons:

- The Property is conveniently located in close proximity to a number of commercial, industrial, recreational, and residential uses.
- In the future, the Property has the opportunity to enjoy a strong multi-modal transportation network, with transportation options including the future rail station, excellent access upon completion of the road segments between Mehana and Kapolei Parkway, and the Pālailai Mall and Village Walk, which run through or are directly adjacent to the property and are two of the Kapolei Urban Design Plan unifying elements.
- The future rail extension will connect the community to the broader Island of O‘ahu, while the village walks, sidewalks, and bicycle facilities will help promote localized connectivity that is not dependent on vehicles. However, in the development of pedestrian and bicycle facilities, design measures that promote safety and accessibility for all residents should be incorporated.
- While views from the Property are limited due to the flat topography, design concepts can take advantage of prominent mauka views of the Wai‘anae Mountain Range. In particular, significant views and vistas noted in the ‘Ewa Development Plan and offered from the Property include mauka views of Pu‘u Kapolei, Pu‘u Pālailai, and Pu‘u Makakilo.
- The redevelopment is expected to result in a reinvigorated community with well-connected thoroughfares, and interconnected and activated streets that will encourage walking and biking, which in turn support individual health and community safety with less need for costly parking.
- Redevelopment of the Property has the ability to balance the potential impacts of intensification of use on-site with the social and environmental considerations of creating a high-quality, comfortable, and inviting community to live, work, and play with the

potential for far-reaching transformative positive community impacts well beyond the boundaries of the Project site.

- Most importantly, redevelopment of the site can add hundreds of desperately needed affordable housing units to the City's existing affordable housing stock.

### **3. Reservations Affecting Property**

The Property currently is inclusive of future roadway connections for Kauwela Street, 'Alohihea Street, and Wakea Street, and accordingly, the City makes reservations therefor.

To facilitate potential high-capacity transit station development along the Kapolei Parkway corridor and provide direct pedestrian connections to the planned future Kapolei Transit Center site bordered by Kama'aha Avenue, 'Alohihea Street, and Kapolei Parkway, the City makes the following reservations to provide access to any future high-capacity transit station:

- **Lot 1:**  
10,000 square feet or less at the northeast corner of the lot, appurtenant to the southwest corner of the intersection of Kapolei Parkway and Kama'aha Avenue (western intersection of these roads closest to Downtown Kapolei, not the eastern intersection closest to Kapolei Middle School).
- **Lot 3-A:**  
10,000 square feet or less at the northwest corner of the lot, appurtenant to the southeast corner of the intersection of Kapolei Parkway and Kama'aha Avenue (western intersection of these roads closest to Downtown Kapolei, not the eastern intersection closest to Kapolei Middle School).

Any planned development around these reserved sites and locations shall assume development facing these boundaries, as defined, facing a northerly direction towards Kapolei Parkway.

## **APPENDIX B: PROPOSAL FORMAT**

All Proposals must be submitted in one (1) original, one (1) hard copy, and five (5) digital copies on USB flash drive. Please mark the original, and stamp the copy. The original and hard copy shall be submitted in three-ring binders, and the digital copies shall be organized and indexed as follows:

### **Tab 1 – Information on the Offeror**

- a) Name, business address, and contact information for the Offeror.
- b) Name and contact information of the Offeror's principal point of contact to which questions or requests for clarifications may be directed to.
- c) Name, business address, and contact information for all members of the Offeror's teams including, but not limited to, legal counsel, members of the Offeror's finance team, property managers, architects, engineers, and contractors.
- d) Narrative history of Offeror including ownership, length of time in existence, current lines of business.
- e) Federal Tax Identification Number.

### **Tab 2 – Experience and Capacity of the Offeror**

- a) Narrative summary of the Offeror's experience in owning or developing affordable rental housing. This experience includes the development, financing, ownership, management, operation, and maintenance of affordable rental and/or ownership housing projects.
- b) Listing of affordable rental housing projects developed in the last ten (10) years and/or currently under ownership or management of the Offeror. The listing should be itemized by project name, location, number of units by unit type (studio, one bedroom, etc.), project type (townhouse, garden apartment, high-rise, etc.), target market (affordable, market, senior, etc.), and the estimated current market value of the project. The information must also include familiarity with State of Hawai'i and City and County of Honolulu development requirements and challenges.
- c) Listing and statements of qualifications for key members of the Offeror's team (if applicable).
- d) Detailed listing of all development team members, including, but not limited to, architects, engineers, development consultants, project managers, legal counsel, accountants, financial consultants, and potential lenders.
- e) Offeror's audited corporate-level financial statements for the past three (3) years; or, if such financial statements are not available, (i) Offeror's compiled corporate-level financial statements for the past three years, and (ii)

Offeror's audited project-level financial statements for the past three years, for all projects listed in response to Tab 2, Paragraph B above.

**Tab 3 – Applicable Properties**

Please indicate behind this tab which of the properties the Offeror is responding to.

**Tab 4 – Conceptual Project Plan**

For each proposal, please indicate behind this tab the Offeror's conceptual project plan describing the proposed use of the property, site plan, floor plans, parking, special features and amenities, affordable unit programming, how the project will address the needs of lower income individuals and families, how the project would integrate with the neighborhood, proposed financing scheme for the project and overall projected timeline for securing entitlements, environmental and historic preservation clearance, building permits, and construction completion. Proposed project illustrations and/or elevations are encouraged.

**Tab 5 – Confidential Materials**

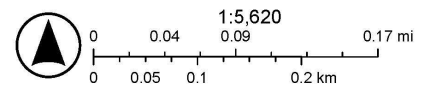
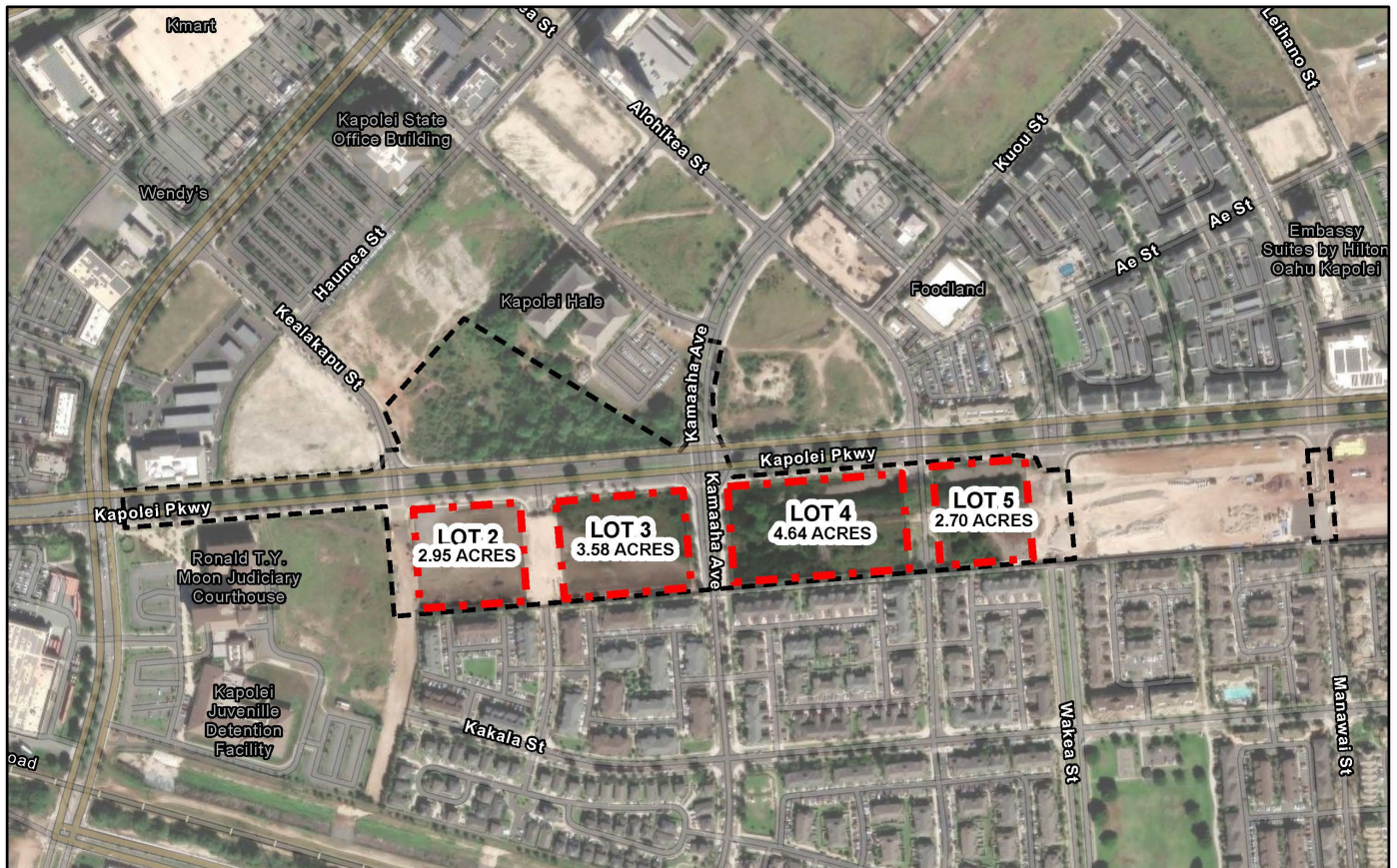
Please segregate behind this tab and clearly mark all documents that are claimed to be confidential and state the basis for claiming such documents to be confidential. Marking the entire proposal as confidential is unacceptable. The City assumes no liability for disclosure or use of unmarked data for any purpose.

**Tab 6 – OPTIONAL Additional Firm Information**

- a) Company literature or brochures
- b) Photographs of past projects
- c) Letters of commendation
- d) Awards



## APPENDIX C: DEVELOPMENT AREA MAP



Resource Mapping Hawaii, Maxar, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User

## **APPENDIX D: SUBDIVISION MAPS**



2013/06-24  
APPROVED  
DEPARTMENT OF PLANNING AND PERMITTING  
City and County of Honolulu

Date AUG 29 2014

*Richard Chalmers*  
Director of Planning and Permitting

RECEIVED  
2014 AUG 27 AM 11:00  
CITY OF HONOLULU  
DEPT. OF PLANNING  
CITY AND COUNTY OF HONOLULU

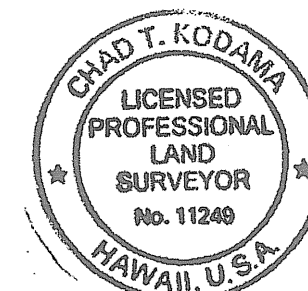
# LAND COURT

STATE OF HAWAII

## LAND COURT APPLICATION 1069

SUBDIVISION OF LOT 60002  
AS SHOWN ON DPP FILE No. 2012/SUB-159  
INTO LOTS 1 TO 3, INCLUSIVE  
AND DESIGNATION OF EASEMENT 1  
AFFECTING LOT 1  
DESIGNATION OF EASEMENT 2  
AFFECTING LOT 3  
AND CANCELLATION OF EASEMENT 10293  
AS SHOWN ON MAP 1494

AT HONOLULU, EWA, OAHU, HAWAII



CONTROLPOINT SURVEYING, INC.

1150 S. King St.  
Suite 1200  
Honolulu, Hawaii 96814  
January 19, 2013

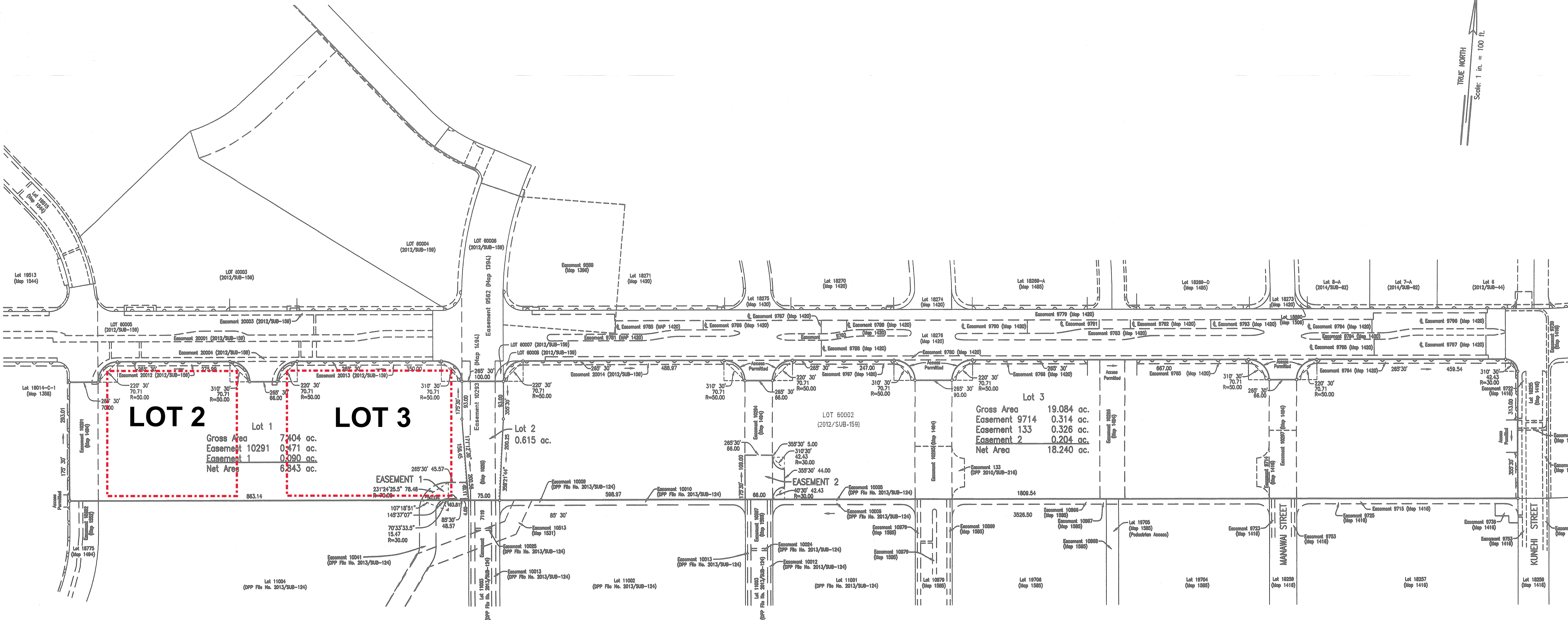
By: *Chad T. Kodama*  
Licensed Professional Land Surveyor  
Certificate Number 11249  
Land Court Certificate Number 325  
License Expires 4/18

OWNER: CITY AND COUNTY OF HONOLULU

TRANSFER CERTIFICATE OF TITLE:

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
OF THE LAND COURT DATED \_\_\_\_\_  
BY ORDER OF THE COURT.

REGISTRAR OF THE LAND COURT



### NOTE:

#### AREA OF EASEMENT

Easement 1 for Flowage Purposes in favor of the C&C of Honolulu affecting Lot 1 = 3,913 Sq. Ft.  
Easement 2 for Access, Sewer, Drainage, Street Light and Traffic Control Purposes in favor of the C&C of Honolulu,  
for Water Purposes in favor of BWS, for Electric Purposes in favor of HECO, for Telecommunications Purposes  
in favor of Hawaiian Telcom and Oceanic Time Warner Cable affecting Lot 3 = 8,900 Sq. Ft.

Denotes no vehicular access permitted  
Denotes access permitted



RECEIVED

2021 APR 26 AM 10:46

PLANNING & PERMITTING  
CITY AND COUNTY OF HONOLULU

2020/SUB-82

APPROVED

DEPARTMENT OF PLANNING AND PERMITTING

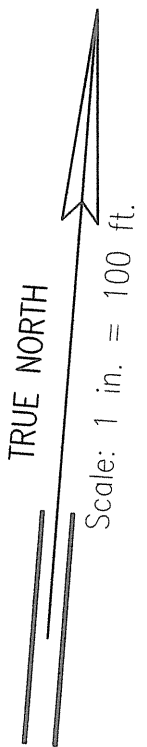
City and County of Honolulu

Date: APR 30 2021

By: [Signature]

Director of Planning and Permitting

MAP



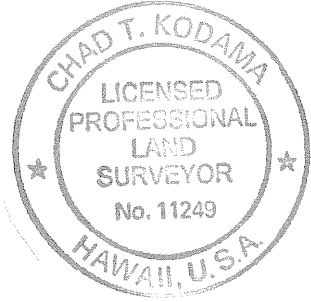
LAND COURT

STATE OF HAWAII

LAND COURT APPLICATION 1069

SUBDIVISION OF LOT 3  
AS SHOWN ON DPP FILE NO. 2013/SUB-24  
INTO LOTS 3-A, 3-B AND 3-C  
AND LOTS 1 AND 2  
AND CANCELLATION OF EASEMENT 133  
AS SHOWN ON DPP FILE NO. 2010/SUB-216  
AND EASEMENT 9714 AS SHOWN ON MAP 1416

AT HONOLULU, EWA, OAHU, HAWAII



CONTROLPOINT SURVEYING, INC.

615 Piikoi St.  
Suite 700  
Honolulu, Hawaii 96814  
April 16, 2020

By: *Chad T. Kodama*  
Licensed Professional Land Surveyor  
Certificate Number 11249  
Land Court Certificate Number 325  
License Expires 4/22

OWNER: CITY AND COUNTY OF HONOLULU

TRANSFER CERTIFICATE OF TITLE:

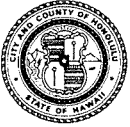
AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
OF THE LAND COURT DATED \_\_\_\_\_  
BY ORDER OF THE COURT.

REGISTRAR OF THE LAND COURT

NOTE:  
Azimuths are referred to "KAPUAI NEW".  
Lots 1 and 2 are road lots.  
Flood Zone: D  
Zoning (LUO): BMX-3

Denotes no vehicular access permitted  
Denotes access permitted

## **APPENDIX E: RESOLUTION 10-49**



## RESOLUTION

### APPROVING THE CONVEYANCE OF PROPERTIES FROM KAPOLEI PROPERTY DEVELOPMENT LLC TO THE CITY AND COUNTY OF HONOLULU

WHEREAS, Kapolei Property Development LLC ("KPD") has offered the City and County of Honolulu ("City") an opportunity to acquire certain real property in the City of Kapolei, and to terminate restrictions on the use of certain real property already designated for transfer to the City; and

WHEREAS, the terms of KPD's offer to transfer that real property to the City, and the City's responsibilities assumed in exchange for that real property are outlined in a Memorandum of Agreement ("MOA") between KPD and the City, which is attached hereto as Attachment A and made a part hereof; and

WHEREAS, the MOA sets forth that as a direct result of the difficult current economic situation, KPD had phased its plans to construct the remaining portion of Kapolei Parkway between Manawai Street and Kamokila Boulevard; and

WHEREAS, due to the traffic circulation demands of the Kapolei region, the City believes that construction of this portion of Kapolei Parkway in the near term is in the best interests of the public; and

WHEREAS, the City believes that constructing this portion of Kapolei Parkway has multiple benefits, including job creation or prevention of job losses, and mitigation of traffic congestion sooner than would occur if KPD phased construction of this portion of Kapolei Parkway; and

WHEREAS, in satisfaction of (1) Condition No. 4 of Ordinance No. 08-26 of the Revised Ordinances of Honolulu regarding the zoning for Makaiwa Hills, (2) Condition No. 8 of Ordinance No. 08-27 of the Revised Ordinances of Honolulu regarding the zoning for Kapolei West, and (3) a commitment by KPD to provide a transit lot to the City within the City of Kapolei, KPD intended to convey approximately twenty-one (21) acres of land located within the City of Kapolei to the City, provided that under such Ordinances and such commitment, this land was required to be use restricted for government purposes (the "Restricted Land"); and

WHEREAS, the Restricted Land consists of Lot 18271 (Map 1420 of Land Court Application No. 1069) commonly referred to as the "transit lot," and other land located within Lot 50001 (DPP File No. 2009/SUB-242), all of which is not served by public roads or other utility infrastructure; and



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## RESOLUTION

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WHEREAS, the MOA sets forth that in consideration for KPD'S agreement to convey the Restricted Land to the City free and clear of the government purposes use restriction, the City agrees to provide public road(s) (including Kapolei Parkway), sewer, drainage, water service, and to enable the installation of electrical and other utility service to the Restricted Land, as the City deems prudent or appropriate, at the City's own cost and within the City's own planning and budgeting time horizons, as determined by the City in its sole discretion; and

WHEREAS, KPD desires to support the City's planned mass transit project and is willing to convey to the City approximately thirteen (13) acres of additional land for development (the "Additional Land"), located within Lot 50001 (DPP File No. 2009/SUB-242) and shown on Exhibit A in Attachment A, to provide additional potential sources of revenue to support the City's planned mass transit project; and

WHEREAS, KPD'S agreement to convey the Additional Land to the City is conditioned upon the City's commitment that the revenue generated from the Additional Land will be dedicated to the City's planned mass transit project if the project moves forward, and if not, to the general fund; and

WHEREAS, pursuant to Section 6-61.3(2) of the Revised Ordinances of Honolulu ("ROH"), the City is authorized to receive "all other receipts dedicated for the mass transit project"; and

WHEREAS, as the MOA sets forth, in consideration for KPD'S agreement to convey the Additional Land to the City, the City agrees to provide public road(s) (including Kapolei Parkway), sewer, drainage, water service, and to enable the installation of electrical and other utility service to the Additional Land, as the City deems prudent or appropriate, at the City's own cost and within the City's own planning and budgeting time horizons, as determined by the City in its sole discretion; and

WHEREAS, the Restricted Land, the Additional Land, and land underlying future roadways to be conveyed to the City which combined total approximately fifty-one (51) acres, may sometimes be referred to collectively in the MOA as the "Property", and the Property is commonly referred to as portions of Tax Map Key Nos. (1) 9-1-016-150(por.); (1) 9-1-148: parcels 009, 010, 011(por.), and 012(por.); and

WHEREAS, KPD is providing the City with the Property in an "As Is, Where Is" condition, but only after the City has had the opportunity to conduct due diligence and environmental assessment(s) of the Property; and





## RESOLUTION

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WHEREAS, the MOA provides that the City may still reject the Property, and the MOA, if the City is reasonably dissatisfied with the condition of the Property or any portion thereof; and

WHEREAS, given the fact that the planned future roads within the Property to serve the Restricted Land and to serve the Additional Land (including Kapolei Parkway) have already been designed by engineers hired and paid for by KPD, and because the construction plans for such roads are in varying degrees approved, or in the process of being approved, by various City departments, KPD has agreed to assign such work product and the respective design contracts to the City under the MOA; and

WHEREAS, KPD has designed and is currently constructing a portion of Kapolei Parkway and a portion of 'Alohikea Street in what is known as "Urban Core 4" or "UC4" (DPP File No. 2006/SUB-142), which construction is taking place on Lot 18276 (Map 1420 of Land Court Application No. 1069), and Lot 18275 (Map 1420 of Land Court Application No. 1069), respectively, with both lots also being shown on Exhibit A in Attachment A; and

WHEREAS, KPD has designed the remainder of the portion of Kapolei Parkway known as "Urban Core 5" or "UC5" and other roads in the vicinity ("Urban Core 4A" or "UC4A", "Urban Core 6" or "UC6", and "Urban Core 7" or "UC7") that are in varying stages of design development; and

WHEREAS, the land that contains this remainder of Kapolei Parkway known as UC5 is identified as Lot 50001 (DPP File No. 2009/SUB-242) on Exhibit A in Attachment A; and

WHEREAS, the City and KPD believe that it is mutually beneficial for KPD to convey the Property to the City at this time so that the City can construct the remainder of Kapolei Parkway within the Property; and

WHEREAS, as set forth above a portion of Kapolei Parkway and a portion of 'Alohikea Street located within the Property are under construction, and the parties agree that upon conveyance of the applicable portion of the Property to the City that KPD will seek to assign a portion of the construction contract to the City to allow the CITY to complete such construction project; and

WHEREAS, the City agrees that in order for KPD to serve its adjoining land with utilities, certain easements will need to be reserved through the Property for construction of a dedicable (up to CITY standards) roadway, and certain dedicable drainage, electrical, sewer, and water utility infrastructure; and





## RESOLUTION

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WHEREAS, the City has independently reviewed the appraisal of the Property and has confirmed its valuation as \$60,005,000; and

WHEREAS, the City has estimated the total cost to the City of constructing improvements to Kapolei Parkway as are required under the MOA to be approximately \$35,875,435; and

WHEREAS, the difference between the appraised value of the Property and the City's estimated construction costs is approximately \$24,129,566, which represents a net positive benefit to the City; and

WHEREAS, the City also anticipates using federal monies to construct parts of Kapolei Parkway, thus further enhancing the benefits of this transaction to the City; and

WHEREAS, the conveyance of the Property to the City provides a resource that the City may lease, sell or otherwise develop to gain additional future revenues and further enhance the City's treasury and the City's Transit Fund; and

WHEREAS, KPD's Board of Directors has approved the MOA; and

WHEREAS, the City Administration and KPD will not proceed with the MOA unless the Council approves the conveyance of real property to the City contemplated in the MOA; now therefore

BE IT RESOLVED by the Council of the City and County of Honolulu that the Council hereby acknowledges, approves and accepts the conveyance of the Property from KPD to the City, and approves the City entering into an agreement to provide public road(s) (including Kapolei Parkway), sewer, drainage, water service, and to enable the installation of electrical and other utility service to the Property, subject to the terms set forth in the MOA; and

BE IT FURTHER RESOLVED that the Mayor or the Director of Budget and Fiscal Services ("BFS"), or the Director's designee, is hereby authorized to execute any agreements and documents in furtherance of said conveyance of the Property; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to Rix Mauer III, Director, Department of Budget and Fiscal Services; Wayne Yoshioka, Director, Department of Transportation Services; Craig Nishimura, Director, Department of Design and Construction; Geoffrey Cudiamat, Director and Chief Engineer,



## RESOLUTION

Department of Facility Maintenance; David Tanoue, Director, Department of Planning and Permitting; and Brad J. Meyers, President, Kapolei Property Development LLC, 1001 Kamokila Boulevard, Suite 250, Kapolei, Hawaii 96707.

INTRODUCED BY:

 (br)

DATE OF INTRODUCTION:

FEB 25 2010

Honolulu, Hawaii

Councilmembers

*Agreement No. A02123700*

## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT ("Agreement")** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY AND COUNTY OF HONOLULU**, hereinafter called the "**CITY**," and **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company, hereinafter called the "**OWNER**," (collectively, the "**parties**").

**WHEREAS**, in satisfaction of (1) Condition No. 4 of Ordinance No. 08-26 of the Revised Ordinances of Honolulu regarding the zoning for Makaiwa Hills, (2) Condition No. 8 of Ordinance No. 08-27 of the Revised Ordinances of Honolulu regarding the zoning for Kapolei West, and (3) a commitment by the OWNER to provide a transit lot to the CITY within the City of Kapolei, the OWNER intends to convey approximately twenty-one (21) acres of land located within the City of Kapolei to the CITY, provided that under such Ordinances and such commitment, this land is required to be use restricted for government purposes (the "**Restricted Land**") as shown on **Exhibit A**; and

**WHEREAS**, the Restricted Land consists of Lot 18271 (Map 1420 of Land Court Application No. 1069) commonly referred to as the "transit lot", and other land located within **Lot 50001 (DPP File No. 2009/SUB-242)**, all of which is not served by public roads or other utility infrastructure; and

**WHEREAS**, in consideration for the OWNER'S agreement to convey the Restricted Land to the CITY free and clear of the government purposes use restriction, the CITY has agreed to provide public road(s) (including Kapolei Parkway), sewer, drainage, water service, and to enable the installation of electrical and other utility service to the Restricted Land, as the CITY deems prudent or appropriate, at the CITY'S own cost and within the CITY'S own planning and budgeting time horizons, as determined by the CITY in its sole discretion; and

**WHEREAS**, the OWNER desires to support the CITY'S planned mass transit project and is willing to convey approximately thirteen (13) acres of additional land for development (the "**Additional Land**") located within **Lot 50001 (DPP File No. 2009/SUB-242)** and shown on **Exhibit A** to the CITY to provide the CITY with additional potential sources of revenue to support the CITY'S planned mass transit project; and

**WHEREAS**, the OWNER'S agreement to convey the Additional Land to the CITY is conditioned upon the CITY'S commitment that the revenue generated from the Additional Land will be dedicated by the CITY to the CITY'S planned mass transit project if the CITY'S planned mass transit project moves forward; and

**WHEREAS**, the Additional Land is not yet served by public roads or other utility infrastructure; and

**WHEREAS**, in consideration for the OWNER'S agreement to convey the Additional Land to the CITY, the CITY has agreed to provide public road(s) (including Kapolei Parkway), sewer, drainage, water service, and to enable the installation of electrical and other utility service to the Additional Land, as the CITY deems prudent or appropriate, at the CITY'S own cost and within the CITY'S own planning and budgeting time horizons, as determined by the CITY in its sole discretion; and

**WHEREAS**, the Restricted Land, the Additional Land, and land underlying future roadways to be conveyed to the CITY which combined total approximately fifty-one (51) acres

may sometimes be referred to collectively in this Agreement as the “**Property**”, and the Property is commonly referred to as portions of Tax Map Key Nos. (1) 9-1-016-150(por.); (1) 9-1-148: parcels 009, 010, 011(por.), and 012(por.), and

**WHEREAS**, as a direct result of the difficult current economic situation, the OWNER had phased its plans to construct the remaining portion of Kapolei Parkway between Manawai Street and Kamokila Boulevard; and

**WHEREAS**, due to the traffic circulation demands of the Kapolei region, the CITY believes that construction of this portion of Kapolei Parkway in the near term is in the best interests of the public; and

**WHEREAS**, the CITY believes that constructing this portion of Kapolei Parkway has multiple benefits, including job creation or prevention of job losses, and mitigation of traffic congestion sooner than would occur if the OWNER phased construction of this portion of Kapolei Parkway; and

**WHEREAS**, the parties agree that the planned future roads within the Property to serve the Restricted Land and to serve the Additional Land are shown in The City of Kapolei Urban Design Plan (November 2007) for the City of Kapolei adopted by the CITY on January 23, 2008 by Resolution 07-372,CD1 (the “**UDP**”); and

**WHEREAS**, the planned future roads within the Property to serve the Restricted Land and to serve the Additional Land (including Kapolei Parkway) have already been designed by engineers hired by the OWNER, and the construction plans for such roads are in varying degrees approved, or in the process of being approved, by various CITY departments, and the OWNER has agreed to assign, without warranty by the OWNER, such work product and the respective design contracts to the CITY under this Agreement; and

**WHEREAS**, the OWNER has designed and is currently constructing a portion of Kapolei Parkway and a portion of ‘Alohikea Street in what is known as “Urban Core 4” or “UC4” (**DPP File No. 2006/SUB-142**), which construction is taking place on Lot 18276 (Map 1420 of Land Court Application No. 1069), and Lot 18275 (Map 1420 of Land Court Application No. 1069), respectively, with both lots also being shown on **Exhibit A**, and

**WHEREAS**, the OWNER has designed the remainder of the portion of Kapolei Parkway known as “Urban Core 5” or “UC5” and other roads in the vicinity (“Urban Core 4A” or “UC4A”, “Urban Core 6” or “UC6”, and “Urban Core 7” or “UC7”) that are in varying stages of design development; and

**WHEREAS**, the land that contains this remainder of Kapolei Parkway known as UC5 is identified as **Lot 50001 (DPP File No. 2009/SUB-242)** on **Exhibit A**; and

**WHEREAS**, the parties believe that it is mutually beneficial for the OWNER to convey the Property to the CITY at this time so that the CITY can construct the remainder of Kapolei Parkway within the Property; and

**WHEREAS**, as set forth above a portion of Kapolei Parkway and a portion of ‘Alohikea Street located within the Property are under construction, and the parties agree that upon conveyance of the applicable portion of the Property to the CITY that the OWNER will

assign, without warranty by the OWNER, the construction contract to the CITY to allow the CITY to complete such construction project; and

**WHEREAS**, the CITY has agreed that in order for the OWNER to serve its adjoining land with utilities, certain easements will need to be reserved through the Property for construction of a dedicable (up to CITY standards) roadway, and certain dedicable drainage, electrical, sewer, and water utility infrastructure; and

**WHEREAS**, the parties have agreed that the Property will be annexed to, and become subject to, the City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, as modified from time to time (the “**City of Kapolei Declaration**”) consistent with existing zoning and other entitlements; and

**WHEREAS**, the value of the Property received by the CITY and estimated costs of constructing the improvements for the Property under this Agreement are summarized in **Exhibit B** attached hereto and incorporated herein by this reference; and

**WHEREAS**, the OWNER believes that entering into this Agreement with the CITY provides a sound business opportunity that allows the OWNER to redirect its capital and efforts from building infrastructure within the Property towards continued development in the Kapolei region, including within the City of Kapolei; and

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the CITY and the OWNER agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

2. The Property. The Property consists of: (i) Lot 18271 (area 5.233 acres) (Map 1420), (ii) Lot 18275 (area 0.458 acre) (Map 1420), (iii) Lot 18276 (area 7.284 acres) (Map 1420), and (iv) **Lot 50001 (DPP File No. 2009/SUB-242)** (a portion of Lot 16014-C-2 (Map 1358), Lot 18272 (Map 1420), and Lot 18710 (Map 1463) that is pending Recorded Subdivision (referred to herein as “**Lot 50001 (DPP File No. 2009/SUB-242)**”). All maps referenced herein are to maps filed with Land Court Application No. 1069 unless otherwise noted.

3. Subdivision. The OWNER has obtained subdivision approval from the Department of Planning and Permitting of the CITY for **Lot 50001 (DPP File No. 2009/SUB-242)**. The OWNER shall, at its own cost, obtain a Land Court Order effectuating such subdivision. As used herein the term “**Recorded Subdivision**” shall mean the OWNER’S obtaining issuance of a Land Court Order approving the recordation of this subdivision.

4. Annexation to Declaration. Subject to obtaining approval from the City Council to accept conveyance of the Property under paragraph 17 (Approval of City Council), prior to conveyance of each lot within the Property to the CITY, each lot has been or shall be annexed to the City of Kapolei Declaration. Lot 18275 and Lot 18276, are currently annexed to the City of Kapolei Declaration but, as road lots, will be withdrawn from the City of Kapolei Declaration prior to the OWNER’S conveyance of such lots to the CITY by a Supplemental Declaration to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions in the form attached as **Exhibit K**, and incorporated herein by this reference. Lot 18271 shall be annexed

to the City of Kapolei Declaration by a Supplemental Declaration to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions, in the form attached as **Exhibit C-1** and incorporated herein by this reference. After obtaining Recorded Subdivision for **Lot 50001 (DPP File No. 2009/SUB-242)**, such lot shall be annexed to the City of Kapolei Declaration by a Supplemental Declaration to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions, in the form attached as **Exhibit C-2** and incorporated herein by this reference.

5. Encumbrances.

5.1 Title Reports. Concurrently with execution of this Agreement, the OWNER will provide the CITY with preliminary title reports for the lot(s) which comprise the Property, together with copies of each recorded encumbrance shown in Schedule B of each such title report and copies of each unrecorded encumbrance that affects or will affect the Property at closing (collectively the **"Permitted Encumbrances"**). A list of the Permitted Encumbrances is attached as **Exhibit D** and incorporated herein by this reference. If an unrecorded encumbrance will be removed prior to closing, then the list of Permitted Encumbrances shall reflect such fact. In addition, attached as **Exhibit F** and incorporated herein by this reference is a list of permits issued by the CITY or other governmental authority that affects all or a portion of the Property (the **"Permits"**). The Property will be conveyed subject to all unexpired Permits. The OWNER agrees to convey to the CITY marketable fee simple title to the Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, claims, leases and taxes, except the Permitted Encumbrances. The CITY will have the right to review and approve in writing the Permitted Encumbrances; provided that the OWNER shall not have any obligation to remove any of the Permitted Encumbrances from title prior to conveyance of the Property to the CITY. The CITY shall have until the end of the "Due Diligence and Title Review Period" (as this term is defined in paragraph 16.1 (Due Diligence and Title Review Period)) to approve or disapprove in writing the Permitted Encumbrances, provided that the Permitted Encumbrances shall not be deemed approved by the CITY unless and until the CITY has delivered to the OWNER the CITY'S written acceptance of the Permitted Encumbrances (the **"Notice of Acceptance of Permitted Encumbrances"**). The OWNER will not encumber the Property with any additional recorded or unrecorded encumbrances without the prior written consent of the CITY, which the CITY agrees will not be unreasonably withheld, conditioned, or delayed. The OWNER will not enter into any additional Permit that affects the Property, without the prior written consent of the CITY, which the CITY agrees will not be unreasonably withheld, conditioned, or delayed; PROVIDED, HOWEVER, that the CITY agrees that any Permit issued by the CITY shall not require such prior written consent.

5.2 Existing Construction Rights of Entry. As set forth on **Exhibit D**, the Property is subject to the following construction rights of entry, each in favor of D.R. Horton - Schuler Homes, LLC, a Delaware limited liability company, doing business as D.R. Horton-Schuler Division (**"D.R. Horton - Schuler"**): (i) that certain Construction Right of Entry and Agreement to Provide Reciprocal Grant of Easement and License Agreement (Mehana Parkway Residential) dated October 20, 2005, by and between the Trustees under the Will and of the Estate of James Campbell Deceased, and D.R. Horton - Schuler (Agreement No. A02008400), (ii) that certain Construction Right of Entry dated effective as of November 25, 2008, in favor of D.R. Horton - Schuler (Right of Entry No. U02103400), and (iii) that certain Construction Right of Entry dated effective as of November 25, 2008, in favor of D.R. Horton - Schuler (Right of Entry No. U02103500) (collectively the **"D.R. Horton - Schuler Construction Rights of Entry"**). Upon taking title to the Property, the CITY agrees to execute separate Assignment and

Assumption Agreements assuming the OWNER'S applicable rights and obligations to and from D.R. Horton - Schuler under the D.R. Horton - Schuler Construction Rights of Entry.

5.3 Assignment and Assumption of Agreements. Upon conveyance of each lot within the Property to the CITY, the parties shall execute a general Assignment and Assumption of Unrecorded Agreements, substantially in the form attached as **Exhibit G** and incorporated herein by this reference; provided that there shall be a separate Assignment and Assumption Agreement for each D.R. Horton - Schuler Construction Right of Entry.

5.4 Construction Right of Entry – Permitted Encumbrance.

5.4.1 Generally. Upon conveyance of Lot 18276 to the CITY, the CITY agrees to execute a construction right of entry substantially in the form attached as **Exhibit H** and incorporated herein by this reference, in favor of the OWNER for construction of: (i) a portion of Kapolei Parkway between its current terminus at Kunehi Street and Manawai Street, and (ii) drain, electrical, sewer, and water utilities at or near the intersections of Kapolei Parkway at Manawai Street, Palailai Mall, Wakea Street, and 'Alohikea Street.

5.4.2 Dedicable Standards. All roadway, drain, electrical, sewer, and water utilities constructed by the OWNER under the construction right of entry referenced in this paragraph 5.4 (Construction Right of Entry - Permitted Encumbrance) shall be designed, bonded (if required) and constructed to CITY dedicable standards. The OWNER shall be responsible, at the OWNER'S own cost, to obtain applicable CITY review and approval for all such infrastructure improvements.

5.4.3 Quitclaim Conveyances. From time to time, upon completion of each kind of infrastructure (roadway, drain, electrical, sewer, or water utilities) within the Property under the construction right of entry referenced in this paragraph 5.4 (Construction Right of Entry - Permitted Encumbrance), such infrastructure shall be quitclaimed by the OWNER to the CITY after: (a) completion of each segment or portion of infrastructure, (b) the CITY has inspected such infrastructure and given an approval and written acceptance of such infrastructure, equivalent to a Final Approval to the Completion of Improvements that would be given if the infrastructure was being dedicated to the CITY as part of a subdivision action, (c) the OWNER has provided the CITY with adequate after construction documentation normally and customarily obtained as part of an infrastructure dedication, and (d) the OWNER has provided the CITY with acceptable "as built" drawings for such infrastructure. If such written acceptance of infrastructure by the CITY has not occurred by that time, the opening of Lot 18276 to the public as a public road will be deemed to be the CITY'S acceptance of all infrastructure constructed by the OWNER within such roadway lot; provided, that any defects or "punchlist items" identified by the CITY during its inspection of the infrastructure and timely communicated to the OWNER in writing prior to the opening of Lot 18276 to the public shall not be deemed accepted by the CITY, and provided, further, that the infrastructure constructed within the roadway lot by the OWNER shall not be deemed accepted unless and until the Owner has satisfied the OWNER'S obligation to provide the CITY with adequate after construction documentation normally and customarily obtained as part of an infrastructure dedication, and to provide the CITY acceptable "as built" drawings for such infrastructure. All such defects or "punchlist items" shall be accepted by the CITY after the OWNER rectifies or cures them to the reasonable satisfaction of the CITY.

5.5 Kama'aha Avenue. After Recorded Subdivision of **Lot 50001 (DPP File No. 2009/SUB-242)** but before conveyance of such lot to the CITY, the OWNER will be granting

an easement to permit D.R. Horton - Schuler to construct a roadway and utility infrastructure within the Kama'aha Avenue right of way shown as Easement "1002" on **Exhibit A** between Kapolei Parkway and Village Walk, which construction shall be to CITY dedicable standards. This Grant of Nonexclusive Easement (Access and Underground Utility Purposes) shall be substantially in the form attached as **Exhibit E** and incorporated herein by this reference.

6. Construction of Certain Infrastructure by the OWNER – Permitted Encumbrance.

6.1 Generally. The CITY acknowledges that **Lot 50001 (DPP File No. 2009/SUB-242)** will be subject to a reservation unto OWNER to enter onto **Lot 50001 (DPP File No. 2009/SUB-242)** to construct certain infrastructure within Easements "1000", and Easement "1002" through Easement "1006", inclusive, and that such reservation is more fully set forth in the Limited Warranty Deed with Covenants and Reservation of Rights attached as **Exhibit J**.

6.2 Quitclaim Conveyances. From time to time, upon completion of each kind of infrastructure (drain, electrical, sewer, water, or other utilities), within each of Easement "1000", and Easement "1002" through Easement "1006", inclusive, such infrastructure shall be quitclaimed by the OWNER to the CITY after: (a) completion of each segment or portion of infrastructure, (b) the CITY has inspected such infrastructure and given an approval and written acceptance of such infrastructure, equivalent to a Final Approval to the Completion of Improvements that would be given if the infrastructure was being dedicated to the CITY as part of a subdivision action, (c) the OWNER has provided the CITY with adequate after construction documentation normally and customarily obtained as part of an infrastructure dedication, and (d) the OWNER has provided the CITY with acceptable "as built" drawings for such infrastructure. If such written acceptance of infrastructure by the CITY has not occurred by that time, the issuance of a Land Court Order effectuating the cancellation of an easement under paragraph 6.3 (Unwinding of Easements) will be deemed to be the CITY'S acceptance of all infrastructure constructed by the OWNER within such easement(s); provided, that any defects or "punchlist items" identified by the CITY during its inspection of the infrastructure and timely communicated to the OWNER in writing shall not be deemed accepted by the CITY, and provided, further, that the infrastructure constructed by the OWNER shall not be deemed accepted unless and until the Owner has satisfied the OWNER'S obligation to provide the CITY with adequate after construction documentation normally and customarily obtained as part of an infrastructure dedication, and to provide the CITY acceptable "as built" drawings for such infrastructure. All such defects or "punchlist items" shall be accepted by the CITY after the OWNER rectifies or cures them to the reasonable satisfaction of the CITY.

6.3 Unwinding of Easements. At such time as the OWNER no longer needs the reservation to construct infrastructure within Easement "1000", and Easement "1002" through Easement "1006", inclusive, the OWNER shall relinquish its reservations set forth in the Limited Warranty Deed with Covenants and Reservation of Rights attached as **Exhibit J**, which relinquishment shall be done of record. In addition, after relinquishment of such reserved rights, at the OWNER'S own cost, the OWNER agrees to seek approval from the CITY to cancel Easement "1000", and Easement "1002" through Easement "1006", inclusive, and thereafter process a cancellation of such easements in Land Court. The CITY agrees to cooperate with the OWNER, including, signing such documentation as is reasonably required to effectuate such easement cancellations. The OWNER shall complete such relinquishment and easement cancellations within a reasonable period of time after the CITY has approved and accepted all of the infrastructure within Easement "1000", and Easement "1002" through Easement "1006".



7. Conveyances.

7.1 Lot 18271, Lot 18275 and Lot 18276. After obtaining approval from the City Council to accept conveyance of Lot 18271, Lot 18275, and Lot 18276, as required by paragraph 17 (Approval of City Council), after annexation of Lot 18271 to the City of Kapolei Declaration and withdrawal of Lot 18275 and Lot 18276 from the City of Kapolei Declaration, and after the CITY has given the Notice of Acceptance of Permitted Encumbrances for those lots, the OWNER shall convey Lot 18271, Lot 18275 and Lot 18276 to the CITY, free and clear of any use restrictions, recorded and unrecorded liens, encumbrances, assessments, easements, leases and taxes, except the approved Permitted Encumbrances, by Limited Warranty Deeds substantially in the forms attached as **Exhibit I-1** and **Exhibit I-2**, and incorporated herein by this reference. The OWNER will be responsible for conveyance taxes, if applicable, and recording fees for conveyance of these lots to the CITY, and shall be responsible for all taxes and assessments of the CITY up to the date of recordation of such Limited Warranty Deed. The parties anticipate that conveyance of Lot 18271, Lot 18275 and Lot 18276 will occur as soon as reasonably possible after the City Council has approved acceptance of conveyance of such lots to the CITY, and after the CITY has given the Notice of Acceptance of Permitted Encumbrances. The OWNER agrees to obtain, execute and deliver to the CITY all additional instruments as the CITY may reasonably deem necessary for the effective conveyance to the CITY of Lot 18271, Lot 18275, and Lot 18276, subject only to the approved Permitted Encumbrances.

7.2 Lot 50001 (DPP File No. 2009/SUB-242). After obtaining: (i) Recorded Subdivision for **Lot 50001 (DPP File No. 2009/SUB-242)**, (ii) approval from the City Council for acceptance of conveyance of **Lot 50001 (DPP File No. 2009/SUB-242)** as required by paragraph 17 (Approval of City Council), (iii) annexation of such lot to the City of Kapolei Declaration, and (iv) the CITY'S giving of the Notice of Acceptance of Permitted Encumbrances for **Lot 50001 (DPP File No. 2009/SUB-242)**, the OWNER shall convey **Lot 50001 (DPP File No. 2009/SUB-242)** to the CITY, free and clear of any use restrictions, recorded and unrecorded liens, encumbrances, assessments, easements, leases and taxes, except the approved Permitted Encumbrances, by Limited Warranty Deed with Covenants and Reservation of Rights substantially in the form attached as **Exhibit J** and incorporated herein by this reference. The OWNER will be responsible for conveyance taxes, if applicable, and recording fees for conveyance of this lot to the CITY, and shall be responsible for all taxes and assessments of the CITY up to the date of recordation of such Limited Warranty Deed. The OWNER agrees to obtain, execute and deliver to the CITY all additional instruments as the CITY may reasonably deem necessary for the effective conveyance to the CITY of **Lot 50001 (DPP File No. 2009/SUB-242)**, subject only to the approved Permitted Encumbrances.

7.3 Certificates of Title. Concurrently with delivery of each of the Limited Warranty Deeds to the CITY for execution, the OWNER shall provide the CITY with a current Certificate of Title (Land Court Lien Letter) for each lot, issued by Title Guaranty of Hawaii, Inc.

7.4 Satisfaction of Unilateral Agreement Conditions. Upon conveyance of the Property to the CITY, Condition No. 4 of Ordinance No. 08-26 of the Revised Ordinances of Honolulu regarding the zoning for Makaiwa Hills (as set forth as Condition No. 4 of that certain Unilateral Agreement and Declaration for Conditional Zoning dated September 11, 2008 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3788456) and Condition No. 8 of Ordinance No. 08-27 of the Revised Ordinances of Honolulu regarding the zoning for Kapolei West (as set forth as Condition No. 8 of that certain Unilateral Agreement and Declaration for Conditional Zoning dated September 11, 2008 filed in the Office

of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3788915) shall be deemed fully satisfied by the Department of Planning and Permitting of the CITY. The OWNER'S agreement to convey the Restricted Land free and clear of a government purposes use restriction is freely bargained for as part of the consideration given to the CITY as part of the transactions set forth in this Agreement, and therefore, the OWNER hereby waives all right, legal, equitable or otherwise, to oppose or object to the future use of the Restricted Land for uses other than governmental purposes. After conveyance of the Restricted Land to the CITY, the CITY agrees to provide written evidence to the OWNER that Condition No. 4 of Ordinance No. 08-26 of the Revised Ordinances of Honolulu regarding the zoning for Makaiwa Hills (as set forth as Condition No. 4 of that certain Unilateral Agreement and Declaration for Conditional Zoning dated September 11, 2008 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3788456) and Condition No. 8 of Ordinance No. 08-27 of the Revised Ordinances of Honolulu regarding the zoning for Kapolei West (as set forth as Condition No. 8 of that certain Unilateral Agreement and Declaration for Conditional Zoning dated September 11, 2008 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3788915) have been fully satisfied.

8. Assignment of Design and Construction Contracts.

8.1 Design Contracts. Aina Nui Corporation, an affiliate and member manager of the OWNER, has entered into design contracts with Engineering Concepts Inc. for the design of roads within the Property, identified in such design contracts as "Urban Core 4", "Urban Core 4A", and "Urban Core 5", and has entered into design contracts with Bills Engineering Inc. for the design of roads within the Property identified in such design contracts as "Urban Core 6", and "Urban Core 7". The parties agree that the work product under these road design contracts may be of use to the CITY. Therefore, the OWNER agrees to seek the consent from Engineering Concepts, Inc. to have the Urban Core 4", "Urban Core 4A", and "Urban Core 5" road design contracts assigned to the CITY with concurrent delivery of the work product (such as construction plans, drawings, and other written design or engineering work product) of Engineering Concepts, Inc. to the CITY. The OWNER also agrees to deliver the work product (such as construction plans, drawings, and other written design or engineering work product) of Bills Engineering, Inc. under the "Urban Core 6" and "Urban Core 7" road design contracts to the CITY to the fullest extent allowed under such design contracts. The parties acknowledge that the "Urban Core 6" and "Urban Core 7" road design contracts will not be assigned to the CITY. Provided that the consent of Engineering Concepts, Inc. is obtained, and provided that the CITY'S Department of Budget and Fiscal Services approves the exemption to the requirements of the Hawaii Public Procurement Code, Chapter 103D of the Hawaii Revised Statutes, the "Urban Core 4" design contract will be assigned to the CITY concurrently with conveyance of Lot 18271, Lot 18275 and Lot 18276. Provided that the consent of Engineering Concepts, Inc. is obtained, and provided that the CITY'S Department of Budget and Fiscal Services approves the exemption to the requirements of the Hawaii Public Procurement Code, Chapter 103D of the Hawaii Revised Statutes, the "Urban Core 4A" and the "Urban Core 5" design contracts will be assigned to the CITY concurrently with conveyance of **Lot 50001 (DPP File No. 2009/SUB-242)**. These assignments shall require that at the time of the assignments, the OWNER shall have paid any and all amounts then due and owing from the OWNER or Aina Nui Corporation arising under these design contracts, and will be substantially in the form of **Exhibit G** attached hereto and incorporated herein by this reference. If Engineering Concepts, Inc. does not consent to the assignment of these design contracts, or if the CITY'S Department of Budget and Fiscal Services does not approve an exemption to the requirements of the Hawaii Public Procurement Code for such assignments, then the CITY shall have no obligation with respect to these design contracts under this Agreement, and the CITY,

in its sole discretion, shall independently obtain such construction services as the CITY deems appropriate to complete construction of the roadways designed under such design contracts. In addition, if Engineering Concepts, Inc. does not consent to these assignments, the OWNER shall nevertheless deliver to the CITY the work product (such as construction plans, drawings, and other written design or engineering work product) under the applicable design contract(s) to the fullest extent allowed under such design contract(s).

8.2 Construction Contract. Aina Nui Corporation, an affiliate and member manager of the OWNER, has entered into a construction contract with Delta Construction Corporation dated June 17, 2008 for the construction of the "Urban Core 4" roads (Contract No. C02092800) (the "**Urban Core 4 Construction Contract**"). These roads are within **DPP Subdivision File No. 2006/SUB-142 and DPP Construction File No. 2007/CP-320**. A portion of the "Urban Core 4" roads are within the Property and a portion of those roads are not. The OWNER agrees to seek the consent of Delta Construction Corporation to amend the Urban Core 4 Construction Contract to remove Manawai Street and Wakea Street (both outside the Property). In addition, the OWNER will be retaining the responsibility to construct the portion of Kapolei Parkway from its current terminus at Kunehi Street to the Manawai Street intersection (within the Property), and therefore, the OWNER agrees to seek the consent of Delta Construction Corporation to amend the Urban Core 4 Construction Contract to remove this portion of Kapolei Parkway. The OWNER agrees to work cooperatively with the CITY to seek such additional amendments to the Urban Core 4 Construction Contract as the CITY reasonably requests, including, but not limited to, incorporating the CITY'S General Conditions of Construction Contracts into the Urban Core 4 Construction Contract. Once amended, and provided that the CITY'S Department of Budget and Fiscal Services approves the exemption to the requirements of the Hawaii Public Procurement Code, Chapter 103D of the Hawaii Revised Statutes, the Urban Core 4 Construction Contract will be assigned to the CITY concurrently with conveyance of Lot 18271, Lot 18275 and Lot 18276. This assignment shall require that at the time of the assignment, the OWNER shall have paid any and all amounts then due and owing from the OWNER or Aina Nui Corporation arising under the Urban Core 4 Construction Contract for work within or on Lot 18275 and Lot 18276, and will be substantially in the form of **Exhibit G** attached hereto and incorporated herein by this reference. If Delta Construction Corporation does not consent to the assignment of the Urban Core 4 Construction Contract to the City on the terms set forth herein, or if the CITY'S Department of Budget and Fiscal Services does not approve an exemption to the requirements of the Hawaii Public Procurement Code for such assignment, then the CITY shall have no obligation with respect to the Urban Core 4 Construction Contract under this Agreement, and the CITY, in its sole discretion, shall independently obtain such construction services as the CITY deems appropriate to complete construction of this portion of Kapolei Parkway.

9. Future Small Lot Subdivisions. Between the date of this Agreement and the date that the OWNER obtains Recorded Subdivision for **Lot 50001 (DPP File No. 2009/SUB-242)**, if requested by the CITY, the OWNER agrees to sign such documentation as is reasonably required for the CITY to process a small lot subdivision of **Lot 50001 (DPP File No. 2009/SUB-242)** with the Department of Planning and Permitting of the CITY. After conveyance of **Lot 50001 (DPP File No. 2009/SUB-242)** to the CITY, as and when the CITY further subdivides **Lot 50001 (DPP File No. 2009/SUB-242)** by small lot subdivision(s), the OWNER agrees to cause the Declarant under the City of Kapolei Declaration to withdraw all future road lots within **Lot 50001 (DPP File No. 2009/SUB-242)** from the City of Kapolei Declaration by an instrument(s) substantially in the form attached as **Exhibit K**, as and when requested to do so by the CITY.

10. Uluohia Street Dedication. Uluohia Street (**DPP File No. 1997/SUB-183**) is currently in the process of dedication. A portion of Easement "7119" (Map 1028) for utility purposes that is to be granted to the CITY as part of such dedication crosses through the Property. The CITY agrees that if such dedication has not occurred prior to conveyance of **Lot 50001 (DPP File No. 2009/SUB-242)** to the CITY, that the portion of Easement "7119" that crosses through **Lot 50001 (DPP File No. 2009/SUB-242)** and the dedicable sewer line located within this portion of Easement "7119" shall be deemed accepted by the CITY upon conveyance of **Lot 50001 (DPP File No. 2009/SUB-242)** to the CITY. The parties acknowledge that the CITY has inspected and approved such sewer line and that at the time of execution of this Agreement, the acceptance of such sewer line by the CITY is pending only document and title review and approval.

11. Construction of Roads. As set forth in the Recitals, the CITY agrees that in consideration for the OWNER'S conveyance of both the Restricted Land and the Additional Land to the CITY, that the CITY will construct Kapolei Parkway, Road B and the other roads through the Restricted Land and the Additional Land substantially in accordance with the requirements of the UDP, and in accordance with CITY dedicable standards, at the CITY'S own cost and within the CITY'S own planning and budgeting time horizons, as determined by the CITY in its sole discretion. Upon conveyance of the Property to the CITY, the CITY agrees to proportionally reduce the amount of the construction bond (and the energizing and street light maintenance bond currently issued to the CITY for the Urban Core 4 subdivision (**DPP File No. 2006/SUB-142**)). These are: (a) Agreement dated July 16, 2008, by and between Kapolei Property Development LLC, and the City and County of Honolulu and the Board of Water Supply of the City and County of Honolulu (Agreement No. A02095300) regarding construction of improvements for the Urban Core 4 Roads (Construction of Improvements Bond - \$9,000,000.00), and (b) Agreement dated July 16, 2008, by and between Kapolei Property Development LLC, and the City and County of Honolulu (Agreement No. A02095400) regarding construction of improvements for the Urban Core 4 Roads (Energizing and Maintenance of Street Lights Bond - \$10,800.00).

12. Kamokila Boulevard/Farrington Highway and Kapolei Parkway. In consideration of the OWNER'S agreement to convey the Property to the CITY, within thirty (30) days of the OWNER'S conveyance of Lot 18271, Lot 18275, and Lot 18276 to the CITY, the CITY agrees to release the repair and replacement bonds currently being held by the CITY for the existing portion of Kamokila Boulevard/Farrington Highway from Makakilo Drive to Kapolei Parkway, and for the existing portion of Kapolei Parkway from Kamokila Boulevard to Kalaeloa Boulevard. All future repaving or reconstruction of these dedicated roads will be borne by the CITY, at the CITY'S own cost.

13. Revenue from the Additional Land. As set forth in the Recitals, the OWNER'S agreement to convey the Additional Land to the CITY is conditioned upon the CITY'S commitment that the revenue generated from the Additional Land will be dedicated by the CITY to the CITY'S planned mass transit project if it moves forward. Therefore, the CITY hereby agrees that all revenue (exclusive of real property taxes) received by the CITY from the sale, lease, or use of the Additional Land shall be used to support the CITY'S planned mass transit project, and that such funds are "dedicated for the mass transit project" within the meaning of Section 6-61.3(2) of the Revised Ordinances of Honolulu (the "**Mass Transit Revenue Restriction**"). The Mass Transit Revenue Restriction will terminate on the first to occur of: (a) December 31, 2015 if the CITY'S planned mass transit project does not break ground to further the construction process by such date, or (b) on such date as the CITY is (i) no longer the fee simple owner of any portion of the Additional Land, and (ii) no longer able or entitled to receive

revenue (exclusive of real property taxes) from the sale, lease or use of all or any portion of the Additional Land under any recorded or unrecorded covenant, contract or other agreement with a third party.

14. Floor Area Ratio. For purposes of calculating any person's share of Assessments (as this term is defined in the City of Kapolei Declaration) under the City of Kapolei Declaration (as well as for other purposes more fully set forth in the City of Kapolei Declaration), during such time or times that the Property is within the "Development Land" (as this term is defined in the City of Kapolei Declaration), the minimum floor area ratio ("**FAR**") for the Property is 1.0. The maximum FAR for the Property under current zoning classification for the Property and under the UDP is 2.5 (not including open space bonuses).

15. Acceptance of Property. As a material inducement to the OWNER'S execution of this Agreement, the CITY agrees to accept the Property subject to the following terms and conditions of this paragraph 15 (Acceptance of Property):

15.1 Property in "As Is, Where Is" Condition.

15.1.1 No Warranties. It is expressly understood and agreed that, except for the limited warranty of title contained in the Limited Warranty Deeds attached as **Exhibit I-1, Exhibit I-2, and Exhibit J**, and except for representations expressly stated or agreed to herein, the OWNER has not made any representation or warranty, express or implied, regarding any aspect of the Property including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, suitability, habitability, quality, physical condition and value, and the OWNER hereby disclaims any and all liability for any and all such representations and warranties. Notwithstanding the foregoing provisions of this paragraph, the OWNER does represent that to the best of its knowledge, at the time of the conveyance of the Property, there shall exist no violations of government (including environmental, zoning and planning) laws, rules, regulations or limitations, unless the same have become legally nonconforming, and no violations of any restrictive covenant, agreement or condition affecting title; provided, however, that because a Phase 1 environmental assessment will be provided by the OWNER to the CITY and the CITY is undertaking its own environmental due diligence for the Property, the foregoing representation shall not be deemed or otherwise construed to be a representation by the OWNER that the Property either does, or does not, contain environmental contamination.

15.1.2 "As Is, Where Is" Condition. The CITY acknowledges and agrees that it is acquiring the Property in its "as is, where is" condition, with all faults, if any, and that the CITY has assumed all risks regarding all aspects of the Property, and the condition thereof, including, without limitation: (i) the risk of any physical condition affecting the Property including, without limitation, the existence of any soils conditions, or the existence of archeological or historical conditions on the Property; (ii) the risk of any damage or loss to the Property caused by any means including, without limitation, flood or earthquake; and (iii) the risk of use, zoning, habitability, merchantability or quality of the Property or the suitability of the Property for its present use or future development; and (iv) the activities of the OWNER or others on adjacent or other nearby lands in compliance with applicable laws and regulations, and covenants, if any, applicable to such lands.

15.2 Incorporation into Deeds; Merger. The provisions of paragraph 15.1.2 ("As Is, Where Is" Condition) shall be incorporated into the limited warranty deeds attached as **Exhibit I-1 and Exhibit J** and shall merge with such deeds upon completion of such conveyance.

16. Due Diligence, Title Review, and Environmental Testing.

16.1 Due Diligence and Title Review Period. For a period of one hundred-twenty (120) days beginning on the date of this Agreement (the “**Due Diligence and Title Review Period**”), the OWNER grants to the CITY and to its duly authorized employees, agents, consultants, contractors or other representatives, a revocable right of entry to enter onto the Property to undertake whatever due diligence and title review that it deems necessary or appropriate for the CITY’S needs under this Agreement.

16.2 Environmental Matters. To assist the CITY in its due diligence efforts, the OWNER, at the OWNER’S own cost, will hire an environmental consultant to prepare a current Phase 1 environmental assessment of the Property. The OWNER will use its commercially reasonable best efforts to provide this Phase 1 environmental assessment to the CITY within fifteen (15) days of the date of this Agreement. If recommended by the Phase 1 environmental assessment, the CITY has the right to hire its own environmental consultant to prepare a Phase 2 (invasive) environmental assessment; provided that the OWNER shall have the right to review and approve the scope and methodologies proposed for the Phase 2 (invasive) environmental assessment, which right of review and approval shall not be unreasonably withheld, conditioned or delayed. If a Phase 2 (invasive) environmental assessment is undertaken, then the consultant’s written work product shall be initially prepared in draft form, and the OWNER will be given a draft copy of such written work product and the opportunity to review and comment upon the resultant draft work product prior to such work being placed in final form. The OWNER’S review and comment shall be completed within a reasonable period of time following submission of such draft work product to the OWNER. In addition, if a Phase 2 (invasive) environmental assessment is undertaken, then the last day of the Due Diligence and Title Review Period shall be extended to a date thirty (30) days following the CITY’S receipt of the final written Phase 2 (invasive) environmental assessment. When the CITY receives the final written Phase 2 (invasive) environmental assessment, the CITY shall notify the OWNER in writing of what date such receipt occurred.

16.3 Acceptance or Rejection of the Property. If the CITY is reasonably dissatisfied with the condition of the Property or any portion thereof as indicated by the CITY’S site inspection, title review, or environmental assessment, disclosing any risk of environmental contamination or other adverse condition of the Property, then the CITY may, by written notice to the OWNER or the OWNER’S attorney describing such risk of environmental contamination or adverse condition and reasonable dissatisfaction and enclosing a copy of such Phase I site assessment or other site assessment, terminate this Agreement by written notice to the OWNER given on or before the last day of the Due Diligence and Title Review Period. In addition, if the CITY does not give the OWNER a Notice of Acceptance of Permitted Encumbrances within the Due Diligence and Title Review Period, the CITY may terminate this Agreement by written notice to the OWNER given on or before the last day of the Due Diligence and Title Review Period. If the CITY terminates this Agreement as provide in this paragraph, all rights and liabilities of the parties hereto by reason of this Agreement shall be deemed at an end.

16.4 Continued Operation. Until conveyance of the Property to the CITY, the OWNER shall operate and manage the Property in the normal course of business, maintaining present services and insurance, and shall maintain the Property in the same manner and custom as with the OWNER’S other vacant lands in the City of Kapolei, and shall perform when due all of the OWNER’S obligations under the Permitted Encumbrances, and otherwise in accordance with applicable laws, ordinances, rules and regulations affecting the Property.

Except as otherwise provided herein, and subject to acts of god and other natural occurrences or conditions which are beyond the control of the OWNER, the OWNER shall deliver the Property to the CITY in substantially the same condition it was in on the date of this Agreement, reasonable changes in conditions from natural occurrences or conditions excepted.

17. Approval of City Council. The conveyances of Lot 18271, Lot 18275, Lot 18276, and **Lot 50001 (DPP File No. 2009/SUB-242)** pursuant to this Agreement shall be subject to the approval by the City Council of the City and County of Honolulu. Both parties shall be responsible for taking such steps as are necessary or prudent to obtain such approval prior to or after execution of this Agreement, which approval is anticipated to be in the form of a City Council Resolution approving and accepting the conveyances of the Property to the CITY. Upon receipt of approval for such conveyances from the City Council of the City and County of Honolulu, the CITY agrees to promptly sign this Agreement.

18. Default. If either the OWNER or the CITY is in default or breach of any of the terms or conditions contained in this Agreement, and such default or breach continues for a period of ten (10) days after written notice by one party to the party in default or breach (unless such default or breach cannot be cured within ten (10) days, in which case the party in default or breach shall commence to cure such default or breach within said ten (10) day period and diligently pursue such cure to completion), the party not in default or breach shall be entitled to all remedies available to it at law or equity including the remedy of specific performance.

19. Assignment. Each party's rights hereunder are personal to it and may not be assigned, and any purported assignment absent such approval is void.

20. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Hawaii. The OWNER and the CITY agree and intend that this Agreement shall comport with the holdings of the Hawaii Supreme Court in Whitlow v. Jennings, 40 Hawaii 523 (1954). They also specifically agree that although this Agreement has not been escrowed, it shall constitute an "agreement made subject to approval of the subdivision" within the meaning of that case (40 Hawaii at page 531) until Recorded Subdivision (as this term is defined above) has been obtained.

21. Costs and Expenses. Each party shall bear its own costs and expenses (including the costs and expenses of its own counsel and consultants, if any) in negotiating the terms of this Agreement and any ancillary agreements or documents pertaining to this Agreement.

22. Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement of the parties and replace any prior written or oral agreement of the parties with respect to the matters set forth herein. All exhibits attached hereto are incorporated herein by reference and made a part hereof.

23. Amendments. Any amendments or modifications to this Agreement shall be in writing and signed by both parties.

24. Partial Invalidity. If any provision(s) of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision(s) to other persons or circumstances shall not be affected thereby.

25. No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement. If this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against any party as drafter.

26. Benefit; No Third Party Rights. Except as expressly set forth herein, the provisions of this Agreement are solely for the benefit of the parties hereto, and nothing herein shall be deemed or construed to create any rights whatsoever in any third parties.

27. No Recordation. Neither this Agreement nor any short form or other memorandum thereof shall be filed in the Land Court or recorded in the Bureau of Conveyances of the State of Hawaii.

28. Authority. Each person signing this Agreement represents and warrants that he or she has authority to sign on behalf of the entity he or she purports to be an officer, member or manager of, and that this Agreement has been validly authorized and constitutes a legally binding and enforceable obligation of each such entity.

29. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts

[Remainder of page intentionally left blank; signatures on following page]



**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized officers or agents on the date first above written.

APPROVAL RECOMMENDED:

CITY:

CITY AND COUNTY OF HONOLULU

\_\_\_\_\_  
Director, Department of Planning and Permitting

By \_\_\_\_\_  
Mufi Hannemann  
Its Mayor

APPROVAL RECOMMENDED:

OWNER:

**KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii corporation, its member manager

APPROVAL RECOMMENDED:

By \_\_\_\_\_  
Name: **Bradford J. Myers**  
Its: **President**

\_\_\_\_\_  
Director, Department of Design and Construction

By \_\_\_\_\_  
Name: **David W. Rae**  
Its: **Senior Vice President**

APPROVAL RECOMMENDED:

\_\_\_\_\_  
Director, Department of Facilities Maintenance

APPROVAL RECOMMENDED:

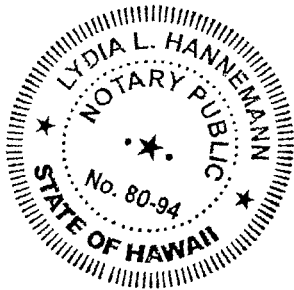
\_\_\_\_\_  
Director, Department of Budget and Fiscal Services

APPROVAL AS TO FORM & LEGALITY:

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

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

On this 24th day of February, 2010, before me personally appeared Bradford J. Myers AND David W. Rae, 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 capacities shown, having been duly authorized to execute such instrument in such capacities.



Lydia L. Hannemann  
Name: Lydia L. Hannemann

Notary Public, State of Hawaii

My commission expires: February 11, 2012

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: **MEMORANDUM OF AGREEMENT**

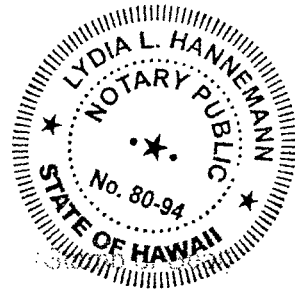
Document Date: undated at time of execution

No. of Pages (exclusive of exhibits): 16

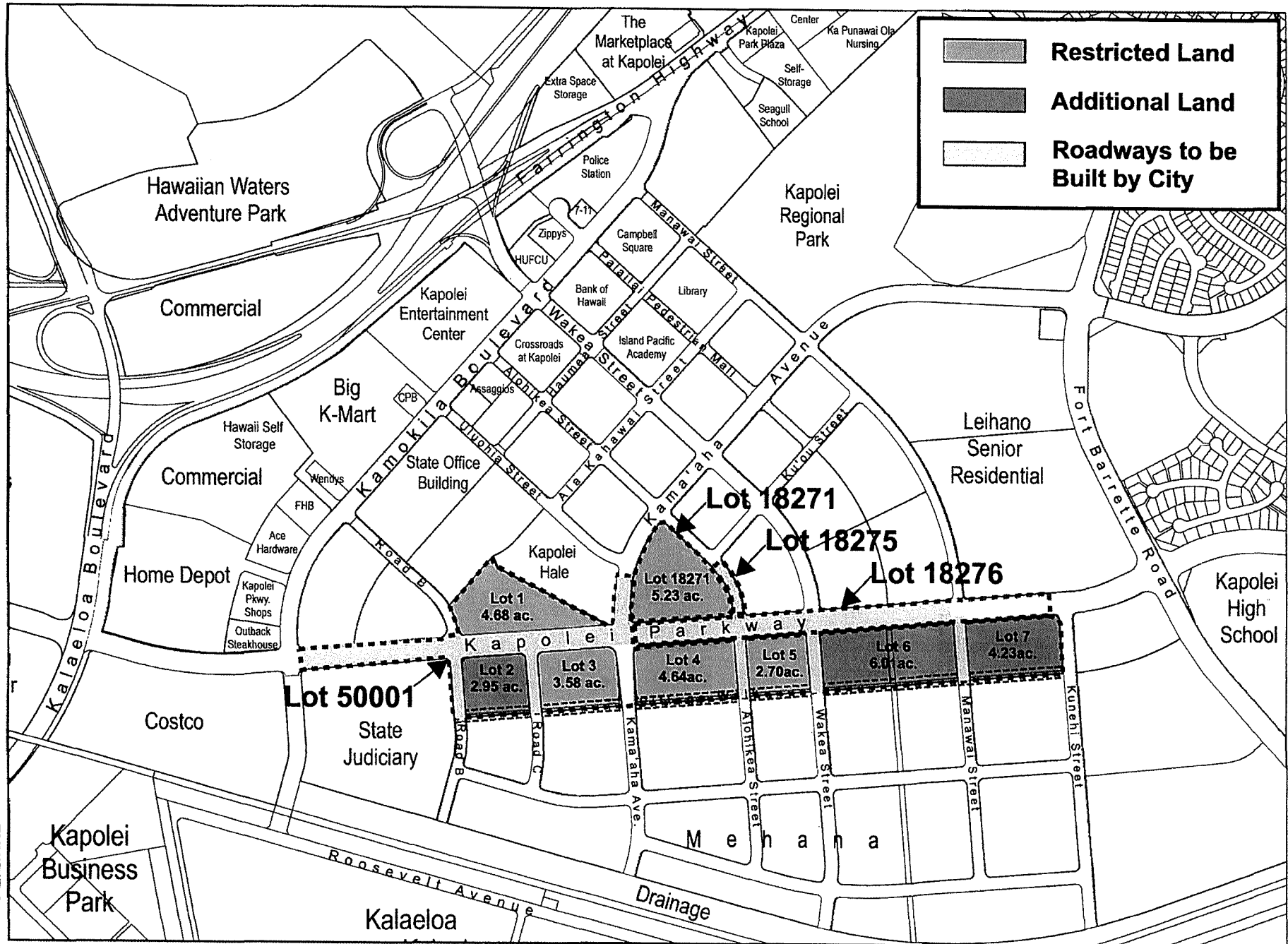
Jurisdiction (in which notarial act is performed): First Circuit

Lydia L. Hannemann 2/24/2010  
Signature of Notary Date of Notarization and  
Certification Statement

Lydia L. Hannemann  
Printed Name of Notary



(Aina Nui Corporation)



# City of Kapolei Land Transaction

N 0 250 500 1,000 Feet

February 2010

# EXHIBIT B

## KPD - City & County of Honolulu Agreement Financial Summary

February 19, 2010

Construction Project/Segment	Spent to Date (Actual through 1/21/10)	Cost to Construct per Contract/ Engineer/ DDC, DTS Estimates	Notes
<b>Urban Core 4</b>			
Kapolei Parkway	\$5,635,737	\$6,331,000	Construction 56% complete by Delta Construction Corp. contract cost to finish project as of 1/27/10.
Deduction for Kapolei Pkwy. section to Manawai St. and intersection retained by KPD		(\$1,506,000)	Total remaining cost for City portion of Kapolei Pkwy. = \$4,825,000 contract cost with 10% contingency and CM.
Alohikea Street	\$999,766	\$335,393	Construction 56% complete by Delta Construction Corp. contract cost with 10% contingency and CM.
<b>Total UC 4</b>	<b>\$6,635,503</b>	<b>\$5,160,393</b>	
<b>Urban Core 4A</b>			
Kamaaha Ave. and Kapolei Pkwy. intersection	<b>\$163,805</b>	<b>\$3,530,000</b>	DTS estimate; Design is approved by DPP.
<b>Urban Core 5</b>			
Kapolei Parkway	<b>\$468,950</b>	<b>\$13,400,000</b>	DTS estimate; Design is complete but pending DPP approval; Does not include Kapolei Pkwy./Kamokila signal.
<b>Urban Core 6</b>			
Manawai Street	\$82,712	\$1,269,400	DDC estimate; Design is complete and pending DPP approval.
Wakea Street	\$111,664	\$1,214,400	DDC estimate; Design is complete and pending DPP approval.
Alohikea Street	\$86,851	\$953,370	DDC estimate; Design is complete and pending DPP approval.
<b>Total UC 6</b>	<b>\$281,227</b>	<b>\$3,437,170</b>	
<b>Urban Core 7</b>			
Road C	\$86,788	\$1,293,600	DDC estimate; Design is complete and pending DPP approval.
Road B	\$116,315	\$1,504,272	DDC estimate; Design is complete and pending DPP approval.
South Parkway lots drainage line to Makai Channel	\$0	\$3,920,000	DDC estimate; Master planning is underway.
<b>Total UC 7</b>	<b>\$203,103</b>	<b>\$6,717,872</b>	
<b>Kamokila Blvd. Repaving/Release of R&amp;R Bonds</b>	<b>\$140,000</b>	<b>\$3,630,000</b>	Contractor's current estimate; Design pending DPP approval.
<b>Total for All Projects City Assumes</b>	<b>\$7,892,588</b>	<b>\$35,875,435</b>	
<b>Land</b>	<b>Acres (gross)</b>	<b>Appraised Value</b>	<b>Notes</b>
<u>Restricted Land</u>			
Lot 18271 (TMK 9-1-148-009)	5.23	\$10,225,000	Per Hallstrom Group 1/8/10 appraisal; No market value for land with restrictions.
Lot 50001 (DPP File No. 2009/Sub-242)	15.60	\$27,895,000	
<u>Additional Land</u>			
Lot 50001 (DPP File No. 2009/Sub-242)	13.19	\$21,885,000	Per Hallstrom Group 1/8/10 appraisal.
<u>Other Land (Roadways)</u>			
Lot 18275 (Alohikea St. TMK 9-1-148-011)	0.46	\$0	Alohikea St. roadway lot - Urban Core 4.
Lot 18276 (Kapolei Pkwy. TMK 9-1-148-011)	7.28	\$0	Kapolei Parkway roadway lot - Urban Core 4.
Lot 50001 (DPP File No. 2009/Sub-242)	9.52	See note	Future roadways; Appraised Kapolei Pkwy. land value is <b>\$4.81 million</b> to serve as a local match for Fed. Funds.
<b>Total Value of Land Conveyed to City</b>	<b>51.28</b>	<b>\$60,005,000</b>	1/8/10 appraised value
<b>Net Positive to City</b>		<b>\$24,129,566</b>	Does not include value for amount spent to date or the potential for Federal funding.
<b>Federal Funding Sought by City</b>		<b>\$10,394,000</b>	For eligible Kapolei Parkway and Kama'aha Ave. segments.
<b>Net Positive to City with Federal Funding</b>		<b>\$34,523,566</b>	

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP  
2200 ASB Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Mark K. Murakami  
Telephone: 808.523.2561

TITLE OF DOCUMENT:

**SUPPLEMENTAL DECLARATION TO CITY OF KAPOLEI DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND RESTRICTIONS**

PARTIES TO DOCUMENT:

**DECLARANT:** **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability company  
James Campbell Building, Suite 200, 1001 Kamokila Boulevard, Kapolei, Hawaii  
96707

**CONSENTING  
PARTY:** **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company  
James Campbell Building, Suite 250, 1001 Kamokila Boulevard, Kapolei, Hawaii  
96707

**TAX MAP KEY(S):** **See Exhibit 2 for Tax Map Key Parcel Numbers Affected by this Document**

Certificate of Title Nos. 496,527; 524,480; 569,438; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314; 600,145; 600,146; 600,148; 600,149; 600,150; 600,151; 600,152; 600,153; 600,154; 600,155; 600,156; 600,157; 600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164; 600,165; 600,166; 600,230 (as to Lot 16013); 619,022; 631,048; 631,381; 658,382; 671,118; 674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010; 806,014; 806,016 (as to Lot 17884, Lot 17885, Lot 17886, Lot 17887, Lot 17888, Lot 17889, Lot 17890, and Lot 17891); 807,561; 812,026; 812,028; 813,557; 816,985; 826,056; 828,618; 830,890 (as to Lot 16014-B); 830,892; 836,531; 842,498; 842,499; 854,915; 870,971; 905,804; 911,246; 913,970; 928,177 (as to Lot 18269, Lot 18271, Lot 18273, and Lot 18274); 928,178; 928,526; 932,371; 941,358; 941,359; and 958,215

(This document consists of \_\_\_ pages.)

**SUPPLEMENTAL DECLARATION TO  
CITY OF KAPOLEI DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**THIS SUPPLEMENTAL DECLARATION** is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability company (the **"Declarant"**), whose principal place of business and post office address is James Campbell Building, Suite 200, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707.

**R E C I T A L S:**

**WHEREAS**, as original Declarant, the Trustees under the Will and of the Estate of James Campbell, Deceased, filed that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as the same has been and may be amended and/or modified from time to time (collectively the **"Declaration"**); and

**WHEREAS**, by instrument dated January 2, 2002, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829, said Trustees assigned, transferred and conveyed to Declarant all of the rights and obligations vested in or reserved unto said Trustees' as the original Declarant under the Declaration; and

**WHEREAS**, Declarant reserved unto itself in Section 3.3 (Annexation) of the Declaration, the right, power and authority to Annex portions of the Benefitted Lands to the Land with the Consent of the Owner of the applicable Benefitted Land, and thereby subject such Annexed parcels to the terms of the Declaration;

**WHEREAS**, Kapolei Property Development LLC, a Hawaii limited liability company, is the Owner of Lot 18271, as shown on Map 1420 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, as more fully described in **Exhibit 1** attached hereto and incorporated herein by this reference (the **"Annexed Lot"**);

**WHEREAS**, the Annexed Lot is a portion of the Benefitted Lands; and

**WHEREAS**, Declarant intends to Annex the Annexed Lot to the Land and thereby subject the same to the terms of the Declaration;

**NOW THEREFORE**, Declarant, in consideration of the foregoing, and subject to the condition set forth below regarding the effective date of this instrument, does hereby declare as follows:

1. Declaration; Annexation of Annexed Lot to Declaration. Pursuant to the rights reserved unto Declarant under Section 3.3 (Annexation) of the Declaration, as of the Effective Date (defined in paragraph 9 (Effective Date)) Declarant does hereby Annex the Annexed Lot described in **Exhibit 1** to the Land. For all purposes set forth in Section 1.2 (Purpose) of the Declaration, or otherwise expressly set forth or implicit in the Declaration, Declarant declares that the Annexed Lot is and shall be from the Effective Date and

throughout the Term developed, maintained, utilized, operated and Transferred subject to any and all of the protective covenants, conditions and restrictions set forth in the Declaration and set forth herein. The Declaration shall attach to the title to the Annexed Lot, inure to the benefit of each Owner, and run with such title throughout the Term, being binding upon and Enforceable against every Owner and Occupant.

2. Consent of Owner. By its execution of this instrument, Kapolei Property Development LLC, a Hawaii limited liability company, as Owner of the Annexed Lot, does hereby join in and consent to the Annexation of the Annexed Lot to the Declaration in accordance with the terms and conditions of this instrument and of the Declaration.

3. Use of the Annexed Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 (Annexation) of the Declaration, Declarant does hereby declare that the proposed use of the Annexed Lot, and if subdivided, any and all resultant Lots, shall be as follows:

3.1 Municipal Status. So long as: (a) the City and County of Honolulu is the "Owner" (as this term is defined in the Declaration) of the Lot, and (b) the Lot is used for governmental purposes, then the Annexed Lot shall have municipal status ("**Municipal Status**").

3.2 Change in Status. If: (a) the City and County of Honolulu is not the "Owner" (as this term is defined in the Declaration) of the Lot, or (b) the Lot is not used for governmental purposes, then the Municipal Status of the Lot shall be changed (a "**Change in Status**"), and thereafter the Lot shall be used or deemed to be used for commercial purposes, with a minimum initial Floor Area of 1.0. After a Change in Status occurs, nothing shall preclude a Lot from reverting to Municipal Status so long as both elements of Municipal Status are concurrently satisfied. The second sentence of Section 3.4 (Withdrawal) of the Declaration reading "Notwithstanding the foregoing, . . . holding fifty-one percent (51%) of the Units (whether or not the Association has been formed)." shall not apply to the Annexed Lot or if subdivided, to any resultant Lot.

3.3 Notice of Change in Status. When a Change in Status occurs with respect to a Lot, the City and County of Honolulu must give Notice of the Change in Status to the Declarant and to the Association within a reasonable period of time either before or after the Change in Status occurs.

3.4 Effect of Change in Status. From and after the date that a Change in Status occurs with respect to a Lot, the Lot shall: (a) be part of the Development Land (as this term is defined in the Declaration), (b) be used or deemed to be used for commercial purposes, with a minimum initial Floor Area of 1.0, and (c) no longer be subject to the terms and conditions of paragraph 4 (Modification of Declaration as to the Annexed Lot with Municipal Status). Notwithstanding the foregoing, the Owner of a Lot shall not be subject to Assessments and not be a Member of the Association until the first day of the next fiscal year of the Association that immediately follows the date the Change in Status occurred.

3.5 Subsequent Amendments of the Declaration. After a Change in Status occurs, the Declarant shall have the right to Amend Exhibit D and Exhibit D-1 of the Declaration at any time, in its Sole Discretion, without Notice to any Party, to reflect the fact that a Lot is part of the Development Land.

4. Modification of Declaration as to the Annexed Lot with Municipal Status. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby Amend the provisions of the Declaration as and to the extent set forth below, solely as they apply to the Annexed Lot, and if subdivided, to any and all resultant Lots, while the Annexed Lot, or resultant Lots, has/have Municipal Status. In the event of any conflict between the other provisions of the Declaration and the provisions of this paragraph 4 (Modification of Declaration as to the Annexed Lot with Municipal Status), the provisions of this paragraph 4 (Modification of Declaration as to the Annexed Lot with Municipal Status) shall control.

4.1 No Assessments. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall be exempt from paying General, Special or Subdistrict Assessments on such Lot, whether past, present or future, and including, without limitation, any Special Assessments levied under subpart (ii) of the last sentence of Section 8.1 of the Declaration.

4.2 No Reimbursements. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall be exempt from any obligation to Reimburse the Board, the Association, the Declarant or any other Party under the Declaration.

4.3 No Indemnity. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall be exempt from any obligation to Indemnify the Board, the Association, the Declarant or any other Party under the Declaration.

4.4 No Liens. During all periods that a Lot has Municipal Status, the City and County of Honolulu's interest in the Lot shall not be subject to any lien under the Declaration.

4.5 Cure Periods. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall have one hundred twenty (120) days, running concurrently, to complete any actions required of them under Notices given pursuant to Sections 6.6 or 7.9 of the Declaration (subject to further extension as provided for in such Sections), rather than the sixty (60) day periods specified in such Sections.

4.6 Inspection. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall be given two (2) days prior written Notice before the Board, it designees or the Declarant enter onto the Lot pursuant to the provisions of Sections 7.9 or 10.6 of the Declaration.

4.7 Remedies. Subparagraphs 9.1 (No Assessments), 9.2 (No Reimbursements) and 9.3 (No Indemnity) shall not be deemed or construed to prevent:

- (i) the Board (on behalf of the Association) from filing suit against the City and County of Honolulu, in its capacity as Owner of a Lot, to recover costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association as a result of the City and County's act or failure or refusal to act in accordance with the Declaration or its failure or refusal to comply with the Rules;
- (ii) the Board (on behalf of the Association), the Declarant or any other Party from filing suit against the City and County of Honolulu, in its



capacity as Owner of a Lot, to recover all costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association, the Declarant or such Party, as appropriate, that are recoverable at law from the City and County of Honolulu, with respect to any event or occurrence that would otherwise be subject to Reimbursement or Indemnity under the provisions of the Declaration, but for subparagraphs 9.2 (No Reimbursements) and 9.3 (No Indemnity); or

- (iii) the Board (on behalf of the Association), or the Declarant (pursuant to Section 10.8 of the Declaration) from exercising their rights under Section 5.6(f) of the Declaration.

5. Modification of Declaration as to the Annexed Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby Amend the provisions of the Declaration as and to the extent set forth below, solely as they apply to the Annexed Lot, or if subdivided, to any and all resultant Lots. In the event of any conflict between the other provisions of the Declaration and the provisions of this paragraph 5 (Modification of Declaration as to the Annexed Lot), the provisions of this paragraph 5 (Modification of Declaration as to the Annexed Lot) shall control.

5.1 Subdivision Provision. Section 4.2 (Subdivision/Partition) of the Declaration shall not apply to the Annexed Lot, or if subdivided, to any and all resultant Lots, and in lieu thereof, the following terms and conditions shall apply:

5.1.1 Subdivision/Partition.

(a) Lot with Municipal Status. If a Lot has Municipal Status and such Lot is subdivided, partitioned or consolidated in accordance with Applicable Laws, then any and all resultant Lot(s) shall continue to have Municipal Status until such time as both elements of Municipal Status are no longer concurrently satisfied with respect to the applicable resultant Lot(s).

(b) Lot within the Development Land. If a Lot is part of the Development Land, then whenever such Lot is subdivided, partitioned or consolidated in accordance with Applicable Laws, the Floor Area allocated to the old Lot or Lots shall be reallocated automatically among the new Lot or Lots in accordance with the Floor Area of any Improvements then Approved by Declarant for construction on such Lot(s) pursuant to Section 6.4 (Plan Approval) of the Declaration and, for any Lot(s) on which such Approvals have not been obtained, the Floor Area shall be reallocated in proportion to the square footage of the land area of such new Lot(s); provided, however, that notwithstanding the foregoing, the Declarant shall have the right, in its Sole Discretion, with the Approval of the Owner of a Lot, to change the use of any portion of such Lot included within the Development Land after such Lot is subdivided or partitioned, by designating the applicable portion of such Lot for government, common area or other use, in which event there shall not be any Floor Area or Units reallocated to any such new Lots designated for such non-commercial purposes, and the total Floor Area and Units shall be reduced by an amount equal to the Floor Area and Units that would otherwise have been reallocated to such Lots pursuant to this paragraph 5.1.1(b) (Subdivision/Partition - Lot within the Development Land).

(c) Required Documentation. After obtaining approval from applicable Government Entities for a subdivision, partition or consolidation of a Lot or Lots, the Owner(s) of the affected Lot(s) shall provide both the Association and the Declarant with a copy of the subdivision map approved by the Department of Planning and Permitting of the City and County of Honolulu (or any successor Government Entity), a copy of the Land Court Map, and a copy of the Land Court Order effectuating such subdivision, partition or consolidation.

6. Amendment to Exhibit A of Declaration. Under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant has the right, without Notice to any Party, to Amend the exhibits to the Declaration as necessary each time a parcel of Benefitted Lands is Annexed to the Land pursuant to Section 3.3 (Annexation) of the Declaration. Pursuant to the rights reserved unto Declarant under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant does hereby Amend Exhibit A of the Declaration by adding thereto the legal description of the Annexed Lot attached hereto as **Exhibit 1**, which for all purposes shall be deemed incorporated therein by reference as of the Effective Date. As defined in the Declaration, and as used herein, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

7. Amendment to Exhibit D of Declaration. Under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant has the right to Amend Exhibit D of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant does hereby Amend Exhibit D of the Declaration by deleting in its entirety every previous Exhibit D and substituting therefor the revised Exhibit D attached hereto as **Exhibit D** and incorporated herein by this reference.

8. Amendment to Exhibit D-1 of Declaration. Under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant has the right to Amend Exhibit D-1 of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant does hereby Amend Exhibit D-1 of the Declaration by deleting in its entirety every previous Exhibit D-1 and substituting therefor the revised Exhibit D-1 attached hereto as **Exhibit D-1** and incorporated herein by this reference.

9. Effective Date. The effective date ("**Effective Date**") of this instrument shall be the date upon which this instrument is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

10. No Other Effect. Except as expressly provided in paragraphs 1 through 9 above, in all other respects, the Declaration shall remain unmodified, and in full force and effect.

11. Notation of Instrument. This instrument shall be noted on each of the following Certificates of Title: **Certificate of Title Nos. 496,527; 524,480; 569,438; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314; 600,145; 600,146; 600,148; 600,149; 600,150; 600,151; 600,152; 600,153; 600,154; 600,155; 600,156; 600,157; 600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164; 600,165; 600,166; 600,230 (as to Lot 16013); 619,022; 631,048; 631,381; 658,382; 671,118; 674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010; 806,014; 806,016 (as to Lot 17884, Lot 17885, Lot**

17886, Lot 17887, Lot 17888, Lot 17889, Lot 17890, and Lot 17891); 807,561; 812,026; 812,028; 813,557; 816,985; 826,056; 828,618; 830,890 (as to Lot 16014-B); 830,892; 836,531; 842,498; 842,499; 854,915; 870,971; 905,804; 911,246; 913,970; 928,177 (as to Lot 18269, Lot 18271, Lot 18273, and Lot 18274); 928,178; 928,526; 932,371; 941,358; 941,359; and 958,215.

12. Defined Terms. Any word, term or phrase which begins with initial capitalization and which is not defined in this instrument or defined in another identified document, shall be given the definition of such word, term or phrase in the Declaration.

[the remainder of this page intentionally left blank; signature(s) on following page(s)]

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date first above written.

**Declarant:**

**CAMPBELL HAWAII INVESTOR LLC**, a  
Hawaii limited liability company

By James Campbell Company LLC, a  
Delaware limited liability company, its  
member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date first above written.

**Consent of Owner:**

**KAPOLEI PROPERTY DEVELOPMENT  
LLC**, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii  
corporation, its member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, 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 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.

Name:  
Notary Public, State of Hawaii  
My commission expires:

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **SUPPLEMENTAL DECLARATION TO CITY OF KAPOLEI  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

Document Date: \_\_\_\_\_, 2010

No. of Pages (including this page): \_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	---

Printed Name of Notary

(Campbell Hawaii Investor LLC)

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

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **SUPPLEMENTAL DECLARATION TO CITY OF KAPOLEI  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

Document Date: \_\_\_\_\_, 2010

No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	---

Printed Name of Notary

(Kapolei Property Development LLC)

## **EXHIBIT 1**

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, described as follows:

**LOT 18271** (area 5.233 acres), as shown on Map 1420, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

**BEING** a portion of the land described in and covered by **Certificate of Title No. 928,177** issued to Kapolei Property Development LLC, a Hawaii limited liability company.

End of Exhibit 1



**EXHIBIT 2**  
**LIST OF TAX MAP KEY PARCELS**

(Oahu) 9-1-016: parcels 054(por.); 121; 125; 135; 138(por.); 144; 147; 148; and 149

(Oahu) 9-1-088: parcels 001 through 021; 023; 025; and 027

(Oahu) 9-1-088-022: CPR 001 through 004

(Oahu) 9-1-106: parcels 001 through 008; and parcels 010 through 016

(Oahu) 9-1-118: parcels 001 through 007; and 009

(Oahu) 9-1-118-008: CPR 001 through 003

(Oahu) 9-1-148: parcels 005; 007; 009; and 011

(Oahu) 9-1-148-008: CPR 001 and 002

End of Exhibit 2

EXHIBIT D  
[REVISED EXHIBIT D TO BE ATTACHED]

End of Exhibit D

EXHIBIT D-1  
[REVISED EXHIBIT D-1 TO BE ATTACHED]

End of Exhibit D-1

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP  
2200 ASB Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Mark K. Murakami  
Telephone: 808.523.2561

TITLE OF DOCUMENT:

**SUPPLEMENTAL DECLARATION TO CITY OF KAPOLEI DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND RESTRICTIONS**

PARTIES TO DOCUMENT:

**DECLARANT:** **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability company  
James Campbell Building, Suite 200, 1001 Kamokila Boulevard, Kapolei, Hawaii  
96707

**CONSENTING  
PARTY:** **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company  
James Campbell Building, Suite 250, 1001 Kamokila Boulevard, Kapolei, Hawaii  
96707

**TAX MAP KEY(S):** **See Exhibit 2 for Tax Map Key Parcel Numbers Affected by this Document**

Certificate of Title Nos. 496,527; 524,480; 569,438; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314; 600,145; 600,146; 600,148; 600,149; 600,150; 600,151; 600,152; 600,153; 600,154; 600,155; 600,156; 600,157; 600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164; 600,165; 600,166; 600,230 (as to Lot 16013); 619,022; 631,048; 631,381; 658,382; 671,118; 674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010; 806,014; 806,016 (as to Lot 17884, Lot 17885, Lot 17886, Lot 17887, Lot 17888, Lot 17889, Lot 17890, and Lot 17891); 807,561; 812,026; 812,028; 813,557; 816,985; 826,056; 828,618; 830,890 (as to Lot 16014-B); 830,892; 836,531; 842,498; 842,499; 854,915; 870,971; 905,804; 911,246; 913,970; 928,177 (as to Lot 18269, Lot 18271, Lot 18273, and Lot 18274); 928,178; 928,526; 932,371; 941,358; 941,359; 958,215; \_\_\_\_\_ and \_\_\_\_\_

(This document consists of \_\_ pages.)

**SUPPLEMENTAL DECLARATION TO  
CITY OF KAPOLEI DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**THIS SUPPLEMENTAL DECLARATION** is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability company (the **"Declarant"**), whose principal place of business and post office address is James Campbell Building, Suite 200, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707.

**R E C I T A L S:**

**WHEREAS**, as original Declarant, the Trustees under the Will and of the Estate of James Campbell, Deceased, filed that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as the same has been and may be amended and/or modified from time to time (collectively the **"Declaration"**); and

**WHEREAS**, by instrument dated January 2, 2002, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829, said Trustees assigned, transferred and conveyed to Declarant all of the rights and obligations vested in or reserved unto said Trustees' as the original Declarant under the Declaration; and

**WHEREAS**, Declarant reserved unto itself in Section 3.3 (Annexation) of the Declaration, the right, power and authority to Annex portions of the Benefitted Lands to the Land with the Consent of the Owner of the applicable Benefitted Land, and thereby subject such Annexed parcels to the terms of the Declaration;

**WHEREAS**, Kapolei Property Development LLC, a Hawaii limited liability company, is the Owner of **Lot 50001 (DPP File No. 2009/Sub-242)**, as shown on Map \_\_\_\_\_ filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, as more fully described in **Exhibit 1** attached hereto and incorporated herein by this reference (the **"Annexed Lot"**);

**WHEREAS**, the Annexed Lot is a portion of the Benefitted Lands; and

**WHEREAS**, Declarant intends to Annex the Annexed Lot to the Land and thereby subject the same to the terms of the Declaration;

**NOW THEREFORE**, Declarant, in consideration of the foregoing, and subject to the condition set forth below regarding the effective date of this instrument, does hereby declare as follows:

1. Declaration; Annexation of Annexed Lot to Declaration. Pursuant to the rights reserved unto Declarant under Section 3.3 (Annexation) of the Declaration, as of the Effective Date (defined in paragraph 9 (Effective Date)) Declarant does hereby Annex the Annexed Lot described in **Exhibit 1** to the Land. For all purposes set forth in Section 1.2 (Purpose) of the Declaration, or otherwise expressly set forth or implicit in the Declaration, Declarant declares that the Annexed Lot is and shall be from the Effective Date and

throughout the Term developed, maintained, utilized, operated and Transferred subject to any and all of the protective covenants, conditions and restrictions set forth in the Declaration and set forth herein. The Declaration shall attach to the title to the Annexed Lot, inure to the benefit of each Owner, and run with such title throughout the Term, being binding upon and Enforceable against every Owner and Occupant.

2. Consent of Owner. By its execution of this instrument, Kapolei Property Development LLC, a Hawaii limited liability company, as Owner of the Annexed Lot, does hereby join in and consent to the Annexation of the Annexed Lot to the Declaration in accordance with the terms and conditions of this instrument and of the Declaration.

3. Use of the Annexed Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 (Annexation) of the Declaration, Declarant does hereby declare that the proposed use of the Annexed Lot, and after each subdivision, consolidation and resubdivision, or combination of each, to any and all resultant Lots, shall be as follows:

3.1 Municipal Status. So long as: (a) the City and County of Honolulu is the "Owner" (as this term is defined in the Declaration) of the Lot, and (b) the Lot is used for governmental purposes, then the Annexed Lot shall have municipal status ("**Municipal Status**").

3.2 Change in Status. If: (a) the City and County of Honolulu is not the "Owner" (as this term is defined in the Declaration) of the Lot, or (b) the Lot is not used for governmental purposes, then the Municipal Status of the Lot shall be changed (a "**Change in Status**"), and thereafter the Lot shall be used or deemed to be used for commercial purposes, with a minimum initial Floor Area of 1.0. After a Change in Status occurs, nothing shall preclude a Lot from reverting to Municipal Status so long as both elements of Municipal Status are concurrently satisfied. The second sentence of Section 3.4 (Withdrawal) of the Declaration reading "Notwithstanding the foregoing, . . . holding fifty-one percent (51%) of the Units (whether or not the Association has been formed)." shall not apply to the Annexed Lot or if subdivided, to any resultant Lot.

3.3 Notice of Change in Status. When a Change in Status occurs with respect to a Lot, the City and County of Honolulu must give Notice of the Change in Status to the Declarant and to the Association within a reasonable period of time either before or after the Change in Status occurs.

3.4 Effect of Change in Status. From and after the date that a Change in Status occurs with respect to a Lot, the Lot shall: (a) be part of the Development Land (as this term is defined in the Declaration), (b) be used or deemed to be used for commercial purposes, with a minimum initial Floor Area of 1.0, and (c) no longer be subject to the terms and conditions of paragraph 4 (Modification of Declaration as to the Annexed Lot with Municipal Status). Notwithstanding the foregoing, the Owner of a Lot shall not be subject to Assessments and not be a Member of the Association until the first day of the next fiscal year of the Association that immediately follows the date the Change in Status occurred.

3.5 Subsequent Amendments of the Declaration. After a Change in Status occurs, the Declarant shall have the right to Amend Exhibit D and Exhibit D-1 of the Declaration at any time, in its Sole Discretion, without Notice to any Party, to reflect the fact that a Lot is part of the Development Land.

4. Modification of Declaration as to the Annexed Lot with Municipal Status. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby Amend the provisions of the Declaration as and to the extent set forth below, solely as they apply to the Annexed Lot, and if subdivided, to any and all resultant Lots, while the Annexed Lot, or resultant Lots, has/have Municipal Status. In the event of any conflict between the other provisions of the Declaration and the provisions of this paragraph 4 (Modification of Declaration as to the Annexed Lot with Municipal Status), the provisions of this paragraph 4 (Modification of Declaration as to the Annexed Lot with Municipal Status) shall control.

4.1 No Assessments. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall be exempt from paying General, Special or Subdistrict Assessments on such Lot, whether past, present or future, and including, without limitation, any Special Assessments levied under subpart (ii) of the last sentence of Section 8.1 of the Declaration.

4.2 No Reimbursements. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall be exempt from any obligation to Reimburse the Board, the Association, the Declarant or any other Party under the Declaration.

4.3 No Indemnity. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall be exempt from any obligation to Indemnify the Board, the Association, the Declarant or any other Party under the Declaration.

4.4 No Liens. During all periods that a Lot has Municipal Status, the City and County of Honolulu's interest in the Lot shall not be subject to any lien under the Declaration.

4.5 Cure Periods. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall have one hundred twenty (120) days, running concurrently, to complete any actions required of them under Notices given pursuant to Sections 6.6 or 7.9 of the Declaration (subject to further extension as provided for in such Sections), rather than the sixty (60) day periods specified in such Sections.

4.6 Inspection. During all periods that a Lot has Municipal Status, the City and County of Honolulu shall be given two (2) days prior written Notice before the Board, it designees or the Declarant enter onto the Lot pursuant to the provisions of Sections 7.9 or 10.6 of the Declaration.

4.7 Remedies. Subparagraphs 9.1 (No Assessments), 9.2 (No Reimbursements) and 9.3 (No Indemnity) shall not be deemed or construed to prevent:

- (i) the Board (on behalf of the Association) from filing suit against the City and County of Honolulu, in its capacity as Owner of a Lot, to recover costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association as a result of the City and County's act or failure or refusal to act in accordance with the Declaration or its failure or refusal to comply with the Rules;
- (ii) the Board (on behalf of the Association), the Declarant or any other Party from filing suit against the City and County of Honolulu, in its

capacity as Owner of a Lot, to recover all costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association, the Declarant or such Party, as appropriate, that are recoverable at law from the City and County of Honolulu, with respect to any event or occurrence that would otherwise be subject to Reimbursement or Indemnity under the provisions of the Declaration, but for subparagraphs 9.2 (No Reimbursements) and 9.3 (No Indemnity); or

- (iii) the Board (on behalf of the Association), or the Declarant (pursuant to Section 10.8 of the Declaration) from exercising their rights under Section 5.6(f) of the Declaration.

5. Modification of Declaration as to the Annexed Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby Amend the provisions of the Declaration as and to the extent set forth below, solely as they apply to the Annexed Lot, or if subdivided, to any and all resultant Lots. In the event of any conflict between the other provisions of the Declaration and the provisions of this paragraph 5 (Modification of Declaration as to the Annexed Lot), the provisions of this paragraph 5 (Modification of Declaration as to the Annexed Lot) shall control.

5.1 Subdivision Provision. Section 4.2 (Subdivision/Partition) of the Declaration shall not apply to the Annexed Lot, or if subdivided, to any and all resultant Lots, and in lieu thereof, the following terms and conditions shall apply:

5.1.1 Small Lot Subdivision(s). From time to time, and until no additional roads are planned or can be built within the Annexed Lot, each time the Annexed Lot is subdivided (including consolidations and resubdivisions), and such subdivision action includes at least one road Lot to serve the other Lots in the subdivision action (a **"Small Lot Subdivision"**), each Lot within the Small Lot Subdivision shall be designated by the Owner of such Lot(s) for governmental use, for commercial use (with a minimum initial Floor Area of 1.0), for other use, or as a road Lot designated as common area. After obtaining approval from applicable Government Entities for a Small Lot Subdivision, the Owner(s) of the affected Lot(s) shall: (a) provide both the Association and the Declarant with a copy of the subdivision map approved by the Department of Planning and Permitting of the City and County of Honolulu (or any successor Government Entity), a copy of the Land Court Map, and a copy of the Land Court Order effectuating the Small Lot Subdivision, and (b) provide Notice to the Association and to the Declarant as to which Lot(s) within the Small Lot Subdivision are to be used for governmental use, for commercial use (with a minimum initial Floor Area of 1.0), for other use, or as a road Lot designated as common area (collectively a **"Small Lot Subdivision Notice"**).

5.1.2 Subdivision/Partition.

(a) Lot with Municipal Status. If a Lot has Municipal Status and such Lot is subdivided, partitioned or consolidated in accordance with Applicable Laws, then any and all resultant Lot(s) shall continue to have Municipal Status until such time as both elements of Municipal Status are no longer concurrently satisfied with respect to the applicable resultant Lot(s).

(b) Lot within the Development Land. If a Lot is part of the Development Land, then whenever such Lot is subdivided, partitioned or consolidated in accordance with Applicable Laws, the Floor Area allocated to the old Lot or Lots shall be reallocated automatically among the new Lot or Lots in accordance with the Floor Area of any Improvements then Approved by Declarant for construction on such Lot(s) pursuant to Section 6.4 (Plan Approval) of the Declaration and, for any Lot(s) on which such Approvals have not been obtained, the Floor Area shall be reallocated in proportion to the square footage of the land area of such new Lot(s); provided, however, that notwithstanding the foregoing, the Declarant shall have the right, in its Sole Discretion, with the Approval of the Owner of a Lot, to change the use of any portion of such Lot included within the Development Land after such Lot is subdivided or partitioned, by designating the applicable portion of such Lot for government, common area or other use, in which event there shall not be any Floor Area or Units reallocated to any such new Lots designated for such non-commercial purposes, and the total Floor Area and Units shall be reduced by an amount equal to the Floor Area and Units that would otherwise have been reallocated to such Lots pursuant to this paragraph 5.1.2(b) (Subdivision/Partition - Lot within the Development Land).

(c) Required Documentation. After obtaining approval from applicable Government Entities for a subdivision, partition or consolidation of a Lot or Lots, the Owner(s) of the affected Lot(s) shall provide both the Association and the Declarant with a copy of the subdivision map approved by the Department of Planning and Permitting of the City and County of Honolulu (or any successor Government Entity), a copy of the Land Court Map, and a copy of the Land Court Order effectuating such subdivision, partition or consolidation.

5.1.3 Amendment to Exhibits. Subject to Declarant's obligations under paragraph 5.1.2(b) (Subdivision/Partition - Lot within the Development Land) regarding allocation and reallocation of Floor Area and Units for Lot(s) already within the Development Land, if applicable, the Declarant shall Amend the Declaration, including, without limitation, Exhibit D and Exhibit D-1, to effectuate the Lot Owner(s) planned uses in the Small Lot Subdivision Notice, by designating each Lot within the Small Lot Subdivision for government, commercial use (with a minimum initial Floor Area of 1.0), common area or other use, and to assign a minimum Floor Area and minimum Units to each Lot(s) within the Small Lot Subdivision designated for commercial use. In addition, and without limiting the foregoing, the Declarant, without Notice to any Party, may Amend the exhibits to the Declaration as necessary each time a Lot is subdivided, partitioned or consolidated.

6. Amendment to Exhibit A of Declaration. Under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant has the right, without Notice to any Party, to Amend the exhibits to the Declaration as necessary each time a parcel of Benefitted Lands is Annexed to the Land pursuant to Section 3.3 (Annexation) of the Declaration. Pursuant to the rights reserved unto Declarant under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant does hereby Amend Exhibit A of the Declaration by adding thereto the legal description of the Annexed Lot attached hereto as **Exhibit 1**, which for all purposes shall be deemed incorporated therein by reference as of the Effective Date. As defined in the Declaration, and as used herein, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

7. Amendment to Exhibit D of Declaration. Under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant has the right to Amend Exhibit D of



the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant does hereby Amend Exhibit D of the Declaration by deleting in its entirety every previous Exhibit D and substituting therefor the revised Exhibit D attached hereto as **Exhibit D** and incorporated herein by this reference.

8. Amendment to Exhibit D-1 of Declaration. Under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant has the right to Amend Exhibit D-1 of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant does hereby Amend Exhibit D-1 of the Declaration by deleting in its entirety every previous Exhibit D-1 and substituting therefor the revised Exhibit D-1 attached hereto as **Exhibit D-1** and incorporated herein by this reference.

9. Effective Date. The effective date ("**Effective Date**") of this instrument shall be the date upon which this instrument is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

10. No Other Effect. Except as expressly provided in paragraphs 1 through 9 above, in all other respects, the Declaration shall remain unmodified, and in full force and effect.

11. Notation of Instrument. This instrument shall be noted on each of the following Certificates of Title: **Certificate of Title Nos. 496,527; 524,480; 569,438; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314; 600,145; 600,146; 600,148; 600,149; 600,150; 600,151; 600,152; 600,153; 600,154; 600,155; 600,156; 600,157; 600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164; 600,165; 600,166; 600,230 (as to Lot 16013); 619,022; 631,048; 631,381; 658,382; 671,118; 674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010; 806,014; 806,016 (as to Lot 17884, Lot 17885, Lot 17886, Lot 17887, Lot 17888, Lot 17889, Lot 17890, and Lot 17891); 807,561; 812,026; 812,028; 813,557; 816,985; 826,056; 828,618; 830,890 (as to Lot 16014-B); 830,892; 836,531; 842,498; 842,499; 854,915; 870,971; 905,804; 911,246; 913,970; 928,177 (as to Lot 18269, Lot 18271, Lot 18273, and Lot 18274); 928,178; 928,526; 932,371; 941,358; 941,359; 958,215; \_\_\_\_\_ and \_\_\_\_\_.**

12. Defined Terms. Any word, term or phrase which begins with initial capitalization and which is not defined in this instrument or defined in another identified document, shall be given the definition of such word, term or phrase in the Declaration.

[the remainder of this page intentionally left blank; signature(s) on following page(s)]

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date first above written.

**Declarant:**

**CAMPBELL HAWAII INVESTOR LLC**, a  
Hawaii limited liability company

By James Campbell Company LLC, a  
Delaware limited liability company, its  
member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date first above written.

**Consent of Owner:**

**KAPOLEI PROPERTY DEVELOPMENT  
LLC**, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii  
corporation, its member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, 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 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.

Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **SUPPLEMENTAL DECLARATION TO CITY OF KAPOLEI  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

Document Date: \_\_\_\_\_, 2010

No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
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Printed Name of Notary

(Campbell Hawaii Investor LLC)

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **SUPPLEMENTAL DECLARATION TO CITY OF KAPOLEI  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

Document Date: \_\_\_\_\_, 2010

No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
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Printed Name of Notary

(Kapolei Property Development LLC)

## EXHIBIT 1

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, described as follows:

**LOT 50001 (DPP File No. 2009/Sub-242)** (area 38.301 acres), as shown on Map \_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

**BEING** all of the land described in and covered by **Certificate of Title No.** \_\_\_\_\_ issued to Kapolei Property Development LLC, a Hawaii limited liability company.

End of Exhibit 1

**EXHIBIT 2**  
**LIST OF TAX MAP KEY PARCELS**

(Oahu) 9-1-016: parcels 054(por.); 121; 125; 135; 138(por.); 144; 147; 148; and 149

(Oahu) 9-1-088: parcels 001 through 021; 023; 025; and 027

(Oahu) 9-1-088-022: CPR 001 through 004

(Oahu) 9-1-106: parcels 001 through 008; and parcels 010 through 016

(Oahu) 9-1-118: parcels 001 through 007; and 009

(Oahu) 9-1-118-008: CPR 001 through 003

(Oahu) 9-1-148: parcels 005; 007; 009; and 011

(Oahu) 9-1-148-008: CPR 001 and 002

End of Exhibit 2

EXHIBIT D  
[REVISED EXHIBIT D TO BE ATTACHED]

End of Exhibit D

EXHIBIT D-1  
[REVISED EXHIBIT D-1 TO BE ATTACHED]

End of Exhibit D-1



**EXHIBIT D**  
**PROPERTY DESCRIPTION**

**PARCEL ONE:**

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

**LOT 18271** (area 5.233 acres), as shown on Map 1420, filed in the Office of the Assistant Registrar of the Land Court to the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

**BEING** a portion of the land described in and covered by **Certificate of Title No. 928,177** issued to Kapolei Property Development LLC.

**TOGETHER WITH** access to access to Manawai Street (a public street) and to Barbers Point Naval Air Station Access Road (also known as Fort Barrette Road) (a public road) over the following lots: (i) Lot 18275 (Map 1420), (ii) Lot 18276 (Map 1420), (iii) Lot 18255 (Map 1416), (iv) Lot 17889 (Map 1396), (v) Lot 17890 (Map 1396), (vi) Lot 17891 (Map 1396), and (vii) Lot 16540 (Map 1290), as set forth by Land Court Order No. 177128, filed December 8, 2008.

**SUBJECT, HOWEVER,** to the following:

1. Amended Document Listing Conditions and Preconditions to Reclassification dated November 14, 1989, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1684751.

2. City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006, June 29, 2006, November 12, 2007, May 30, 2008, June 2, 2008, November 5, 2008, and December 29, 2008, \_\_\_\_\_, 2010, \_\_\_\_\_, 2010, and \_\_\_\_\_, 2010, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 2489739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 3432142, 3449337, 3681968, 3757128, 3757130, 3804678, 3816543, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, respectively. The Estate's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company, by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829. **[Note: The City of Kapolei Declaration will become an encumbrance prior to closing. The blanks are for the dates and recording information for the Supplemental Declarations attached as Exhibit K, Exhibit C-1 and C-2 to the Memorandum of Agreement.]**

3. Amended and Restated Document Listing Conditions to Reclassification dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased,

filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260754.

4. Document Listing Conditions of Order Modifying Conditions dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260756.

5. Trustees Limited Warranty Deed with Use Restrictions, Covenants and Reservation of Rights (City of Kapolei) dated January 2, 2002, made by and between the Trustees under the Will and of the Estate of James Campbell, Deceased and Kapolei Property Development LLC, a Hawaii limited liability company, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2766590.

6. Unilateral Agreement and Declaration for Conditional Zoning dated November 17, 2004, made by Kapolei Property Development LLC and the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3195672.

7. Easement "9587" (area 149 square feet) for electrical purposes, and for traffic signal purposes, as shown on Map 1396, as set forth by Land Court Order No. 175620, filed July 16, 2008.

8. Easement "9588" (total area 87,875 square feet) for flowage purposes, as shown on Map 1396, as set forth by Land Court Order No. 175620, filed July 16, 2008.

9. Easement "9762" (area 0.071 acre) for landscaping and utility purposes, in favor of Campbell Hawaii Investor LLC, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

10. Easement "9763" (area 0.272 acre) for landscaping and utility purposes, in favor of Campbell Hawaii Investor LLC, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

11. Easement "9798" (area 324 square feet) for electrical purposes, street lighting purposes, traffic signal purposes, telephone purposes, and irrigation purposes, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

12. Easement "9799" (area 130 square feet) for electrical purposes, and traffic signal purposes, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

13. Restriction of sight line distance, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

14. Restriction of vehicular access rights, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

15. Grant of Easement dated May 27, 2009, in favor of Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as

Document No. 3864056, affecting Easement "9798" (both grantees) and Easement "9799" (Hawaiian Electric Company, Inc. only).

16. Grant of Easement dated August 13, 2009, in favor of Hawaiian Electric Company, Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3890836, affecting Easement "9587".

End of Parcel One Description

**PARCEL TWO:**

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

**LOT 18275** (area 0.458 acre), as shown on Map 1420, filed in the Office of the Assistant Registrar of the Land Court to the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

**BEING** a portion of the land described in and covered by **Certificate of Title No. 928,177** issued to Kapolei Property Development LLC.

**TOGETHER WITH** access to access to Manawai Street (a public street) and to Barbers Point Naval Air Station Access Road (also known as Fort Barrette Road) (a public road) over the following lots: (i) Lot 18276 (Map 1420), (ii) Lot 18255 (Map 1416), (iii) Lot 17890 (Map 1396), (iv) Lot 17891 (Map 1396), and (v) Lot 16540 (Map 1290), as set forth by Land Court Order No. 177128, filed December 8, 2008.

**SUBJECT, HOWEVER,** to the following:

1. Amended Document Listing Conditions and Preconditions to Reclassification dated November 14, 1989, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1684751.
2. Amended and Restated Document Listing Conditions to Reclassification dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260754.
3. Document Listing Conditions of Order Modifying Conditions dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260756.
4. Trustees Limited Warranty Deed with Use Restrictions, Covenants and Reservation of Rights (City of Kapolei) dated January 2, 2002, made by and between the Trustees under the Will and of the Estate of James Campbell, Deceased and Kapolei Property Development LLC, a Hawaii limited liability company, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2766590.
5. Unilateral Agreement and Declaration for Conditional Zoning dated November 17, 2004, made by Kapolei Property Development LLC and the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3195672.
6. Easement "9777" (area 0.072 acre) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

7. Easement "9778" (area 0.067 acre) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

8. Access rights over Lot 18275 in favor of Lot 18270 and Lot 18271, as set forth by Land Court Order No. 177128, filed December 8, 2008.

9. Agreement dated July 16, 2008, by and between Kapolei Property Development LLC, and the City and County of Honolulu and the Board of Water Supply of the City and County of Honolulu (Agreement No. A02095300) regarding construction of improvements for the Urban Core 4 Roads (Construction of Improvements Bond - \$9,000,000.00). (unrecorded)

10. Agreement dated July 16, 2008, by and between Kapolei Property Development LLC, and the City and County of Honolulu (Agreement No. A02095400) regarding construction of improvements for the Urban Core 4 Roads (Energizing and Maintenance of Street Lights Bond - \$10,800.00). (unrecorded)

11. Grant of Easement dated May 27, 2009, in favor of Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3864056.

12. Grant of Nonexclusive Irrigation Easement dated \_\_\_\_\_, 2010, in favor of Campbell Hawaii Investor LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_, affecting Easements "9777" and "9778". The grantee's rights and obligations under this grant of easement were assigned to The City of Kapolei Community Association, Inc., by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_. **[pending]**

End of Parcel Two Description

**PARCEL THREE:**

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

**LOT 18276** (area 7.284 acres), as shown on Map 1420, filed in the Office of the Assistant Registrar of the Land Court to the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

**BEING** a portion of the land described in and covered by **Certificate of Title No. 928,177** issued to Kapolei Property Development LLC.

**TOGETHER WITH** access to access to Barbers Point Naval Air Station Access Road (also known as Fort Barrette Road) (a public road) over Lot 18255 (Map 1416), as set forth by Land Court Order No. 177128, filed December 8, 2008.

**SUBJECT, HOWEVER,** to the following:

1. Amended Document Listing Conditions and Preconditions to Reclassification dated November 14, 1989, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1684751.

2. Amended and Restated Document Listing Conditions to Reclassification dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260754.

3. Document Listing Conditions of Order Modifying Conditions dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260756.

4. Trustees Limited Warranty Deed with Use Restrictions, Covenants and Reservation of Rights (City of Kapolei) dated January 2, 2002, made by and between the Trustees under the Will and of the Estate of James Campbell, Deceased and Kapolei Property Development LLC, a Hawaii limited liability company, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2766590.

5. Unilateral Agreement and Declaration for Conditional Zoning dated November 17, 2004, made by Kapolei Property Development LLC and the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3195672.

6. Easement "9588" (total area 87,875 square feet) for flowage purposes, as shown on Map 1396, as set forth by Land Court Order No. 175620, filed July 16, 2008.

7. Easement "9779" (area 1.207 acre) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

8. Easement "9780" (area 0.525 acre) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

9. Easement "9781" (area 0.168 acre) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

10. Easement "9782" (area 0.116 acre) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

11. Easement "9783" (area 0.307 acre) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

12. Easement "9784" (area 0.177 acre) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

13. Easement "9785" (area 165 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

14. Easement "9786" (area 115 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

15. Easement "9787" (area 165 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

16. Easement "9788" (area 195 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

17. Easement "9789" (area 130 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

18. Easement "9790" (area 165 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

19. Easement "9791" (area 115 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

20. Easement "9792" (area 115 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

21. Easement "9793" (area 115 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

22. Easement "9794" (area 165 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

23. Easement "9795" (area 195 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

24. Easement "9796" (area 195 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

25. Easement "9797" (area 245 square feet) for irrigation purposes, in favor of the City of Kapolei Community Association, Inc., as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

26. Access rights over Lot 18276 in favor of Lot 18269, Lot 18270, Lot 18271, Lot 18272, Lot 18273, Lot 18274, and Lot 18275, as set forth by Land Court Order No. 177128, filed December 8, 2008.

27. Agreement dated July 16, 2008, by and between Kapolei Property Development LLC, and the City and County of Honolulu and the Board of Water Supply of the City and County of Honolulu (Agreement No. A02095300) regarding construction of improvements for the Urban Core 4 Roads (Construction of Improvements Bond - \$9,000,000.00). (unrecorded)

28. Agreement dated July 16, 2008, by and between Kapolei Property Development LLC, and the City and County of Honolulu (Agreement No. A02095400) regarding construction of improvements for the Urban Core 4 Roads (Energizing and Maintenance of Street Lights Bond - \$10,800.00). (unrecorded)

29. Construction Right of Entry dated effective as of November 25, 2008, in favor of D.R. Horton - Schuler Homes, LLC (Right of Entry No. U02103500), the term of which expires upon the completion of specific types of construction or grading related to the Mehana residential project, as more fully set forth therein. (unrecorded)

30. Grant of Easement dated May 27, 2009, in favor of Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3864056.

31. Grant of Nonexclusive Irrigation Easement dated \_\_\_\_\_, 2010, in favor of Campbell Hawaii Investor LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_, affecting Easements "9779" through and "9797". The grantee's



rights and obligations under this grant of easement were assigned to The City of Kapolei Community Association, Inc., by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_. **[pending]**

End of Parcel Three Description

**PARCEL FOUR:**

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

**LOT 50001 (DPP File No. 2009/SUB-242)** (area 38.301 acres), as shown on Map \_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court to the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

**BEING** all of the land described in and covered by **Certificate of Title No. \_\_\_\_\_** issued to Kapolei Property Development LLC.

**TOGETHER WITH** access to access to Barbers Point Naval Air Station Access Road (also known as Fort Barrette Road) (a public road) over the following lots: (i) Lot 18276 (Map 1420), and (ii) Lot 18255 (Map 1416), as set forth by Land Court Order No. 177128, filed December 8, 2008.

**TOGETHER WITH** access to Kamokila Boulevard (a public road) over the following lots: (i) **Lot 50003 (DPP File No. 2009/SUB-242)** (Map \_\_\_\_), (ii) Lot 13433 (Map 1028), and (iii) Lot 11001-A-2 (Map 1024), as set forth by Land Court Order No. (pending), filed \_\_\_\_\_, 2010.

**SUBJECT, HOWEVER,** to the following:

1. Amended Document Listing Conditions and Preconditions to Reclassification dated November 14, 1989, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1684751.

2. City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006, June 29, 2006, November 12, 2007, May 30, 2008, June 2, 2008, November 5, 2008, and December 29, 2008, \_\_\_\_\_, 2010, \_\_\_\_\_, 2010, and \_\_\_\_\_, 2010, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 2489739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 3432142, 3449337, 3681968, 3757128, 3757130, 3804678, 3816543, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, respectively. The Estate's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company, by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829. **[Note: The City of Kapolei Declaration will become an encumbrance prior to closing. The blanks are for the dates and recording information for the Supplemental Declarations attached as Exhibit K, Exhibit C-1 and C-2 to the Memorandum of Agreement.]**

3. Amended and Restated Document Listing Conditions to Reclassification dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260754.

4. Document Listing Conditions of Order Modifying Conditions dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260756.

5. Easement "6169" (area 38,395 square feet) for utility purposes, as shown on Map 898, as set forth by Land Court Order No. 128141, filed June 26, 1997.

6. Easement "6170" (area 25,063 square feet) for waterline purposes, as shown on Map 898, as set forth by Land Court Order No. 128141, filed June 26, 1997.

7. Agreement dated December 28, 1999, by and between the Trustees under the Will and of the Estate of James Campbell, Deceased, and the City and County of Honolulu and the Board of Water Supply of the City and County of Honolulu (Agreement No. A01152900) regarding construction of improvements for the Uluohia Street extension and off-site sewer line (Construction of Improvements Bond - \$748,827.00). (unrecorded)

8. Agreement dated December 28, 1999, by and between the Trustees under the Will and of the Estate of James Campbell, Deceased, and the City and County of Honolulu (Agreement No. A01153000) regarding construction of improvements for the Uluohia Street extension and off-site sewer line (Energizing and Maintenance of Street Lights Bond - \$6,000.00). (unrecorded)

9. Easement "7119" (area 132,948 square feet) for utility purposes, as shown on Map 1028, as set forth by Land Court Order No. 139733, filed October 4, 2000.

10. Trustees Limited Warranty Deed with Use Restrictions, Covenants and Reservation of Rights (City of Kapolei) dated January 2, 2002, made by and between the Trustees under the Will and of the Estate of James Campbell, Deceased and Kapolei Property Development LLC, a Hawaii limited liability company, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2766590.

11. Unilateral Agreement and Declaration for Conditional Zoning dated November 17, 2004, made by Kapolei Property Development LLC and the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3195672.

12. Grant of Non-Exclusive Easements dated December 30, 2004, in favor of the City and County of Honolulu and the Board of Water Supply, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3228386, affecting Easement "6169" and Easement "6170".

13. Construction Right of Entry and Agreement to Provide Reciprocal Grant of Easement and License Agreement (Mehana Parkway Residential) dated October 20, 2005, by and between the Trustees under the Will and of the Estate of James Campbell Deceased, and D.R. Horton - Schuler (Agreement No. A02008400), the term of which expires on \_\_\_\_\_, 20\_\_, unless sooner terminated pursuant to the terms thereof. (unrecorded)

14. Trustees Limited Warranty Deed with Covenants and Reservation of Rights dated December 14, 2005, made by and between the Trustees under the Will and of the Estate of James Campbell,

Deceased and D.R. Horton – Schuler Homes, LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3368412.

15. Trustees Limited Warranty Deed with Restrictions, Covenants and Agreements dated as of November 1, 2006, by and between the Trustees under the Will and of the Estate of James Campbell, Deceased, as grantor, and Kapolei Property Development LLC, as grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3505984.

16. Grant of Nonexclusive Easements (Temporary Access Only) dated July 3, 2008, in favor of the State of Hawaii, by its Board of Land and Natural Resources, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3765720.

17. Easement "9562" (area 53,413 square feet) for flowage purposes, as shown on Map 1394, as set forth by Land Court Order No. 175528, filed July 9, 2008.

18. Access rights in favor of Lot 18256, Lot 18257, Lot 18258, and Lot 18259, as set forth by Land Court Order No. 176856, filed November 10, 2008.

19. Easement "9714" (area 13,671 square feet) for access purposes, sewer purposes, drainage purposes, street light purposes, traffic control purposes, water purposes, electric purposes, and telecommunications purposes, as shown on Map 1416, as set forth by Land Court Order No. 176856, filed November 10, 2008.

20. Restriction of vehicular access rights, as shown on Map 1416, as set forth by Land Court Order No. 176856, filed November 10, 2008.

21. Construction Right of Entry dated effective as of November 25, 2008, in favor of D.R. Horton - Schuler Homes, LLC (Right of Entry No. U02103400), the term of which expires upon the completion of specific types of construction or grading related to the Mehana residential project, as more fully set forth therein. (unrecorded)

22. Construction Right of Entry dated effective as of November 25, 2008, in favor of D.R. Horton - Schuler Homes, LLC (Right of Entry No. U02103500), the term of which expires upon the completion of specific types of construction or grading related to the Mehana residential project, as more fully set forth therein. (unrecorded)

23. Easement "9764" (area 0.164 acre) for landscaping and utility purposes, in favor of Campbell Hawaii Investor LLC, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

24. Easement "9765" (area 0.079 acre) for landscaping and utility purposes, in favor of Campbell Hawaii Investor LLC, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

25. Easement "9766" (area 0.079 acre) for landscaping and utility purposes, in favor of Campbell Hawaii Investor LLC, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

26. Easement "9767" (area 0.083 acre) for landscaping and utility purposes, in favor of Campbell Hawaii Investor LLC, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

27. Easement "9768" (area 0.246 acre) for landscaping and utility purposes, in favor of Campbell Hawaii Investor LLC, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

28. Easement "9803" (area 0.247 acre) for utility purposes, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

29. Easement "9804" (area 14.986 acres) for flowage and utility purposes, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

30. Restriction of vehicular access rights, as shown on Map 1420, as set forth by Land Court Order No. 177128, filed December 8, 2008.

31. Easement "1000" (area 140,364 square feet) for access, cable, CATV, communication, drain, electrical, sewer, telephone, and water purposes, as shown on Map (pending), as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_, 2010.

32. Easement "1002" (area 74,389 square feet) for access, drain, electrical, sewer and water purposes, in favor of D.R. Horton – Schuler Homes LLC, as shown on Map (pending), as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_, 2010.

33. Easement "1003" (area 17,580 square feet) for drain, electrical, sewer and water purposes, as shown on Map (pending), as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_, 2010.

34. Easement "1004" (area 26,370 square feet) for drain, electrical, sewer and water purposes, as shown on Map (pending), as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_, 2010.

35. Easement "1005" (area 17,580 square feet) for drain and sewer purposes, as shown on Map (pending), as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_, 2010.

36. Easement "1006" (area 19,338 square feet) for drain, electrical, sewer and water purposes, as shown on Map (pending), as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_, 2010.

37. Access rights over Easement "1000" (Map (pending)) in favor of **Lot 50002 (DPP File No. 2009/SUB-242)**, as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_, 2010.

End of Parcel Four Description

**END OF EXHIBIT D**

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

Carlsmith Ball LLP  
318 Kapolei Building  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707  
Attention: Mark K. Murakami  
t: 808.523.2561

TITLE OF DOCUMENT:

**GRANT OF NONEXCLUSIVE EASEMENTS  
(ACCESS AND UNDERGROUND UTILITY PURPOSES)**

PARTIES TO DOCUMENT:

**GRANTOR:** **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company

**GRANTEE:** **D.R. HORTON – SCHULER HOMES, LLC**, a Delaware limited liability company, doing business as D.R. Horton – Schuler Division  
828 Fort Street Mall, 4<sup>th</sup> Floor, Honolulu, Hawaii 96813

TAX MAP KEY(S): Oahu 9-1-016-134(por.)

**BURDEN:** Certificate of Title No. \_\_\_\_\_ (as to Lot \_\_\_\_)

**APPURTENANT TO:** Certificate of Title Nos. \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; and \_\_\_\_\_

(This document consists of 9 pages.)

**GRANT OF NONEXCLUSIVE EASEMENT  
(ACCESS AND UNDERGROUND UTILITY PURPOSES)**

**THIS INDENTURE**, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company ("**Grantor**"), whose principal place of business and post office address is James Campbell Building, Suite 250, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, and **D. R. HORTON – SCHULER HOMES, LLC**, a Delaware limited liability company, doing business as D.R. Horton – Schuler Division ("**Grantee**"), whose address is 828 Fort Street Mall, 4<sup>th</sup> Floor, Honolulu, Hawaii 96813,

**RECITALS:**

**WHEREAS**, Grantee has constructed a portion of Kapolei Parkway and [insert name of Road N] upon Grantor's land, and Grantee desires to have an easement for access and underground utility purposes across such roadways during the interim period between completion of construction and dedication of such roadways to the City and County of Honolulu; and

**WHEREAS**, Grantor and Grantee have reached agreement on the terms and conditions under which Grantor has agreed to permit Grantee to use the easement area described below for access and underground utility purposes, and the parties desire to document such agreements;

**AGREEMENT:**

**NOW THEREFORE**, for and in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) paid to them by Grantee, receipt whereof is hereby acknowledged, and of the terms, covenants and conditions hereinafter contained and on the part of Grantee to be observed and performed, Grantor does hereby grant unto Grantee the right, in the nature of a nonexclusive easement over the easement area described below (the "easement area") for access and underground utility purposes, which easement rights shall be appurtenant to the Benefited Property (defined below), together with the right, after obtaining Grantor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, to construct, reconstruct, install, reinstall, operate, repair and maintain roadway, underground utility improvements, and landscaping within the easement area, subject to the terms and conditions set forth in this grant of easement. The easement area is described as follows:

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

**LOT 8003 (DPP File No. 2005/Sub-212)** (area \_\_\_\_\_ acres), as shown on Map \_\_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

**BEING** all of the land described in and covered by **Certificate of Title No.** \_\_\_\_\_, issued to Kapolei Property Development LLC, a Hawaii limited liability company.

**TO HAVE AND TO HOLD** the same unto Grantee, forever; provided, however that this grant of easement will automatically terminate as to any portion of the easement area upon dedication and conveyance of such portion of the easement area to, and acceptance by, any governmental authority for use as a public road.

**SUBJECT, HOWEVER,** to any and all existing recorded uses, licenses, easements and other encumbrances of record; and

In consideration of the rights hereby granted, the acceptance thereof and the obligations hereby assumed, Grantor and Grantee hereby covenant and agree as follows:

1. Use of Easement Area. Grantee shall use the easement area solely for ingress and egress to and from Grantee's land described as **Lot 8004 (DPP File No. 2005/Sub-212), Lot 8005 (DPP File No. 2005/Sub-212), Lot 8006 (DPP File No. 2005/Sub-212), and Lot 8007 (DPP File No. 2005/Sub-212)**, all as shown on Map \_\_\_\_ of Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased, said land being commonly known as Tax Map Key No. (Oahu) 9-1-016: parcels 124 and 131 located off of Kamokila Boulevard collectively containing approximately \_\_\_\_ acres of land, more or less (the "**Benefited Property**"), which use shall be for vehicular and pedestrian ingress and egress to and from the Benefited Property, and for underground utility purposes, and Grantee shall exercise the rights granted to Grantee hereunder in a manner so as not to interfere unreasonably with adjacent lands through which the easement area crosses. The Benefited Property is all of the land covered by **Certificate of Title Nos.** \_\_\_\_; \_\_\_\_; \_\_\_\_; and \_\_\_\_, all issued to D.R. Horton - Schuler, LLC. Parking of vehicles within the easement area is prohibited.

2. Maintenance. Grantee shall, at Grantee's own expense, keep all improvements (roadway, underground utilities and landscaping) that Grantee installs within the easement area in good order, condition, maintenance and repair, reasonable wear and tear from normal usage or damage by casualty excepted. Grantee shall at all times exercise reasonable precaution against damaging the property adjoining the easement area and shall immediately repair any such damaged property.

3. No Modification to Improvements or Landscaping. Except for modifications that are required by applicable governmental authorities to bring the easement area into compliance with applicable laws for purposes of dedication, Grantee shall not be permitted to modify the roadway, underground utility improvements, or landscaping located within the easement area without Grantor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Grantor shall be under no obligation to consent to any modification to the roadway, underground utility improvements, or landscaping, that would prevent or delay dedication of the lot within which the easement area is located to applicable governmental authorities.

4. Condition of Easement Area. Grantee has constructed the existing roadway, other improvements, and landscaping within the easement area, and therefore, Grantee does hereby acknowledge that, by the acceptance and recordation of this grant of easement, Grantee is familiar with and has examined the physical conditions of the easement area and has agreed to accept the easement area without any warranties or representations by Grantor.



5. Observance of Laws and Other Requirements. Grantee shall at all times during the term of this grant of easement: (a) observe, perform and comply with all applicable laws now or hereafter made with respect to Grantee's use of the easement area; (b) maintain in effect all permits, approvals, licenses, consents or other entitlements, if any, required by applicable laws for Grantee's permitted use of the easement area hereunder; and (c) keep the easement area in a safe and nuisance free condition, to the extent the same is consistent with Grantee's use of the easement area. Any failure by Grantee to comply with the requirements set forth in clauses (a) through (c) of the immediately preceding sentence shall be an event of default under this grant of easement, and Grantor shall have the right to exercise all remedies which Grantor may have at law or in equity. Grantee shall Indemnify (as this term is defined in paragraph 6 (Indemnity)) Grantor against all actions, suits, claims and damages by whomsoever brought or made by reason of the nonobservance or nonperformance by Grantee as required hereunder of the requirements of: (i) all applicable laws, (ii) permits, approvals, licenses, consents or other entitlements, if any, for Grantee's use of the easement area, and (iii) this paragraph 5 (Observance of Laws and Other Requirements).

6. Indemnity. Grantee shall Indemnify Grantor and the owner of the land through which the easement area crosses from and against any and all actions, suits, losses, costs, damages, liabilities or claims thereof ("**Claims**"), including reasonable attorneys' fees, arising out of or in connection with any loss or damage to property and/or injury to or death of persons arising out of or resulting from the acts or omissions of Grantee or anyone claiming by, through or under Grantee in connection with the exercise of the rights or privileges granted hereunder, or arising out of or in connection with any improvements made by Grantee within the easement area; provided, however that nothing herein shall be deemed to require Grantee to Indemnify Grantor for any Claim, to the extent such Claim was caused solely by Grantor's own acts or omissions. Grantee's obligations to Indemnify Grantor under this paragraph 6 (Indemnity), under paragraph 5 (Observance of Laws and Other Requirements) and under paragraph 7 (No Liens) shall survive the termination of this grant of easement and shall be binding upon Grantee, its successors and assigns. As used herein, the term "**Indemnify**" means the protection of a party, by a money payment if necessary, against reasonable out-of-pocket loss. The term shall include an obligation by the indemnitor to defend and hold the indemnitee harmless (with counsel reasonably acceptable to the indemnitee) in connection with any claim against which the Indemnity operates. The obligation to Indemnify shall specifically include, but shall not be limited to, payment of all reasonable costs and expenses paid by the indemnitee or reasonably anticipated to be incurred by the indemnitee for the indemnitee's defense, including without limitation, reasonable attorneys' fees and costs, and all other consultants' reasonable fees and costs. An Indemnity shall also specifically include all reasonable costs for research regarding settlement or other preventive measures undertaken by the indemnitee with regard to any such claim.

7. No Liens. Grantee shall not commit or suffer any act or neglect whereby the easement area becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and shall Indemnify Grantor from and against any and all loss, liability, claim or demand for damage or injury with respect thereto.

8. Binding Effect. This instrument shall be binding upon and shall inure to the benefit of Grantor, Grantee and the owner of the land through which the easement area crosses, and their respective heirs, devisees, personal representatives, successors, and assigns.

9. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

[remainder of this page intentionally left blank; signatures on following page]

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date and year first above written.

**Grantor:**

**KAPOLEI PROPERTY DEVELOPMENT  
LLC**, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii  
corporation, its member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date and year first above written.

**Grantee:**

**D. R. HORTON - SCHULER HOMES, LLC**, a  
Delaware limited liability company, doing  
business as D.R. Horton-Schuler Division

By VERTICAL CONSTRUCTION  
CORPORATION, a Delaware corporation  
Its Manager

By \_\_\_\_\_  
Michael T. Jones  
Division President of the Hawaii Division

$$\left. \begin{array}{l} ) \\ ) \\ ) \end{array} \right\}$$

SS.

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_



**EXHIBIT F  
LIST OF PERMITS**

**A. AS TO LOT 18271 ONLY:**

1. NPDES Permit dated January 31, 2008 (File No. HI R10C758) issued by the State of Hawaii, Department of Health to James Campbell Company LLC, for the UC 3 Roads (Agreement No. A02091100), the term of which expires on October 21, 2012, unless sooner terminated pursuant to the terms thereof.
2. Sewer Connection Application No. 2008/SCA-0147 approval dated March 20, 2008, for subdivision DPP File No. 2005/SUB-212 (UC 4 Subdivision) (Agreement No. A02090300), the term of which expires on March 20, 2010, unless sooner terminated pursuant to the terms thereof.
3. Grading Permit No. GP2010-02-0067 dated February 17, 2010 issued by the City and County of Honolulu, Department of Planning and Permitting to Delta Construction Corp., for the Urban Core 3 Roads (Agreement No. A02091000), the term of which expires on February 17, 2011, unless sooner terminated pursuant to the terms thereof.

**B. AS TO LOT 18275 ONLY:**

1. NPDES Permit dated January 31, 2008 (File No. HI R10C758) issued by the State of Hawaii, Department of Health to James Campbell Company LLC, for the UC 3 Roads (Agreement No. A02091100), the term of which expires on October 21, 2012, unless sooner terminated pursuant to the terms thereof.
2. NPDES Permit dated May 16, 2008 (File No. HI R10D042) issued by the State of Hawaii, Department of Health to Kapolei Property Development LLC, for the UC 4 through UC 7 Roads (Agreement No. A02091800), the term of which expires on October 21, 2012, unless sooner terminated pursuant to the terms thereof.
3. Grading Permit No. GP2009-09-0512 dated September 4, 2009 issued by the City and County of Honolulu, Department of Planning and Permitting to Delta Construction Corp., for the Urban Core 4 Roads (Agreement No. A02105100), the term of which expires on September 4, 2010, unless sooner terminated pursuant to the terms thereof.
4. Official Street Name Map No. 2008/SN-7 dated September 19, 2008, for Manawai Street, Wakea Street, Alohikea Street and Kapolei Parkway (Agreement No. A02101500).

**C. AS TO LOT 18276 ONLY:**

1. NPDES Permit dated May 16, 2008 (File No. HI R10D042) issued by the State of Hawaii, Department of Health to Kapolei Property Development LLC, for the UC 4 through UC 7 Roads (Agreement No. A02091800), the term of which expires on October 21, 2012, unless sooner terminated pursuant to the terms thereof.

2. Grading Permit No. GP2009-09-0512 dated September 4, 2009 issued by the City and County of Honolulu, Department of Planning and Permitting to Delta Construction Corp., for the Urban Core 4 Roads (Agreement No. A02105100), the term of which expires on September 4, 2010, unless sooner terminated pursuant to the terms thereof.
3. Official Street Name Map No. 2008/SN-7 dated September 19, 2008, for Manawai Street, Wakea Street, Alohikea Street and Kapolei Parkway (Agreement No. A02101500).

**D. AS TO LOT 50001 (DPP File No. 2009/SUB-242) ONLY:**

1. Drainage Connection License approval dated January 24, 2008 (License No. SWP2007-10-0084) issued by the Department of Planning and Permitting of the City and County of Honolulu for Mehana at Kapolei, Arterial Roadway Phase 1 (Lot "A" and "B") for Intake Structure Inlet "M" (Agreement No. A02087400), the term of which is not expressly set forth in the license.
2. Sewer Connection Application No. 2008/SCA-0148 approval dated March 20, 2008, for subdivision DPP File No. 2005/SUB-212 (UC 4 Subdivision) (Agreement No. A02090400), the term of which expires on March 20, 2010, unless sooner terminated pursuant to the terms thereof.
3. NPDES Permit dated May 16, 2008 (File No. HI R10D042) issued by the State of Hawaii, Department of Health to Kapolei Property Development LLC, for the UC 4 through UC 7 Roads (Agreement No. A02091800), the term of which expires on October 21, 2012, unless sooner terminated pursuant to the terms thereof.
4. NPDES Permit dated July 25, 2008 (File No. HI R10D144) issued by the State of Hawaii, Department of Health to D.R. Horton, for the City of Kapolei, Makai Drainage Channel and Ko Olina Relief Interceptor Sewer (Agreement No. A02099600), the term of which expires on October 21, 2012, unless sooner terminated pursuant to the terms thereof.
5. Grading Permit No. GP2009-09-0512 dated September 4, 2009 issued by the City and County of Honolulu, Department of Planning and Permitting to Delta Construction Corp., for the Urban Core 4 Roads (Agreement No. A02105100), the term of which expires on September 4, 2010, unless sooner terminated pursuant to the terms thereof.
6. Stockpiling Permit No. GP2009-10-0613 dated October 29, 2009 issued by the City and County of Honolulu, Department of Planning and Permitting to Kapolei Property Development LLC, for the Urban Core 4 Roads (Agreement No. A02105000), the term of which expires on October 29, 2010, unless sooner terminated pursuant to the terms thereof.
7. Sewer Connection Application No. 2010/SCA-0055 approval dated January 22, 2010, for subdivision DPP File No. 2009/SUB-242 (the City Lot Subdivision) (Agreement No. A02124000), the term of which expires on January 22, 2012, unless sooner terminated pursuant to the terms thereof.

**END OF EXHIBIT F**



## ASSIGNMENT AND ASSUMPTION OF UNRECORDED AGREEMENTS

### KNOW ALL MEN BY THESE PRESENTS:

That as of \_\_\_\_\_, 20\_\_ (the “Effective Date”) **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company (“**Assignor**”) in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Assignor paid by the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii (“**Assignee**”), whose address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, the receipt and sufficiency of which are hereby acknowledged, does hereby sell, assign, transfer and convey to the Assignee all of Assignor's right, title and interest in, to and under those certain unrecorded agreements (the “**Agreements**”), which Agreements are more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference.<sup>1</sup>

**TO HAVE AND TO HOLD** the same unto Assignee, its successors and assigns, together with all of the benefits and all of the obligations arising or accruing under the Agreements after the Effective Date, and together with the right to enforce the terms and conditions of the Agreements.

**AND** Assignor, in consideration of the foregoing, does hereby covenant and agree that Assignor is the lawful owner and holder of an interest under the Agreements; the same are valid and enforceable and are in full force and effect; each respective Agreement contains the entire agreement between the parties thereto; that Assignor has good right to sell, assign, transfer, set over and deliver Assignor's interest therein as aforesaid; and that Assignor shall **WARRANT AND DEFEND** the same unto the Assignee against the lawful claims and demands of all persons whomsoever.

**AND** Assignor hereby represents to Assignee that all payments required to be made by Assignor under each of the Agreements for work performed under each of the Agreements prior to the Effective Date have been made, and that there are no outstanding payments due from Assignor under each of the Agreements as of the Effective Date.<sup>2</sup>

**AND** the Assignee does hereby covenant to and with the Assignor for the benefit of the Assignor and the Assignor's successors and assigns, that the Assignee will observe and perform all of the terms, covenants, conditions and restrictions in the Agreements contained and on the part of the Assignor to be observed and performed from and after the Effective Date. The Assignee does hereby acknowledge receipt of fully executed copies of the Agreements assigned hereunder on or before the Effective Date.

**IT IS MUTUALLY AGREED** that the terms “Assignor” and “Assignee”, as used herein, or any pronouns used in place thereof, shall mean and include the named parties and their respective successors and assigns, and shall be so construed that whenever applicable with reference to any of them, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include every other gender.

The parties hereto agree to execute any and all other documents, agreements and instruments,

<sup>1</sup> If this Assignment and Assumption Agreement is for a D.R. Horton – Schuler Construction Right of Entry, then the description of such construction right of entry shall be inserted here, Exhibit A will be deleted, and the use of the plural “Agreements” will be replaced with the singular “Agreement” with appropriate grammar modifications.

<sup>2</sup> This clause to be inserted in the Assignment and Assumption Agreement when used for the Design Contracts with Engineering Concepts, Inc.

and to take any and all other actions, which may be reasonably necessary or desirable to effect the transactions contemplated hereunder.

All representations, warranties and covenants specifically set forth in this instrument shall survive the execution and delivery of this instrument.

If any provisions of this instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this instrument and the application of such provisions to other persons or circumstances shall not be affected thereby.

This instrument may be amended only by a writing signed by each of the parties to this instrument.

This instrument constitutes and contains the entire agreement between Assignor and the Assignee and supersedes any and all prior negotiations, correspondence, understandings and agreements between these parties respecting the subject matter of this instrument.

The parties agree that neither shall be deemed to be the drafter of this instrument and that, in the event that this instrument is ever construed by a court of law, such court shall not construe this instrument or any provision hereof against either party as the drafter hereof.

This instrument shall be controlled, construed and enforced in accordance with the laws of the State of Hawaii.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

[the remainder of this page intentionally left blank; signature(s) on the following page(s)]

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date first above written.

**Assignor:**

**KAPOLEI PROPERTY DEVELOPMENT LLC**, a  
Hawaii limited liability company

By Aina Nui Corporation, a Hawaii corporation, its  
member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date first above written.

APPROVAL RECOMMENDED:

**Assignee:**

**CITY AND COUNTY OF HONOLULU**

\_\_\_\_\_  
Director, Department of Planning and  
Permitting

By \_\_\_\_\_  
Director of Budget and Fiscal  
Services

APPROVAL RECOMMENDED:

\_\_\_\_\_  
Director, Department of Transportation  
Services

APPROVAL RECOMMENDED:

\_\_\_\_\_  
Director, Department of Design and  
Construction

APPROVAL RECOMMENDED:

\_\_\_\_\_  
Director, Department of Facilities  
Maintenance

APPROVAL AS TO FORM & LEGALITY:

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

**EXHIBIT A**  
**[ATTACH LIST OF UNRECORDED AGREEMENTS]**

## RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2010 (the "Agreement"), by and between the **CITY AND COUNTY OF HONOLULU**, hereinafter called the "CITY," and **AINA NUI CORPORATION**, a Hawaii corporation, hereinafter called the "GRANTEE," (collectively, the "parties"). The parties hereto agree on use of certain land within Tax Map Key: (1) 9-1-148-011(por.), City and County of Honolulu, State of Hawaii, as indicated on the map attached hereto as **EXHIBIT A** and made a part hereof, which land is hereinafter referred to as the "**Premises**," and the parties hereto agree as follows:

1. Use of the Premises.

The CITY hereby grants to the GRANTEE, its officers, employees and contractors, permission to enter upon, have access over and across, and take possession of the Premises to finish construction of the portion of Kapolei Parkway on the Premises to CITY standards (the "**Roadway Improvements**"). The GRANTEE will take reasonable steps to ensure that the contractor(s) the GRANTEE selects to construct the Roadway Improvements (hereafter the "**CONTRACTOR**") will permit the CITY and utility companies to exercise any existing rights each may have relating to the Premises, including, but not limited to, access over and through the Premises, as long as said exercise of rights, including any exercise of said access rights, does not unreasonably delay or interfere with the GRANTEE'S construction of the Roadway Improvements. The GRANTEE shall not make, permit, or suffer any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises. The GRANTEE shall observe and comply with all laws, ordinances, rules and regulations of the Federal, State, or CITY governments affecting the Premises or improvements thereon. This Agreement shall not be construed to include the granting of any permanent rights, ownership, title, or easement in the Premises.

2. Rental for the Premises.

The CITY will not charge the GRANTEE any rental for the use of the Premises.

3. Maintenance of the Premises.

The GRANTEE shall repair and maintain the Roadway Improvements on the Premises after the Notification for the Completion of the Roadway Improvements is issued for the Premises. The GRANTEE shall remove any debris or trash from the Premises, repair any damage to the Premises caused by GRANTEE'S use of the Premises, and keep the Premises and the Roadway Improvements in a clean, sanitary, and orderly condition. The GRANTEE shall use its commercially reasonable efforts to minimize and mitigate the occurrence of traffic, dust and noise originating from the Premises.

4. Installation of Roadway Improvements.

The purpose of this Agreement is to permit the GRANTEE to construct the Roadway Improvements on the Premises, and the CITY hereby consents to the construction of such improvements. The GRANTEE shall be responsible for all costs associated with construction of the Roadway Improvements. In the event

the GRANTEE'S activities shall in any way be outside the scope of uses contemplated under this Agreement, the GRANTEE shall promptly remove all of GRANTEE'S property and personnel from the Property.

5. GRANTEE Responsibility.

The GRANTEE shall be responsible, to the extent permitted by law, for: (i) damage or injury caused by the GRANTEE'S officers and employees in the scope of their employment, and (ii) damage or injury caused by the CONTRACTOR, by the CONTRACTOR'S employees, agents and sub-contractors or sub-agents of any tier, arising under the contract between the GRANTEE and the CONTRACTOR for construction of the Roadway Improvements. The GRANTEE shall pay for such damage and injury. The GRANTEE shall require the CONTRACTOR to include the CITY and such other persons as the CITY reasonably requests as additional insureds on the liability and property insurance policies that are prescribed by the proposed Roadway Improvements construction contract, which insurance policies, types of coverage and amounts of coverage shall be subject to the CITY'S reasonable prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

6. Indemnity.

The CITY shall not be liable for any loss, liability, claim or demand for property damage, property loss, personal injury, including but not limited to death arising out of any injury or damage caused by or resulting from any act or omission of the GRANTEE or its contractors in connection with the GRANTEE'S entry onto and occupancy of the Premises or arising out of damages or losses occurring on sidewalks, roadways, and other areas adjacent to the Premises, during the term of this Agreement. The GRANTEE, for itself, for all persons, entities or organizations claiming by, through or under it, and for their respective heirs, devisees, personal representatives, successors and assigns, does hereby (a) release, acquit and forever discharge the CITY and its officers, employees, and agents from all causes of action or claims for relief, liability costs, expenses, losses, and damages, including reasonable attorneys' fees, from any matter arising from GRANTEE'S entry onto the Premises or the work to be performed by GRANTEE during the term of this Agreement; and (b) agree to indemnify, defend and save harmless the CITY and its officers, employees, and agents, from and against any and all claims, demands, actions, causes of action that may hereafter be made or brought by any third party against the CITY for relief, liability, loss, damage, injury, or death sustained during the term of this Agreement as a consequence of GRANTEE'S entry onto the Premises or the work to be performed by GRANTEE during the term of this Agreement.

7. Public Safety.

Except for damage caused by the willful misconduct or negligence of the CITY, the GRANTEE shall, at all times, with respect to the Premises, use due care for public and private safety and shall indemnify, defend and hold the CITY harmless from and against all claims or demands for damage, including claims for property damage, personal injury, or death, arising on or about the Premises, or growing

out of, or caused by any failure on the part of the GRANTEE to maintain, supervise and control the Premises in accordance with the terms and conditions of this Agreement.

8. Term.

This Agreement shall commence on the date of this Agreement and shall terminate upon GRANTEE'S vacating the Premises after completion of the Roadway Improvements and with written notice to the CITY that GRANTEE has vacated the Premises. The termination of this Agreement shall not affect GRANTEE'S continuing obligations under paragraph 5.4 (Construction Right of Entry – Permitted Encumbrance) of that certain Memorandum of Agreement dated \_\_\_\_\_, 2010, by and between the CITY and Kapolei Property Development LLC. Upon termination of this Agreement, GRANTEE shall vacate the Premises and except for the Roadway Improvements constructed by GRANTEE and approved by the CITY, GRANTEE shall restore the area to the same condition as existed on the commencement date of this Agreement.

9. "As Built" Plans.

The GRANTEE agrees to cause Engineering Concepts, Inc., the design consultant for the Roadway Improvements, to provide the CITY with a full set of "As Built" plans for the Roadway Improvements constructed on the Premises.

10. Assignment and Modification.

This Agreement shall not be assigned, sold or transferred by GRANTEE to any other party. This Agreement may be modified from time to time upon written consent of all parties.

[Remainder of page intentionally left blank; signatures on following page]



**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized officers or agents on the date first above written.

APPROVAL RECOMMENDED:

**CITY:**

**CITY AND COUNTY OF HONOLULU**

\_\_\_\_\_  
Director, Department of Transportation  
Services

By \_\_\_\_\_  
Director of Budget and Fiscal  
Services

APPROVAL RECOMMENDED:

**GRANTEE:**

**AINA NUI CORPORATION**, a Hawaii  
corporation

\_\_\_\_\_  
Director, Department of Design and  
Construction

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

APPROVAL RECOMMENDED:

\_\_\_\_\_  
Director, Department of Facilities  
Maintenance

APPROVAL AS TO FORM & LEGALITY:

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ **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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

## NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **RIGHT OF ENTRY AGREEMENT**

Document Date: \_\_\_\_\_, 2010

No. of Pages (including this page): \_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	--

Printed Name of Notary

(Aina Nui Corporation)

**EXHIBIT A**

[ATTACH MAP OF PREMISES]

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP  
2200 ASB Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Mark K. Murakami  
Telephone: 808.523.2561

TITLE OF DOCUMENT:

**LIMITED WARRANTY DEED WITH COVENANTS AND AGREEMENTS**

PARTIES TO DOCUMENT:

**GRANTOR:** **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company

**GRANTEE:** **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii  
Honolulu Hale, Honolulu, Hawaii 96813

TAX MAP KEY(S): (Oahu) 9-1-148-009  
**Certificate of Title No. 928,177 (as to Lot 18271)**

(This document consists of \_\_\_ pages.)

## LIMITED WARRANTY DEED WITH COVENANTS AND AGREEMENTS

### KNOW ALL MEN BY THESE PRESENTS:

That on this \_\_\_\_ day of \_\_\_\_\_, 2010, **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company ("**Grantor**"), in consideration of the sum of ONE DOLLAR (\$1.00), to it paid by the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, whose business and post office address is Honolulu Hale, Honolulu, City and County of Honolulu, State of Hawaii ("**Grantee**"), the receipt whereof is hereby acknowledged, **GRANTOR DOES HEREBY GRANT, BARGAIN, SELL AND CONVEY** unto the Grantee, its successors and assigns, the property described in **Exhibit "A"** attached hereto and made a part hereof (the "**Property**"), **SUBJECT TO THE FOLLOWING COVENANTS AND AGREEMENTS:**

1. Water Development Facilities Charges. Any person, other than the City and County of Honolulu that seeks to use or develop all or a portion of the Property shall be responsible, at its own cost, to obtain a potable and non-potable water allocation from the Board of Water Supply of the City and County of Honolulu for the Property, and for its own hook up into the Board of Water Supply of the City and County of Honolulu water system (both potable and non-potable, each as applicable), and such person shall be responsible for payment of applicable water facilities charges (including source, storage and transmission components). The source component of water facilities charges shall be payable to the Board of Water Supply unless the Board of Water Supply directs the applicant to pay the same to James Campbell Company LLC, a Delaware limited liability company (James Campbell Company LLC being entitled to payment of such charges because it is the assign of the Trustees under the Will and of the Estate of James Campbell, Deceased who developed and then dedicated portions of the water facilities serving the Kapolei region). The storage and transmission components of water facilities charges shall be payable to James Campbell Company LLC (James Campbell Company LLC being entitled to payment of such charges because it is the assign of the Trustees under the Will and of the Estate of James Campbell, Deceased who developed and then dedicated portions of the water facilities serving the Kapolei region). The water facilities charges payable to James Campbell Company LLC shall be calculated in accordance with the published rates of the Board of Water Supply in existence at the time. Upon connection, from time to time, of a person's water meter for improvements at the Property to the Board of Water Supply's facilities and from time to time as additional improvements are completed on the Property and connected (directly or indirectly) into existing Board of Water Supply's facilities, the applicant seeking to hook up to the Board of Water Supply's facilities shall pay to James Campbell Company LLC and to the Board of Water Supply, each as applicable, the water development facilities charges described above which shall be calculated in accordance with the published rates of the Board of Water Supply in existence at the time. Concurrently with receipt or dispatch of such material, the applicant shall provide James Campbell Company LLC with copies of all material pertaining to the calculation or payment of water development facilities charges.

2. Sewer Transmission Capacity. Any person, other than the City and County of Honolulu, that seeks to use or develop all or any portion of the Property shall be responsible for its own hook up into the City and County of Honolulu sewer system, and such person shall be responsible for payment of applicable sewer connection fees, which will be payable to the City and County of Honolulu and/or James Campbell Company LLC, a Delaware limited liability company (James Campbell Company LLC being entitled to payment of such

charges because it is in the process of developing and/or developed portions of the sewer transmission facilities serving the Kapolei region). Upon connection, from time to time, of any improvements at the Property to the municipal sewer system of the City and County of Honolulu, the applicant seeking to connect such improvements to the municipal sewer system shall pay to James Campbell Company LLC and to the City and County of Honolulu, each as applicable, sewer connection fees which shall be calculated in accordance with agreements between James Campbell Company LLC and the City and County of Honolulu in existence at the time. Concurrently with receipt or dispatch of such material, the applicant shall provide James Campbell Company LLC with copies of all material pertaining to the calculation or payment of sewer connection fees.

3. Property in "As Is, Where Is" Condition. Grantee acknowledges and agrees that it is acquiring the Property in its "as is, where is" condition, with all faults, if any, and that Grantee has assumed all risks regarding all aspects of the Property, and the condition thereof, including, without limitation: (i) the risk of any physical condition affecting the Property including, without limitation, the existence of any soils conditions, or the existence of archeological or historical conditions on the Property; (ii) the risk of any damage or loss to the Property caused by any means including, without limitation, flood or earthquake; and (iii) the risk of use, zoning, habitability, merchantability or quality of the Property or the suitability of the Property for its present use or future development; and (iv) the activities of Grantor or others on adjacent or other nearby lands in compliance with applicable laws and regulations, and covenants, if any, applicable to such lands.

**TOGETHER WITH** the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of Grantor both at law and in equity therein and thereto.

**TO HAVE AND TO HOLD** the same, together with all buildings, improvements, tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee, absolutely and in fee simple.

Grantor for itself and its successors and assigns, does hereby covenant and agree with Grantee that Grantor has full power and authority to sell and convey the Property described in said **Exhibit "A"** and that Grantor has not done or suffered any act or thing whereby the Property is encumbered and that the same is free and clear of and from all encumbrances made or suffered by Grantor except for the encumbrances mentioned in said **Exhibit "A"** and real property taxes not yet due and payable; and that Grantor will **WARRANT AND DEFEND** the same unto Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons claiming by, through or under Grantor, except as aforesaid.

Grantee does hereby covenant to and with Grantor for the benefit of Grantor and for the benefit of James Campbell Company LLC, a Delaware limited liability company, that Grantee will observe and comply with all of the terms, covenants, conditions and restrictions set forth in any declaration of covenants or deed of record with respect to the Property, as the same exist or may hereafter be amended from time to time in accordance with law and the terms of such declaration(s) of covenants or deed(s), on the part of Grantee to be observed and performed, as and when required to do so.

The terms "Grantor" and "Grantee" wherever herein used shall be held to mean and include Grantor, its successors and assigns, and Grantee, its successors and assigns, and

this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their said respective successors and assigns.

[the remainder of this page intentionally left blank]

**IN WITNESS WHEREOF**, the parties hereunto have caused these presents to be duly executed on the day and year first above written.

**KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii corporation, its member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

**“Grantor”**

**APPROVED AS TO CONTENTS**

**CITY AND COUNTY OF HONOLULU**

\_\_\_\_\_  
Department of Facility Maintenance

By \_\_\_\_\_  
Name:  
Its Mayor

**“Grantee”**

**APPROVED AS TO FORM AND LEGALITY**

**APPROVED AND ACCEPTED BY THE CITY COUNCIL ON**

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

**EFFECTIVE AS OF THE DATE OF FILING IN THE OFFICE OF THE ASSISTANT REGISTRAR OF THE LAND COURT OF THE STATE OF HAWAII.**

**CITY CLERK**



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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii  
Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **LIMITED WARRANTY DEED WITH COVENANTS AND AGREEMENTS**

Document Date: 05/01/2014

No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	--

Printed Name of Notary

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did say that he is the Mayor of the CITY AND COUNTY OF HONOLULU, a municipal corporation, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and that the instrument was signed and sealed in behalf of said municipal corporation by authority of its Council, and said \_\_\_\_\_ acknowledged the instrument to be the free act and deed of said municipal corporation.

Notary Public  
State of Hawaii  
My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **LIMITED WARRANTY DEED WITH COVENANTS AND AGREEMENTS**

Document Date: \_\_\_\_\_

No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	---

Printed Name of Notary

**EXHIBIT A**  
[ATTACH LEGAL DESCRIPTION OF LOT 18271]

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP  
2200 ASB Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Mark K. Murakami  
Telephone: 808.523.2561

TITLE OF DOCUMENT:

**LIMITED WARRANTY DEED**

PARTIES TO DOCUMENT:

**GRANTOR:** **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company

**GRANTEE:** **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii  
Honolulu Hale, Honolulu, Hawaii 96813

**TAX MAP KEY(S):** (Oahu) 9-1-148-011(por.)  
**Certificate of Title No. 928,177 (as to Lot 18275, and Lot 18276)**  
(This document consists of \_\_ pages.)

## LIMITED WARRANTY DEED

### KNOW ALL MEN BY THESE PRESENTS:

That on this \_\_\_\_ day of \_\_\_\_\_, 2010, **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company ("**Grantor**"), in consideration of the sum of ONE DOLLAR (\$1.00), to it paid by the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, whose business and post office address is Honolulu Hale, Honolulu, City and County of Honolulu, State of Hawaii ("**Grantee**"), the receipt whereof is hereby acknowledged, **GRANTOR DOES HEREBY GRANT, BARGAIN, SELL AND CONVEY** unto the Grantee, its successors and assigns, the property described in **Exhibit "A"** attached hereto and made a part hereof (the "**Property**").

**TOGETHER WITH** the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of Grantor both at law and in equity therein and thereto.

**TO HAVE AND TO HOLD** the same, together with all buildings, improvements, tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee, absolutely and in fee simple.

Grantor for itself and its successors and assigns, does hereby covenant and agree with Grantee that Grantor has full power and authority to sell and convey the Property described in said **Exhibit "A"** and that Grantor has not done or suffered any act or thing whereby the Property is encumbered and that the same is free and clear of and from all encumbrances made or suffered by Grantor except for the encumbrances mentioned in said **Exhibit "A"** and real property taxes not yet due and payable; and that Grantor will **WARRANT AND DEFEND** the same unto Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons claiming by, through or under Grantor, except as aforesaid.

The terms "Grantor" and "Grantee" wherever herein used shall be held to mean and include Grantor, its successors and assigns, and Grantee, its successors and assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their said respective successors and assigns.

[the remainder of this page intentionally left blank]

**IN WITNESS WHEREOF**, the Grantor has caused these presents to be duly executed on the day and year first above written.

**KAPOLEI PROPERTY DEVELOPMENT  
LLC**, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii  
corporation, its member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

**"Grantor"**

**APPROVED AS TO CONTENTS**

\_\_\_\_\_  
Department of Facility Maintenance

**APPROVED AS TO FORM AND  
LEGALITY**

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

**APPROVED AND ACCEPTED BY THE  
CITY COUNCIL ON**

**EFFECTIVE AS OF THE DATE OF  
FILING IN THE OFFICE OF THE  
ASSISTANT REGISTRAR OF THE LAND  
COURT OF THE STATE OF HAWAII.**

**CITY CLERK**

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii  
Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **LIMITED WARRANTY DEED**

Document Date: \_\_\_\_\_

No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	--

Printed Name of Notary

**EXHIBIT A**

[ATTACH LEGAL DESCRIPTION OF LOT 18275 AND LOT 18276]



LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP  
2200 ASB Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Mark K. Murakami  
Telephone: 808.523.2561

TITLE OF DOCUMENT:

**LIMITED WARRANTY DEED WITH COVENANTS, AGREEMENTS, AND RESERVATION OF RIGHTS**

PARTIES TO DOCUMENT:

**GRANTOR:** **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company

**GRANTEE:** **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii  
Honolulu Hale, Honolulu, Hawaii 96813

TAX MAP KEY(S): (Oahu) 9-1-016-150(por.);  
(Oahu) 9-1-148: parcels 010, and 012(por.)  
Certificate of Title No. \_\_\_\_\_

(This document consists of \_\_ pages.)

**LIMITED WARRANTY DEED WITH COVENANTS, AGREEMENTS, AND RESERVATION OF RIGHTS**

**KNOW ALL MEN BY THESE PRESENTS:**

That on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company ("**Grantor**"), in consideration of the sum of ONE DOLLAR (\$1.00), to it paid by the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, whose business and post office address is Honolulu Hale, Honolulu, City and County of Honolulu, State of Hawaii ("**Grantee**"), the receipt whereof is hereby acknowledged, **GRANTOR DOES HEREBY GRANT, BARGAIN, SELL AND CONVEY** unto the Grantee, its successors and assigns, the property described in **Exhibit "A"** attached hereto and made a part hereof (the "**Property**"), **SUBJECT TO THE FOLLOWING COVENANTS, AGREEMENTS, AND RESERVATION OF RIGHTS:**

1. Reservation of Utility Easements. Grantor hereby reserves unto itself, and unto its successors and assigns the right, at their respective own cost, to use (a) Easement "1000" (Map \_\_\_\_), (b) Easement "1002" (Map \_\_\_\_), (c) Easement "1003" (Map \_\_\_\_), (d) Easement "1004" (Map \_\_\_\_), (e) Easement "1005" (Map \_\_\_\_), and (f) Easement "1006" (Map \_\_\_\_), with Map \_\_\_\_ being filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 (collectively, these easement areas being referred to as the "**easement areas**") for the purposes set forth herein. Such reserved rights shall include the right: (i) to construct, reconstruct, install, reinstall, use, operate, repair and maintain infrastructure for drain, electrical, sewer, water, or other utilities within the easement areas, provided that all such infrastructure improvements constructed within the easement areas are constructed to City and County of Honolulu dedicable standards, (ii) of ingress and egress to and from the easement areas through portions of the Property immediately adjacent to and above the easement areas for the purposes enumerated herein; (iii) to grant easements to use the easement areas to public utilities or governmental authorities which shall be in the form normally and customarily used by such public utilities or governmental authorities, as applicable, provided that each such grant of easement must provide that the same automatically terminates upon initial commencement of use of the applicable easement area as a road open to the general public. Grantor, its successors and assigns may exercise all of the rights reserved under this paragraph 1 (Reservation of Utility Easements) without the consent or joinder of any person, including the fee simple owner of the Property. Notwithstanding anything to the contrary contained herein, nothing in this paragraph 1 (Reservation of Utility Easements) shall be deemed or otherwise construed to permit Grantor, its successors or assigns, to construct infrastructure improvements within the easement areas unless and until Grantor, or its successors or assigns, as applicable, first obtain all necessary permits and approvals from the City and County of Honolulu and other applicable governmental authorities, if any, with regulatory jurisdiction over such construction.

2. Release of Terms and Conditions. When Grantor, its successors or assigns, no longer require the reservations contained in paragraph 1 (Reservation of Utility Easements), Grantor, its successors and assigns, agree to release the reservations set forth in paragraph 1 (Reservation of Utility Easements) by executing an appropriate instrument of release, and recording same in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

3. Water Development Facilities Charges. Any person, other than the City and County of Honolulu that seeks to use or develop all or a portion of the Property shall be responsible, at its own cost, to obtain a potable and non-potable water allocation from the Board of Water Supply of the City and County of Honolulu for the Property, and for its own hook up into the Board of Water Supply of the City and County of Honolulu water system (both potable and non-potable, each as applicable), and such person shall be responsible for payment of applicable water facilities charges (including source, storage and transmission components). The source component of water facilities charges shall be payable to the Board of Water Supply unless the Board of Water Supply directs the applicant to pay the same to James Campbell Company LLC, a Delaware limited liability company (James Campbell Company LLC being entitled to payment of such charges because it is the assign of the Trustees under the Will and of the Estate of James Campbell, Deceased who developed and then dedicated portions of the water facilities serving the Kapolei region). The storage and transmission components of water facilities charges shall be payable to James Campbell Company LLC (James Campbell Company LLC being entitled to payment of such charges because it is the assign of the Trustees under the Will and of the Estate of James Campbell, Deceased who developed and then dedicated portions of the water facilities serving the Kapolei region). The water facilities charges payable to James Campbell Company LLC shall be calculated in accordance with the published rates of the Board of Water Supply in existence at the time. Upon connection, from time to time, of a person's water meter for improvements at the Property to the Board of Water Supply's facilities and from time to time as additional improvements are completed on the Property and connected (directly or indirectly) into existing Board of Water Supply's facilities, the applicant seeking to hook up to the Board of Water Supply's facilities shall pay to James Campbell Company LLC and to the Board of Water Supply, each as applicable, the water development facilities charges described above which shall be calculated in accordance with the published rates of the Board of Water Supply in existence at the time. Concurrently with receipt or dispatch of such material, the applicant shall provide James Campbell Company LLC with copies of all material pertaining to the calculation or payment of water development facilities charges.

4. Sewer Transmission Capacity. Any person, other than the City and County of Honolulu, that seeks to use or develop all or any portion of the Property shall be responsible for its own hook up into the City and County of Honolulu sewer system, and such person shall be responsible for payment of applicable sewer connection fees, which will be payable to the City and County of Honolulu and/or James Campbell Company LLC, a Delaware limited liability company (James Campbell Company LLC being entitled to payment of such charges because it is in the process of developing and/or developed portions of the sewer transmission facilities serving the Kapolei region). Upon connection, from time to time, of any improvements at the Property to the municipal sewer system of the City and County of Honolulu, the applicant seeking to connect such improvements to the municipal sewer system shall pay to James Campbell Company LLC and to the City and County of Honolulu, each as applicable, sewer connection fees which shall be calculated in accordance with agreements between James Campbell Company LLC and the City and County of Honolulu in existence at the time. Concurrently with receipt or dispatch of such material, the applicant shall provide James Campbell Company LLC with copies of all material pertaining to the calculation or payment of sewer connection fees.

5. Property in "As Is, Where Is" Condition. Grantee acknowledges and agrees that it is acquiring the Property in its "as is, where is" condition, with all faults, if any, and that Grantee has assumed all risks regarding all aspects of the Property, and the condition thereof, including, without limitation: (i) the risk of any physical condition affecting the Property

including, without limitation, the existence of any soils conditions, or the existence of archeological or historical conditions on the Property; (ii) the risk of any damage or loss to the Property caused by any means including, without limitation, flood or earthquake; and (iii) the risk of use, zoning, habitability, merchantability or quality of the Property or the suitability of the Property for its present use or future development; and (iv) the activities of Grantor or others on adjacent or other nearby lands in compliance with applicable laws and regulations, and covenants, if any, applicable to such lands.

**TOGETHER WITH** the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of Grantor both at law and in equity therein and thereto.

**TO HAVE AND TO HOLD** the same, together with all buildings, improvements, tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee, absolutely and in fee simple.

Grantor for itself and its successors and assigns, does hereby covenant and agree with Grantee that Grantor has full power and authority to sell and convey the Property described in said **Exhibit "A"** and that Grantor has not done or suffered any act or thing whereby the Property is encumbered and that the same is free and clear of and from all encumbrances made or suffered by Grantor except for the encumbrances mentioned in said **Exhibit "A"** and real property taxes not yet due and payable; and that Grantor will **WARRANT AND DEFEND** the same unto Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons claiming by, through or under Grantor, except as aforesaid.

Grantee does hereby covenant to and with Grantor for the benefit of Grantor and for the benefit of James Campbell Company LLC, a Delaware limited liability company, that Grantee will observe and comply with all of the terms, covenants, conditions and restrictions set forth in any declaration of covenants or deed of record with respect to the Property, as the same exist or may hereafter be amended from time to time in accordance with law and the terms of such declaration(s) of covenants or deed(s), on the part of Grantee to be observed and performed, as and when required to do so.

The terms "Grantor" and "Grantee" wherever herein used shall be held to mean and include Grantor, its successors and assigns, and Grantee, its successors and assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their said respective successors and assigns.

[the remainder of this page intentionally left blank]

**IN WITNESS WHEREOF**, the parties hereunto have caused these presents to be duly executed on the day and year first above written.

**KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii corporation, its member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

**“Grantor”**

**APPROVED AS TO CONTENTS**

**CITY AND COUNTY OF HONOLULU**

\_\_\_\_\_  
Department of Facility Maintenance

By \_\_\_\_\_  
Name:  
Its Mayor

**“Grantee”**

**APPROVED AS TO FORM AND LEGALITY**

**APPROVED AND ACCEPTED BY THE CITY COUNCIL ON**

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

**EFFECTIVE AS OF THE DATE OF FILING IN THE OFFICE OF THE ASSISTANT REGISTRAR OF THE LAND COURT OF THE STATE OF HAWAII.**

**CITY CLERK**

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii  
Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **LIMITED WARRANTY DEED WITH COVENANTS, AGREEMENTS, AND RESERVATION OF RIGHTS**

Document Date:

No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	--

Printed Name of Notary

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did say that he is the Mayor of the CITY AND COUNTY OF HONOLULU, a municipal corporation, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and that the instrument was signed and sealed in behalf of said municipal corporation by authority of its Council, and said \_\_\_\_\_ acknowledged the instrument to be the free act and deed of said municipal corporation.

Notary Public  
State of Hawaii  
My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **LIMITED WARRANTY DEED WITH COVENANTS, AGREEMENTS, AND RESERVATION OF RIGHTS**

Document Date: \_\_\_\_\_

No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	---

Printed Name of Notary

**EXHIBIT A**

[ATTACH LEGAL DESCRIPTION OF LOT 50001 (DPP File No. 2009/SUB-242)]



LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP  
2200 ASB Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Mark K. Murakami  
Telephone: 808.523.2561

TITLE OF DOCUMENT:

**SUPPLEMENTAL DECLARATION TO CITY OF KAPOLEI DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND RESTRICTIONS**

PARTIES TO DOCUMENT:

**DECLARANT:** **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability company  
James Campbell Building, Suite 200, 1001 Kamokila Boulevard, Kapolei, Hawaii  
96707

**CONSENTING  
PARTY:** **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company  
James Campbell Building, Suite 250, 1001 Kamokila Boulevard, Kapolei, Hawaii  
96707

**TAX MAP KEY(S):** **See Exhibit 2 for Tax Map Key Parcel Numbers Affected by this Document**

Certificate of Title Nos. 496,527; 524,480; 569,438; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314; 600,145; 600,146; 600,148; 600,149; 600,150; 600,151; 600,152; 600,153; 600,154; 600,155; 600,156; 600,157; 600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164; 600,165; 600,166; 600,230 (as to Lot 16013); 619,022; 631,048; 631,381; 658,382; 671,118; 674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010; 806,014; 806,016 (as to Lot 17884, Lot 17885, Lot 17886, Lot 17887, Lot 17888, Lot 17889, Lot 17890, and Lot 17891); 807,561; 812,026; 812,028; 813,557; 816,985; 826,056; 828,618; 830,890 (as to Lot 16014-B); 830,892; 836,531; 842,498; 842,499; 854,915; 870,971; 905,804; 911,246; 913,970; 928,177 (as to Lot 18269, Lot 18271, Lot 18273, Lot 18274, Lot 18275, and Lot 18276); 928,178; 928,526; 932,371; 941,358; 941,359; and 958,215

(This document consists of \_\_ pages.)

**SUPPLEMENTAL DECLARATION TO  
CITY OF KAPOLEI DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**THIS SUPPLEMENTAL DECLARATION** is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability company (the **"Declarant"**), whose principal place of business and post office address is James Campbell Building, Suite 200, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707.

**R E C I T A L S:**

**WHEREAS**, as original Declarant, the Trustees under the Will and of the Estate of James Campbell, Deceased, filed that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as the same has been and may be amended and/or modified from time to time (collectively the **"Declaration"**); and

**WHEREAS**, by instrument dated January 2, 2002, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829, said Trustees assigned, transferred and conveyed to Declarant all of the rights and obligations vested in or reserved unto said Trustees' as the original Declarant under the Declaration; and

**WHEREAS**, Declarant reserved unto itself in Section 12.7 (Termination of Declaration Regarding Dedicated Land) of the Declaration, the right, power and authority to release lands encumbered by the Declaration upon dedication of the same in fee simple to a Government Entity, subject to the reservation of certain post-dedication rights of the Declarant and the Association contained in Section 5.6(e) (Maintenance) of the Declaration;

**WHEREAS**, the Kapolei Property Development LLC, a Hawaii limited liability company is the Owner of Lot \_\_\_\_, as shown on Map \_\_\_\_, all maps being filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, as more fully described in **Exhibit 1** attached hereto and incorporated herein by reference (the **"Property"**);

**WHEREAS**, Kapolei Property Development LLC, a Hawaii limited liability company intend to dedicate the Property to the City and County of Honolulu for public road purposes;

**NOW THEREFORE**, Declarant, in consideration of the foregoing, and subject to the condition set forth below regarding the effective date of this instrument, does hereby declare as follows:

1. Release of Declaration. Pursuant to the rights reserved unto Declarant under Section 12.7 of the Declaration, Declarant does hereby release and withdraw the Property as of the Effective Date (defined in paragraph 6 below) from the terms, covenants, conditions and restrictions contained in the Declaration; **PROVIDED, HOWEVER** that such release and withdrawal shall not affect the post-dedication rights of the Declarant and the

Association more fully set forth in Section 5.6(e) (Maintenance) of the Declaration as to the Property so released and withdrawn, said rights being hereby reserved.

2. Consent of Owner. By their execution of this instrument, Kapolei Property Development LLC, a Hawaii limited liability company, as Owner of the Property, does hereby join in and consent to the release and withdrawal of the Property from the Declaration.

3. Amendment to Exhibit A of Declaration. Under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant has the right, without Notice to any Party, to Amend the exhibits to the Declaration as necessary each time a parcel of Benefitted Lands is Annexed to the Land pursuant to Section 3.4 (Withdrawal) of the Declaration. Pursuant to the rights reserved unto Declarant under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant does hereby Amend Exhibit A of the Declaration by adding thereto the legal description of the Annexed Lot attached hereto as **Exhibit 1**, which for all purposes shall be deemed incorporated therein by reference as of the Effective Date. As defined in the Declaration, and as used herein, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

4. Amendment to Exhibit D of Declaration. Under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant has the right to Amend Exhibit D of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant does hereby Amend Exhibit D of the Declaration by deleting in its entirety every previous Exhibit D and substituting therefor the revised Exhibit D attached hereto as **Exhibit D** and incorporated herein by this reference.

5. Amendment to Exhibit D-1 of Declaration. Under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant has the right to Amend Exhibit D-1 of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 (Amendment to Declaration) of the Declaration, Declarant does hereby Amend Exhibit D-1 of the Declaration by deleting in its entirety every previous Exhibit D-1 and substituting therefor the revised Exhibit D-1 attached hereto as **Exhibit D-1** and incorporated herein by this reference.

6. Effective Date. The effective date ("**Effective Date**") of this instrument shall be the date upon which this instrument is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

7. No Other Effect. Except as expressly provided in paragraphs 1 through 6 above, in all other respects, the Declaration shall remain unmodified, and in full force and effect.

8. Notation of Instrument. This instrument shall be noted on each of the following Certificates of Title: **Certificate of Title Nos. 496,527; 524,480; 569,438; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314; 600,145; 600,146; 600,148; 600,149; 600,150; 600,151; 600,152; 600,153; 600,154; 600,155; 600,156; 600,157; 600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164; 600,165; 600,166; 600,230 (as to Lot 16013); 619,022; 631,048; 631,381; 658,382; 671,118; 674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010; 806,014; 806,016 (as to Lot 17884, Lot 17885, Lot**

17886, Lot 17887, Lot 17888, Lot 17889, Lot 17890, and Lot 17891); 807,561; 812,026; 812,028; 813,557; 816,985; 826,056; 828,618; 830,890 (as to Lot 16014-B); 830,892; 836,531; 842,498; 842,499; 854,915; 870,971; 905,804; 911,246; 913,970; 928,177 (as to Lot 18269, Lot 18271, Lot 18273, Lot 18274, Lot 18275, and Lot 18276); 928,178; 928,526; 932,371; 941,358; 941,359; and 958,215.

9. Defined Terms. Any word, term or phrase which begins with initial capitalization and which is not defined in this instrument or defined in another identified document, shall be given the definition of such word, term or phrase in the Declaration.

[the remainder of this page intentionally left blank; signature(s) on following page(s)]

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date first above written.

**Declarant:**

**CAMPBELL HAWAII INVESTOR LLC**, a  
Hawaii limited liability company

By James Campbell Company LLC, a  
Delaware limited liability company, its  
member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

**IN WITNESS WHEREOF**, the undersigned has executed this instrument as of the date first above written.

**Consent of Owner:**

**KAPOLEI PROPERTY DEVELOPMENT  
LLC**, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii  
corporation, its member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, 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 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.

Name:  
Notary Public, State of Hawaii  
My commission expires:

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **SUPPLEMENTAL DECLARATION TO CITY OF KAPOLEI  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

Document Date: , 2010

No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	---

Printed Name of Notary

(Campbell Hawaii Investor LLC)

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

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No. of Pages (including this page): \_\_\_\_\_

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary	Date of Notarization and Certification Statement
---------------------	---

Printed Name of Notary

(Kapolei Property Development LLC)



## EXHIBIT 1

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, described as follows:

**LOT** \_\_\_\_\_ (area \_\_\_\_\_ acres), as shown on Map \_\_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

**BEING** a portion of the land described in and covered by **Certificate of Title No.** \_\_\_\_\_ issued to Kapolei Property Development LLC, a Hawaii limited liability company.

End of Exhibit 1

**EXHIBIT 2**  
**LIST OF TAX MAP KEY PARCELS**

(Oahu) 9-1-016: parcels 054(por.); 121; 125; 135; 138(por.); 144; 147; 148; and 149

(Oahu) 9-1-088: parcels 001 through 021; 023; 025; and 027

(Oahu) 9-1-088-022: CPR 001 through 004

(Oahu) 9-1-106: parcels 001 through 008; and parcels 010 through 016

(Oahu) 9-1-118: parcels 001 through 007; and 009

(Oahu) 9-1-118-008: CPR 001 through 003

(Oahu) 9-1-148: parcels 005; 007; 009; and 011

(Oahu) 9-1-148-008: CPR 001 and 002

End of Exhibit 2

EXHIBIT D  
[REVISED EXHIBIT D TO BE ATTACHED]

End of Exhibit D

EXHIBIT D-1  
[REVISED EXHIBIT D-1 TO BE ATTACHED]

End of Exhibit D-1

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

RESOLUTION 10-49

Introduced: 2/25/10 By: TODD APO (BR)

Committee: BUDGET

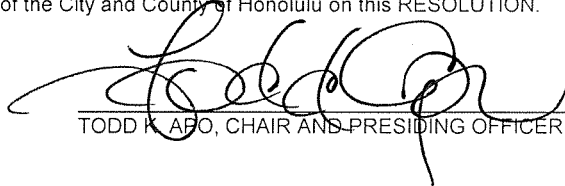
Title: RESOLUTION APPROVING THE CONVEYANCE OF PROPERTIES FROM KAPOLEI PROPERTY DEVELOPMENT LLC TO THE CITY AND COUNTY OF HONOLULU.

Links: RES10-49  
CR-66

BUDGET	3/3/10	CR-66 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.			
COUNCIL	3/17/10	CR-66 AND RESOLUTION 10-49 WERE ADOPTED.			
ANDERSON	Y	APO	Y	CACHOLA	Y
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 RESOLUTION.

  
BERNICE K. N. MAU, CITY CLERK

  
TODD K. APO, CHAIR AND PRESIDING OFFICER