

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

January 31, 2014

The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

CITY COUNCIL
HONOLULU, HAWAII

2014 JAN 31 P 2:06

2013/GEN-12

RECEIVED

Dear Chair Martin and Councilmembers:

SUBJECT: Application for a Development Agreement for the Live, Work, Play Aiea Project

We are pleased to submit for City Council action, the first Development Agreement Application submitted to the City. As requested by CP Kam Properties, LLC, this Development Agreement is being reviewed in conjunction with a zone change application from B-2 to BMX-3 for the property. As Bill 68 (2013), this Application is currently being considered by the Zoning and Planning Committee.

We recommend approval of this Application for a Development Agreement for the Live, Work, Play Aiea project. Our recommendation includes several revisions to the Public Benefits section (Exhibit E) of the Development Agreement.

Attached for your consideration are our report and Draft Resolution, including the Development Agreement, as submitted to the Department. The Department held a public hearing on January 21, 2014 on the Application. Three people testified and five other testimonies were submitted. These are attached. The public hearing was closed on January 21, 2014.

Pursuant to Section 33-1.7, we were required to transmit our recommendation to the City Council within 10 days of the completion of the public hearing held by the Department. The City Council must review the proposed Development Agreement and the transmitted recommendation, hold a public hearing, and by resolution, accept, modify and accept as modified, or reject the Development Agreement.

The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
January 31, 2014
Page 2

Should you have any questions, please contact me at 768-8000.

Very truly yours,



George I. Atta, FAICP
Director

GIA:js

Attachments

APPROVED:



Ember Lee Shinn
Managing Director

DEPARTMENT OF PLANNING AND PERMITTING
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)
)
 OF)
)
 CP KAM PROPERTIES, LLC FOR A)
 DEVELOPMENT AGREEMENT)
)
 _____)

FILE NO. 2013/GEN-12

FINDINGS OF FACT, ANALYSIS,
CONCLUSIONS OF LAW, AND RECOMMENDATION

I. APPLICATION

A. Basic Information.

PROJECT NAME : Live, Work, Play Aiea
APPLICANT/LANDOWNER : CP Kam Properties, LLC
AGENT : PBR Hawaii
LOCATION : 98-850 Moanalua Road, Oahu
(**Attachment 1**)
TAX MAP KEYS : 9-8-013: 013 and 015
LAND AREA : About 13.99 Acres
RECORDATION : Regular System
STATE LAND USE DISTRICT : Urban District
DEVELOPMENT PLAN AREA : Primary Urban Center
DEVELOPMENT PLAN : Within the Urban Community Boundary and in an
LAND USE POLICY : area planned for District Commercial uses
EXISTING ZONING : B-2 Community Business District with 60-foot
height limit
EXISTING USE : Commercial (Kamehameha Swap Meet three times
a week); former Kamehameha Drive-In Theater

SURROUNDING LAND USES : Commercial, multi-family dwellings, a meeting facility (church) with day-care, and public uses

- B. Request. The Applicant, CP Kam Properties, LLC, requests a Development Agreement (DA) in conjunction with the zone change application being processed for the Live, Work, Play Aiea (LWPA) project.

The LWPA is a mixed use project which will combine residential, commercial, and gathering areas/open spaces in an urban village. The project will include up to 1,500 dwelling units and commercial uses such as retail areas, offices, limited-service hotel or senior-oriented medical service, residential, and convalescent care facilities. The zone change application, from B-2 Community Business District with a 60-foot height limit to BMX-3 Community Business Mixed Use District with a 350-foot height limit, is currently pending at City Council. The DA is being requested in lieu of conditional zoning (and Unilateral Agreement [UA]).

The DA is subject to Chapter 33, Revised Ordinances of Honolulu (ROH), and Chapter 46, Hawaii Revised Statutes (HRS), and provides a means to vest development rights. Public benefits that go beyond the “rational and proportional nexus” and constraints of zone change ordinances may be negotiated in the DA in return for reducing uncertainty in the development process. The Applicant requests the DA to protect their development rights from the effect of subsequently enacted City legislation which may conflict with terms or provisions of the agreement. As provided by Chapter 33, ROH, this “freezing” of land use regulations will be in effect for at least 10 years. Negotiations on the draft DA include UA-type conditions and community benefits to be included in the “Public Benefits” section. The UA-type conditions address adverse impacts directly attributable to the proposed land use and zone change (i.e., rational and proportionate nexus). The community benefits are intended to support the residents of the Aiea-Pearl City area.

The proposed DA identifies the City and the Applicant as parties to the agreement and includes the following:

- Master plan of the project showing the proposed uses, structures, and other improvements. Several elements of the plan cannot be changed without prior City approval, including the maximum heights of the buildings, the internal road, gateway entry features, and the public gathering place.
- Phases in which the project will be constructed. Phase 1 will primarily consist of the commercial space. The remainder of the project will be constructed in Phases 2 through 5 with the full build-out expected in about 12 years, subject to market conditions and economic considerations.
- A termination date, not to exceed 10 years from the effective date of the agreement, and provisions to extend this date.
- The current City laws, ordinances, resolutions, rules, regulations and policies to govern the use of the land for the duration of the DA (at least 10 years) are:
 - Chapter 21, ROH, Land Use Ordinance.

- Chapter 25, ROH, Special Management Area.
 - Section 23-1.4(a), ROH, relating to the establishment of the shoreline setback line.
 - Article 7 of Chapter 22, ROH, relating to parks and playgrounds (park dedication).
 - City Council Resolution No. 09-241, which established City policy with respect to income thresholds for affordable housing required by unilateral agreements, and the affordable housing rules adopted by the Department of Planning and Permitting (DPP).
- Public benefits section which includes conditions to mitigate potential impacts which are directly attributable to the project and benefits beyond that which would be typically required under the zone change process, including:
 - Affordable housing. Provide affordable housing for the project in accordance with the City's affordable housing rules, which requires an obligation equivalent to no less than 30 percent of the total number of dwelling units in the project be affordable.
 - Urban design. Review and approval of elements relating to "connectivity", building heights and orientation, pedestrian-friendly ground level and streets, entry gateways, building architecture, and landscaping.
 - Transportation. Compliance with transportation-related requirements, including the completion of a construction management plan, traffic demand management plan, updated traffic reports, and the construction of street and other traffic improvements.
 - Water. Compliance with water-related requirements, including water conservation measures and improvements for high-rise buildings.
 - Education. Compliance with the school impact fee requirements.
 - Streetscape improvements along Kaonohi Street to Kamehameha Highway. Provide improvements which support a friendlier pedestrian and biking experience, within the City right-of-way along Kaonohi Street, from the boundary of the project site to the boundary of Kamehameha Highway (State right-of-way).
 - Subsidize bus/transit passes. The retail tenant(s) will provide 30 bus/transit passes to employees for 15 to 20 years.
 - Park and bus transit facility. Provide \$50,000 for a conceptual study for a proposed park and bus transit facility makai of the rail transit station.
 - Meeting room and public restrooms. Provide a meeting room, for a nominal charge, on the project site for community groups and restrooms for users of the meeting room and public open space.
 - Contribution to non-profit organizations. Provide annual contributions of no less than \$25,000 for 20 years to non-profit organizations, which provide services for the benefit of the Aiea-Pearl City community, through the creation of a charitable contribution program.

The submitted DA is attached to the draft resolution (see **Attachment 2**).

- C. Zone Change Application (DPP No. 2013/Z-3). The proposed zone change accompanying the DPP report and recommendation (zone change report) was transmitted to the Planning Commission (PC) on September 16, 2013. The DPP determined that the zone change was consistent with the General Plan and Primary Urban Center Development Plan and met the purpose and intent of the proposed BMX-3

zoning district. The Aiea Neighborhood Board No. 20 (Aiea NB) did not take a position on the project; comments in opposition and support of the project were received. The DPP recommended approval of the zone change subject to the execution of a DA.

The PC held a public hearing on October 2, 2013 and voted to recommend approval of the request. The PC also recommended the following:

- Remove the in-lieu fee provision from the affordable housing component of the draft DA, Exhibit "E" - Public Benefits;
- The Applicant should work closely with the City Department of Transportation Services (DTS) on pedestrian and traffic safety measures; and
- As the project moves forward, apprise the PC of comments from the State Department of Transportation and the DTS regarding traffic issues, including updated and/or new traffic reports.

The PC transmitted the proposed zone change to the City Council on November 1, 2013 and the draft Bill was introduced as Bill No. 68 (2013). The Bill passed first reading on December 11, 2013 and was referred to the Zoning and Planning Committee. At their January 16, 2014 meeting, the Committee voted to defer the Bill so it could be processed by City Council concurrently with the DA.

The provisions of the DA are discussed throughout the zone change report, particularly the UA-type conditions recommended to mitigate impacts attributable to the project and proposed zone change. The zone change report will be referenced throughout this report. As such, a copy of the zone change report (without attachments) has been attached as **Attachment 3**.

II. FINDINGS OF FACT

On the basis of the evidence presented, the Director has found:

- A. Description of Site/Surrounding Land Uses. The description of the site and surrounding land uses is described in the zone change report.
- B. Environmental Compliance. The project's environmental compliance, including acceptance of the Final Environmental Impact Statement (EIS), is referenced in the zone change report.
- C. Public Agency Notification/Comments. Based on the comments received during the EIS and zone change processes, the following public agencies were requested to evaluate and comment on the DA. Agencies that submitted written comments on the zone change are identified with a plus sign (+). Agencies indicating that they have no comments or their comments are the same as those provided for the zone change application are identified with an asterisk (*). Significant comments received are addressed in Section III of this report. All written comments received prior to the signing of this report are included in their entirety in **Attachment 4**. Comments received after the signing of this report will be transmitted separately to the City Council for their consideration.

1. City Agencies:
 Board of Water Supply (BWS) +*
 Department of Community Services
 Department of Environmental Services (ENV) +*
 Department of Facility Maintenance +
 Department of Parks and Recreation (DPR) +*
 Department of Transportation Services (DTS) +
 Honolulu Authority for Rapid Transportation (HART) +
 Honolulu Fire Department (HFD) +*
 Honolulu Police Department (HPD) +*

2. State Agencies:
 Department of Accounting and General Services
 Department of Education (DOE) +
 Department of Health +*
 Department of Land and Natural Resources (DLNR) +*
 Department of Transportation (DOT) +
 Office of State Planning

D. Public Notifications, Hearings, and Community Comments. In accordance with Chapter 33, ROH, upon acceptance of the DA Application for processing, the DPP published a notice of the proposed DA in the November 8, 2013 publication of the Honolulu Star Advertiser. In addition to the public agencies, a copy of the Application was sent to the Aiea NB for review and comment. Informational notices were also sent to the Pearl City Neighborhood Board No. 21, elected area officials, Pearlridge Satellite City Hall, various community organizations, and individuals who commented on the zone change application. Four letters from the public were received in opposition of the project.

The DPP also held a public hearing on January 21, 2014 to receive public testimony concerning the DA. Three individuals, including an individual representing both the Aiea NB and the Aiea Community Association, provided written and oral testimony. In addition, four written testimonies were received prior to and one testimony was received after the close of the hearing. Three of the eight testimonies were in support, three in opposition, and two did not take a position. The public hearing testimonies and the letters received during the comment period are included in their entirety in **Attachment 4** and summarized below.

No Position

The Aiea NB and Aiea Community Association did not take a position on the DA but it did request clarification on the proposed public benefits relating to affordable housing, the subsidized bus/transit passes, and the community meeting room. The Applicant provided responses to those comments, including:

- Affordable housing location and timing. An affordable housing agreement will be executed for each residential building prior to the issuance of the building permit and will clarify the number and location of the units, including whether the units will be on-site or off-site. Regardless, per the DA, at least half of the affordable units will be built on-site. Also, the affordable housing rules will govern the restrictions on sales by owners of affordable units.

- Trigger for subsidized bus/transit passes. If the anticipated market tenant is the only retail tenant that leases over 40,000 square feet, then the market would be the only tenant to provide the passes. The intent is to have this requirement in place for 15 to 20 years.
- Eligible organizations for use of the community meeting room. The term “community groups” is intended to be broad and is not limited to entities that have an IRS 501(c)(3) designation.
- Time periods for benefits. Although the term of the DA is 10 years, certain public benefits will continue well beyond that period and will be incorporated in a master Covenants, Conditions, and Restrictions (CC&Rs) to be recorded against the property as continuing obligations. There is no time limit on the provision of the community meeting room.

Another organization, Hawaii Building and Construction Trades Council, AFL-CIO, indicated that the DA lacked provisions to ensure that a local and highly skilled workforce will be employed on all phases of the project as it relates to construction, as well as preference to residents of the area for permanent jobs. They understand that the Applicant only intends to develop Phase 1 and that the fate of the remaining phases have not been determined. This concern will be further addressed in Section III of this report.

Opposition

Those opposing the project expressed similar concerns as those raised during the zone change. These concerns, which were addressed in the zone change report, include:

- The project will create more hazardous traffic conditions for both pedestrians and vehicles and further worsen traffic congestion. Recently, there have been several major accidents on Moanalua Road.

Since the streets are at their maximum capacity, it is unclear how the proposed improvements along Kaonohi Street will help the traffic flow. Also, there is insufficient space to widen Kaonohi Street and Moanalua Road.

- There is inadequate public infrastructure, such as water and wastewater, to support the project.
- The proposed height of the zone change and the proposed residential buildings are not appropriate for the area and will impact existing views.
- The project will result in less greenery and more pollution, including noise pollution. Also, the site is currently used for a farmers market and other events such as parking for UH football games.
- The property value in the area will decrease.

Support

Supporters of the project indicated the following:

- The project incorporates smart growth principles and will redevelop land for both residential and commercial use within a half-mile of the City's rail station. The development is the type of catalytic project the City needs in the urban core.
- The proposed DA will help assure that the project moves forward in an expeditious way to deliver the community benefits, including housing, commercial areas, and short- and long-term job opportunities.
- The proposed DA will specify the standards and conditions that will govern development of the property, including the developer's contribution toward funding specific infrastructure improvements.
- The project will provide new housing for the Aiea-Pearl City area and will help growing families stay in the area.

III. ANALYSIS

A. Compliance with City Land Use Legislation. As discussed in the zone change report, the project, in addition to the requested zone change, is consistent with the following City land use legislation.

1. General Plan of the City and County of Honolulu (Amended October 3, 2002 by Resolution 02-205, CD1). The proposal is consistent with General Plan objectives and policies relating to Population, Economic Activity, Housing and Physical Development, and Urban Design.
2. Chapter 24, ROH, Article 2, Primary Urban Center Development Plan (PUC DP), Ordinance No. 04-14, June 2004 and Aiea-Pearl City Livable Communities Plan, Resolution No. 05-048, CD1, May 2004. The proposal is consistent with the vision, policies, and guidelines of the PUC DP and the Aiea-Pearl City Livable Communities Plan, which is a Special Area Plan of the PUC DP.
3. Chapter 4, ROH, Article 8, Public Infrastructure Map (PIM). The proposal includes improvements to Kaonohi Street, and, therefore, is consistent with Resolution No. 07-026, adopted on June 6, 2007, which revised the PUC PIM to add a major collector or arterial roadway symbol for Kaonohi Street fronting the project site.
4. Proposed Rezoning to BMX-3 Community Business Mixed Use District, LUO Section 21-3.20. The proposal is consistent with the purpose and intent of the business mixed use districts and the proposed 350-foot height limit can be supported as it will help implement the City's long-range plans and policies, particularly promoting more compact urban places.

Although Transit Oriented Development (TOD) zoning is not yet adopted, critical elements of successful TOD projects were negotiated to be part of this proposal. As such, the DPP has no objections to the vesting of the zoning code. Moreover, the Applicant invested significant time and resources to work with the community in developing its proposal.

5. Aiea-Pearl City Neighborhood TOD Plan, Public Review Draft, November 2010. The proposal supports the TOD plan for a mixed-use regional center around the Pearlridge station and a “Main Street” connecting Moanalua Road and Kaonohi Street.
6. Chapter 23, ROH Shoreline Setbacks, and Chapter 25, ROH, Special Management Area (SMA). The project site is outside of both the shoreline setback area and the SMA and not subject to the requirements under Chapters 23 and 25, ROH, respectively. As such, the DPP has no objections to the vesting of both land use policies.

B. Public Facilities and Services.

1. Transportation. As discussed in the zone change report, the DA contains provisions to mitigate traffic impacts, including the completion of construction management plan, traffic demand management plan, updated traffic reports, and the construction of street and other traffic improvements. Updated comments on the DA were received from the State DOT and the City DTS.

DOT

The DPP had concurred that it would be unreasonable to require the Applicant to improve traffic operations in the study area along Kamehameha Highway from Level of Service (LOS) F to E since the impacts of concern could not be attributed to the proposed zone change. As such, the DPP did not recommend improvements within the study area along Kamehameha Highway.

The updated comments from the DOT request that the DA include a provision indicating that the Applicant continue to coordinate and reach an agreement with DOT to provide public transportation improvements along Kamehameha Highway to satisfy the project’s pro-rated share of regional transportation improvements to mitigate the project’s transportation impacts to the State highways, all at no cost to the State.

The DOT also responded directly to the Applicant and acknowledged that it may not be feasible for the Applicant to improve the LOS from F to E. As such, the DOT asked the Applicant to evaluate smaller projects where “each provides beneficial, independent utility and determine which projects are feasible.” In addition, the DOT requested further discussion and recommendations regarding the provision of pedestrian infrastructure improvements at the intersection of Kamehameha Highway and Kaonohi Street to the Honolulu High-Capacity Transit Corridor Project.

On January 14, 2014, the Applicant responded to the DOT with the following:

- Overall, the Applicant's traffic consultant concluded that subdividing projects along Kamehameha Highway into smaller projects would provide significantly less beneficial and independent utility than the whole, and thus this approach should be considered not practical or cost-effective, nor can they be directly attributable to the proposed project.
- With respect to pedestrian infrastructure improvements, the DA requires the Applicant to provide streetscape improvements along Kaonohi Street, to the boundary of Kamehameha Highway.
- The Applicant initiated communication with the DOT in November 2010. As of this date, the DOT has not been able to advise what would be considered the project's pro-rated share of improvements and the Applicant does not find it reasonable that the DA should include an open-ended provision, as recommended by the DOT.
- Nevertheless, the Applicant is willing to provide up to \$900,000 for the previously identified improvements at the Hekaha Street/Kamehameha Highway intersection as follows: "Upon the completion of improvements by the State Department of Transportation to improve traffic operations along Kamehameha Highway from LOS F to LOS E, the applicant will contribute funding of up to \$900,000 for improvements that are necessary as a direct result of the project at Hekaha Street/Kamehameha Highway intersection (as specified in Figure 2 of the letter report by Austin, Tsutsumi & Associates (ATA) dated July 10, 2013)."

While the DPP has no objections to the Applicant providing the project's pro-rated share of improvements, it is difficult to know when DOT would determine the project's fair share of improvements to Kamehameha Highway, and when it would actually construct the improvements. It would be problematic as to whether \$900,000 is a reasonable figure. Therefore, the DPP does not recommend a provision relating to transportation improvements along Kamehameha Highway at this time.

DPP and DTS

The DPP recommends minor changes to the Public Benefits (Exhibit E) to be consistent with the remainder of the DA:

- Page 15 of 16 relating to streetscape improvements along Kaonohi Street to Kamehameha Highway (Ramseyer format):

"Provide streetscape improvements within the existing City right-of-way and existing curb line, which [may] shall provide for improved sidewalks, [street trees,] crosswalks, a dedicated bike lane mauka bound and sharrows makai bound, along Kaonohi Street, from the boundary of the Project site to the boundary of Kamehameha Highway (State right-of-way)

and in any event within the City right-of-way. Improvements may also include street trees where feasible.”

The DTS added a comment, indicating disagreement with an at-grade crosswalk across of Kaonohi Street at the Pearlridge Center driveway below Macy’s. If a grade separated crossing cannot be made, then pedestrian crossings off Kaonohi Street at the driveway should be prevented.

As discussed in the zone change report, the DA includes a provision requiring an evaluation of a grade separated crossing. The DA also indicates that if an updated and/or new Traffic Impact Analysis Report recommends an unsignalized crossing across Kaonohi Street, then additional information on the measures to be implemented to increase pedestrian safety must be provided. At this time, the DA is not requiring the unsignalized crossing, only that it be evaluated. As such, the DPP does not recommend any revisions of the DA.

Honolulu Authority of Rapid Transportation (HART)

The HART provided comments on the Master Plan’s proposal to provide pedestrian and/or vehicular connections to the adjoining St. Timothy’s Church and Harbor Pointe development. The HART does not object if a vehicular connection cannot be provided but feels that pedestrian connections should be made in the spirit of Transit-Oriented Development, to lessen the walking distance to the planned transit station and to encourage greater use of public transportation.

The Applicant’s provision of the pedestrian and/or vehicular connections are elements of the DA’s Master Plan that cannot be changed without City approval. However, if the adjoining developments do not accept the Applicant’s offer for connection, than the Applicant will not be required to provide the connection. As of this date, the adjoining owners have not taken a formal position on access.

2. Water. As discussed in the zone change report, the DA contains provisions which require the Applicant to comply with water-related requirements including water conservation measures and improvements for high-rise buildings. The BWS indicated that their comments are still applicable.
3. Parks and Recreation. As discussed in the zone change report, the project is subject to park dedication requirements under Chapter 22, Article 7, ROH. The DPP has no objections to the vesting of the park dedication requirements as the Applicant will also provide funds for a conceptual study for a potential park and bus transit facility makai of the planned rail transit station and an on-site meeting room for community groups and public restrooms.

C. Social and Economic Impacts

1. Education. As discussed in the zone change report, the DA contains provisions which require the developer of a phase with residential buildings and the DOE to agree to the terms for compliance with the school impact fees. Updated comments from the DOE indicate that the DA is insufficient to support the full and timely enforcement of the school impact fee payment. The DOE requests that

the Applicant enter into an Education Contribution Agreement (ECA) which would establish and memorialize the Applicant's educational contribution. However, the Applicant had yet to do so at the time their comment letter was finalized.

Subsequently, the Applicant responded by indicating that a draft ECA was submitted to the DOE. The Applicant notes that Section 302A-1607(h), HRS only requires that an agreement be executed prior to the issuance of a building permit and the only agreement that is required is as to the time for payment. The residential developer is obligated to comply with the statutory requirements for the school impact fees regardless of whether an agreement is executed. However, the Applicant is working with the DOE to agree upon the acceptable terms for such an agreement.

Based on the Applicant's response, the DPP does not recommend any changes to the DA provisions regarding the educational requirements at this time.

2. Employment. As discussed in the zone change report, the project will increase both short- and long-term employment opportunities. A comment received requests that the DA include provisions to ensure the use of a local and highly-skilled workforce as it relates to construction and permanent jobs going forward.

This comment was forwarded to the Applicant for their consideration. The DPP does not recommend the inclusion of such a provision in the DA at this time.

3. Affordable Housing. As discussed in the zone change report, the DA contains provisions which require the Applicant to provide affordable housing in accordance with the City's current affordable housing rules. The affordable housing rules and Resolution No. 09-241, which establishes City policy with respect to income thresholds for affordable housing, will also be vested under the DA. The DPP has no objection to vesting the affordable housing requirements.

In their transmittal of the zone change application to the City Council, the PC recommended the removal of language allowing the use of in-lieu fees to satisfy up to five percent of the affordable housing requirements.

The in-lieu fee language was included in the DA as an option to meet the affordable housing obligation should unforeseen circumstances occur (e.g., an affordable unit fails to meet the ten-year occupancy requirement). The affordable housing rules already provide various options to meet the affordable housing obligation, including in-lieu fees. Therefore, the DPP has no objections to the removal of the in-lieu fee language.

The Aiea NB requested clarification as to when will the community be informed of the percentage of affordable units in each of the residential buildings and whether there will be any off-site affordable units and the location of those units (including plans to aggregate the units). Although the Applicant responded to the Aiea NB, the DPP also notes that the affordable housing rules already requires an approved Affordable Housing Agreement and Implementation Plan which will identify the location, number, and delivery schedule of the affordable units.

Further, the DPP recommends that the DA include a provision requiring the Applicant to update the Aiea NB, on an annual basis, on the development of the project. This update should occur until the termination of the DA.

IV. CONCLUSIONS OF LAW

The Director hereby makes the following conclusions:

The DA, as proposed, was reviewed under the provisions of Chapter 33, ROH, and found to be consistent with the City's land use plans, including the General Plan, the Primary Urban Center Development Plan, and the purpose and intent of the proposed BMX-3 zoning district. However, upon further review of the DA, including public and agency comments, the DPP recommends the following revisions to the Public Benefits (Exhibit E) portion of the DA:

1. Page 1 of 16 – Affordable Housing. Delete sentence from Public Benefits section which states:

“...[The affordable housing requirement may be satisfied by payment of in-lieu fees for no more than five percent (5%) of the affordable housing requirement.]...”

2. Page 15 of 16 - Streetscape improvements along Kaonohi Street to Kamehameha Highway. Revise the language as follows:

“Provide streetscape improvements within the existing City right-of-way and existing curb line, which [may] shall provide for improved sidewalks, [street trees,] crosswalks, a dedicated bike lane mauka bound and sharrows makai bound, along Kaonohi Street, from the boundary of the Project site to the boundary of Kamehameha Highway (State right-of-way) and in any event within the City right-of-way. Improvements may also include street trees where feasible.”

3. New topic relating to updates to the Aiea NB. The Applicant shall be required to update the Board, on an annual basis, on the development of the project. This update shall occur until the termination of the DA.

These revisions, as well as any others recommended by City Council, should be incorporated into the DA prior to its execution. In accordance with Section 33-1.7, the City Council shall, by resolution, accept, modify and accept as modified, or reject the DA. As such, these revisions, as well as any others recommended by City Council, should be incorporated into the DA prior to its execution. Further, pursuant to Section 33-1.3, the DA can only be executed after the zone change is approved.

V. RECOMMENDATION

Pursuant to the foregoing Findings of Fact, Analysis, and Conclusions of Law, the Director of the Department of Planning and Permitting recommends that the Application for a Development Agreement (DA) for the Live, Work, Play Aiea project be APPROVED, subject to the revisions stated in the preceding section to the Public Benefits (Exhibit E) portion of the DA.

A draft Resolution, which includes the draft DA, has been attached (**Attachment 2**).

Dated at Honolulu, Hawaii, this 30th day of January, 2014.

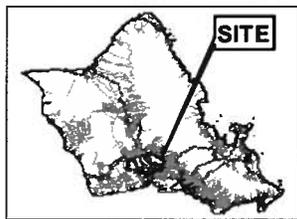
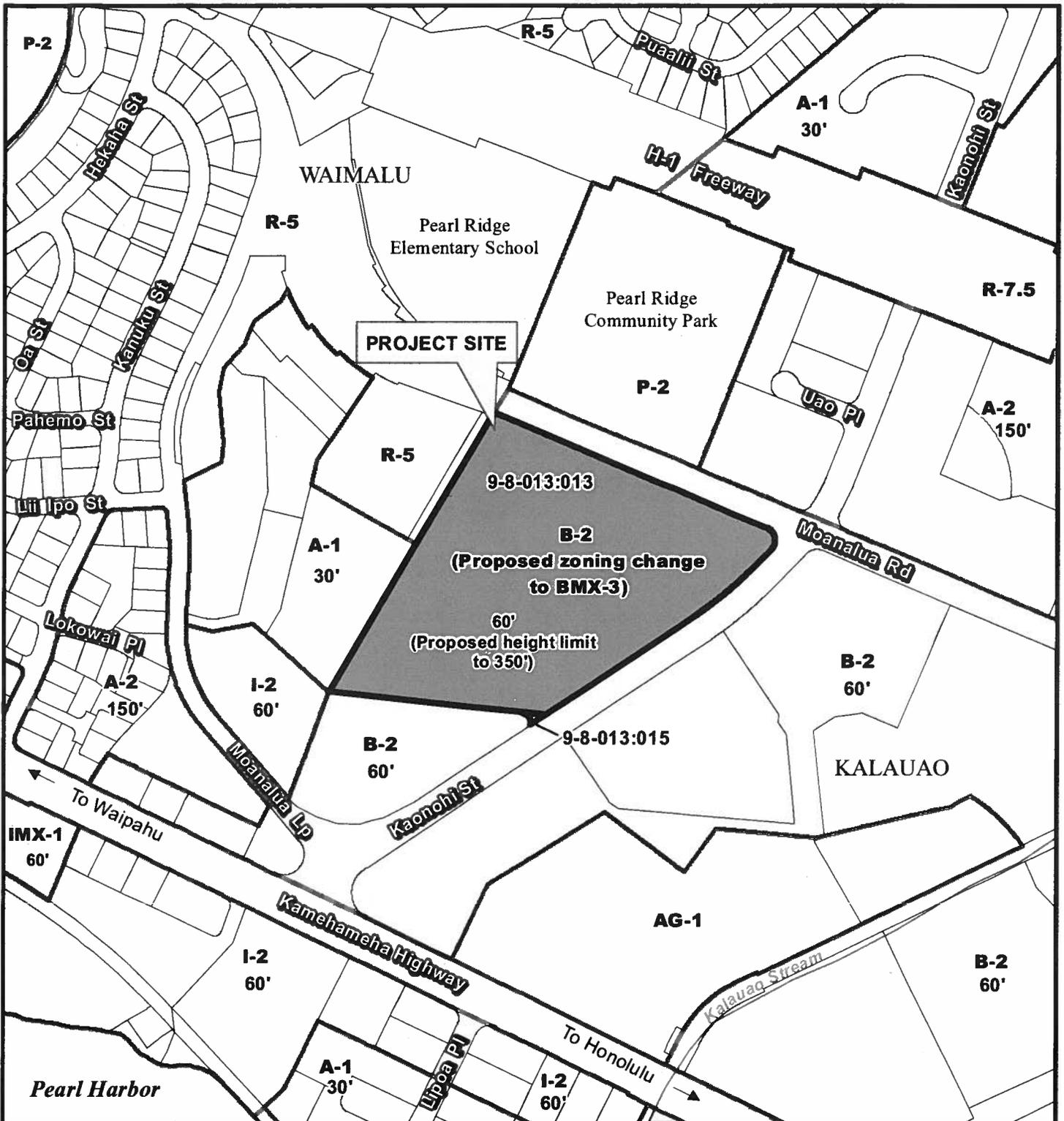
DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

By *George I. Atta*
George I. Atta, FAICP
Director

GIA:js

Attachments

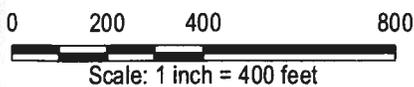
ATTACHMENT 1
(Location Map)



VICINITY MAP

LOCATION MAP WITH EXISTING ZONING WAIMALU

TAX MAP KEY(S): 9-8-013:013 & 015
FOLDER NO.: 2013/GEN-12



ATTACHMENT 2
**(Draft Resolution, Draft Development Agreement,
and Recommended Revisions)**



RESOLUTION

ACCEPTING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU AND CP KAM PROPERTIES, LLC FOR THE LIVE, WORK, PLAY AIEA PROJECT AND AUTHORIZING THE CITY AND COUNTY OF HONOLULU TO ENTER INTO THE SAME.

WHEREAS, CP Kam Properties, LLC (the "Applicant") proposes to develop a mixed use project which will combine residential, commercial, and gathering areas/open spaces on about 13.99 acres of land located at 98-850 Moanalua Road, Oahu, identified as Tax Map Keys 9-8-013: 013 and 015, which is owned by the Applicant, to be known as Live, Work, Play Aiea (the "Project"); and

WHEREAS, the Project requires a zone change application from B-2 Community Business District with a 60-foot height limit to BMX-3 Community Business Mixed Use District with a 350-foot height limit, which is being processed concurrently at City Council as Bill 68 (2013);

WHEREAS, Applicant has also requested a Development Agreement, attached hereto as Exhibit "A", and submitted an application on October 11, 2013 for the same pursuant to Chapter 33, Revised Ordinances of Honolulu (ROH);

WHEREAS, within 30 days of receipt of the application, pursuant to ROH Section 33-1.7(a), the Department of Planning and Permitting (DPP) published notice of the substance of the Development Agreement on November 8, 2013, in a newspaper of general circulation in the City and County of Honolulu and forwarded copies of the application to all affected agencies and neighborhood boards;

WHEREAS, pursuant to ROH Section 33-1.7(a), the notice provided that any affected agency, affected neighborhood board, or interested person could comment on the application within 45 days of the date of the public notice;

WHEREAS, pursuant to ROH Section 33-1.7(b), on January 21, 2014, the Department of Planning and Permitting (DPP) held a public hearing, to afford all interested parties an opportunity to testify on the Development Agreement, which was attended by DPP staff, representatives of the Applicant, and members of the public. Both written and oral testimony was provided and the public hearing was closed; and

WHEREAS, pursuant to ROH Section 33-1.7(b), on January 31, 2014, within 10 days after the close of the public hearing, the DPP, having duly considered all evidence and the review guidelines established in Chapter 33, ROH, completed its report and transmitted its findings and recommendation of approval to the City Council; and



RESOLUTION

WHEREAS, the City Council, having received the findings and recommendation of the DPP on _____, held a public hearing on _____, to consider said application for a Development Agreement; and

WHEREAS, on _____, the City Council, having duly considered all of the evidence and reports and testimony offered at said public hearing; now therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it approves the Development Agreement subject to certain revisions, attached hereto as Exhibit B, and finds that the provisions of the Development Agreement are consistent with:

- (1) The General Plan of the City and County of Honolulu;
- (2) Any applicable development plans; and
- (3) The applicable zoning district designation.

BE IT FURTHER RESOLVED by the City Council that it authorizes the City to enter into the Development Agreement, substantially in the form attached hereto as Exhibit "A", incorporating the certain revisions, attached hereto as Exhibit "B".

BE IT FURTHER RESOLVED that this Resolution shall be void unless the Development Agreement is executed by all parties within 30 days after the effective date of the rezoning ordinance, which is being processed concurrently at City Council as Bill 68 (2013);

BE IT FURTHER RESOLVED that the City shall not execute the Development Agreement until Bill 68 (2013) relating to the zone change has been enacted and become effective; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

BE IT FINALLY RESOLVED that the clerk is hereby directed to transmit certified copies of this resolution to the Director, Department of Planning and Permitting, and President, CP Kam Properties, LLC, 120 N. Robertson Boulevard, Los Angeles, California, 90048.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

EXHIBIT A

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made this ____ day of _____, 2013 (the "Effective Date") by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii ("City"), and CP KAM PROPERTIES, LLC, a California limited liability company ("Developer"), pursuant to the authority of Hawaii Revised Statutes ("HRS") Chapter 46, Part VII and Revised Ordinances of Honolulu ("ROH") Chapter 33.

RECITALS:

A. HRS §46-123 authorizes the City to enact an ordinance authorizing the executive branch of the City to enter into a development agreement with any person having a legal or equitable interest in real property, for the development of such property in accordance with HRS Chapter 46, Part VII.

B. ROH Chapter 33 authorizes the executive branch of the City to enter into development agreements and further establishes procedures and requirements for the consideration of development agreements and for the administration of development agreements.

C. Developer is the owner in fee simple of the real property identified on Exhibit A attached hereto (the "Property").

D. Developer or its affiliate plans to develop the Property into a compact, walkable, urban village that integrates homes, stores, restaurants, offices, and public plazas. The intent is to provide a vibrant community where residents can live, work, and play. Developer's mixed-use project, as reflected on the Master Plan which may be modified in accordance with this Agreement, includes residential towers with retail components below some of the towers; additional retail buildings; a building for office, lodging, and/or senior or market housing with retail; and privately maintained ground level open space which is open to the public (as further defined herein, the "Project"). The Project is intended by the Developer to provide and encourage easy connections to neighboring properties and is enhanced by proximity to nearby employment centers and convenient access to multiple forms of transportation including major roads, bus lines, and the planned Pearl Ridge Rail Transit Station, less than a quarter mile away near the intersection of Kaonohi Street and Kamehameha Highway. The Project is further intended by the Developer as an urban "in-fill" smart growth development, complementary to the surrounding land uses.

E. The provisions of this Agreement are consistent with and implement major components of: (1) the City's General Plan; (2) the Primary Urban Center Development Plan; and (3) the Aiea-Pearl City Livable Communities Plan.

F. Developer desires this Agreement with the City to assure that Developer will be able to pursue its Project within the Term (as defined herein), subject to the terms and conditions set forth in this Agreement, including, without limitation, the City's review of the Project under the Existing Land Use Regulations (as defined herein) in accordance with Section II.C.(1).

G. In exchange for certain vested rights, as set forth in Section II.B herein, the Developer has committed to the development of public infrastructure and other improvements and benefits, some of which are in excess of what Developer could otherwise be legally required to provide, as set forth in Section III herein (collectively, the “Public Benefits”).

H. The City has determined that the Project is a development for which a development agreement is appropriate. The development agreement will vest certain rights in the Developer, as set forth in Section II.B herein while assuring the development of the Public Benefits, some of which could not otherwise be obtained, and achieves the purposes for which ROH Chapter 33 was enacted by the City.

I. City and Developer have entered into this Agreement pursuant to HRS Chapter 46, Part VII, and ROH Chapter 33. City and Developer agree that use of this Agreement will reduce the uncertainty in the Project’s planning and development approval process which, in turn, will encourage the efficient utilization of resources and minimize the economic cost to the public; allow for the orderly planning of public facilities and services; and otherwise achieve the purposes and objectives for which HRS Chapter 46, Part VII, and ROH Chapter 33 were enacted.

J. On _____, 2013, the City Council, following a duly noticed public hearing, adopted Resolution No. _____ approving this Agreement and authorizing the execution of this Agreement (“Enacting Resolution”).

K. Pursuant to the Enacting Resolution, the City Council found that this Agreement is consistent with the City’s General Plan, any applicable development plans, and the applicable zoning district designation or designations.

NOW, THEREFORE, pursuant to the authority contained in HRS §46-123 and ROH Chapter 33, and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Developer mutually agree as follows:

I. GENERAL PROVISIONS

A. **City and State Laws on Development Agreements**. This Agreement is subject to applicable laws pertaining to development agreements, specifically HRS Chapter 46, Part VII and ROH Chapter 33 as in effect on the date hereof.

B. **Definitions**. The following terms used in this Agreement, unless the context otherwise requires, shall have the following meanings:

(1) “Agreement” shall mean this Development Agreement, including all Exhibits attached hereto, and, if this Agreement has been partially assigned and assumed as provided in Section IX, then as the context may require, the portion thereof so assigned and assumed.

(2) “City” shall have the meaning assigned in the first paragraph of this Agreement.

(3) “City Council” shall mean the City Council for the City.

- (4) “Cure Period” shall have the meaning given in Section V.A herein.
- (5) “DA Required Provisions” shall have the meaning given in Exhibit E attached hereto.
- (6) “Default Notice” shall have the meaning given in Section V.A. herein.
- (7) “Developer” shall mean CP Kam Properties, LLC, and if this Agreement has been assigned and assumed in whole or in part as provided in Section IX, then as the context may require, the Person who has so assumed this Agreement or a portion thereof.
- (8) “Development” shall mean the improvement of the Property for the purposes of completing and effecting the structures, improvements and facilities comprising the Project, including without limitation, grading, the construction of infrastructure and public facilities related to the Project whether located within or outside the Property, the construction of structures and buildings and the installation of landscaping. “Development” also includes the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement, landscaping or facility after the construction and completion thereof.
- (9) “Department” or “DPP” shall mean the City’s Department of Planning and Permitting.
- (10) “Director” shall mean the Director of the DPP or his or her designated representative.
- (11) “Discretionary Permit” shall mean any permit issuable pursuant to the Existing Land Use Regulations, and shall include, but not be limited to, any permit issuable by the City Council, including special management area use permits; any permit issuable by the Department, including but not limited to conditional use permits, site plan review permits, and subdivision approvals; and any other permit or approval that may be issued or granted as a matter of discretion by any City agency. “Discretionary Permit” does not include grading permits, construction permits, or any permit issuable under the City’s building, plumbing, fire or electrical codes, or any permit not issued pursuant to the Existing Land Use Regulations.
- (12) “Effective Date” shall have the meaning assigned in the first paragraph of this Agreement.
- (13) “Existing Land Use Regulations” shall mean the City laws, ordinances, resolutions, rules, regulations and policies as set forth in Exhibit B attached hereto and in effect on the Effective Date, and the ordinances, resolutions, rules, regulations and policies that implement, interpret or clarify the same. “Existing Land Use Regulations” shall not include any other Chapter of the Revised Ordinances of Honolulu 1990 (ROH), including, but not limited to, regulations such as the building code, plumbing code, electrical code, tax, improvement district, maintenance district, tax increment financing district and community facilities district laws, and the ordinances, resolutions, rules, regulations and policies that implement, interpret or clarify the same.
- (14) “Event of Default” shall have the meaning given in Section V.A herein.

(15) “Future Development Approvals” shall mean any and all Discretionary Permits for the Project that have not yet been granted as of the Effective Date; as of the Effective Date, the only Discretionary Permit that has been granted is the zone change pursuant to Zoning Change Application # 2013Z-3.

(16) “Indemnified Parties” shall have the meaning given in Section VIII herein.

(17) “Master Plan” shall mean the plan set forth in Exhibit C attached hereto, as the same may be revised in accordance with this Agreement.

(18) “Mortgagee” shall mean the holder of any mortgage or the beneficiary of any deed of trust, including an affiliate of Developer, covering all or part of the Property, including the purchaser of all or any portion of the Property at a judicial or non-judicial foreclosure sale and any person or entity who acquires title to all or any part of the Property by deed-in-lieu of foreclosure, and any of their respective heirs, successors, and assigns, provided that such mortgage holder or beneficiary has delivered written notice to the City stating its desire to receive notices of default hereunder pursuant to Section VII.A.(1) herein.

(19) “Ongoing Obligations” shall have the meaning given in Section IV.B.

(20) “Parties” shall mean the City and Developer collectively and “Party” shall mean the City and Developer individually.

(21) “Person” shall mean an individual, partnership, corporation, limited liability company, trust, unincorporated association, joint stock company, governmental entity or other entity or association.

(22) “Phase” shall have the meaning given in Exhibit “E”.

(23) “Project” shall mean development of the Property consistent with the Master Plan, as further defined or modified pursuant to the provisions of this Agreement, and includes but is not limited to all on-site and off-site improvements.

(24) “Property” shall have the meaning assigned in Recital C, provided that if this Agreement has been partially assigned and assumed as provided in Section IX, then as the context may require, it shall mean that portion of the real property described in Exhibit A that is owned by the applicable Developer.

(25) “Public Benefits” shall mean the development of public infrastructure and other improvements and the provision of other benefits, some of which are in excess of what Developer could otherwise be legally required to provide, as set forth in Section III herein and Exhibit E attached hereto.

(26) “Subsequent Land Use Regulation” shall mean any City law, ordinance, resolution, rule, regulation, or policy which alters, amends, revises or otherwise conflicts with Existing Land Use Regulations, including any such law, ordinance, resolution, rule, regulation or policy which is an alternative to an Existing Land Use Regulation or imposes new restrictions, reviews, permits, conditions, exactions or impact fees for the development of the Project, and

including but not limited to any initiative, referendum, moratorium or similar limitation imposed by the City or the electorate, adopted and effective after the Effective Date.

(27) “Term” shall have the meaning assigned in Section I.C herein.

C. **Term**. The term of this Agreement (the “Term”) shall commence on the Effective Date and shall expire upon the ten (10) year anniversary of the Effective Date unless this Agreement is terminated or extended pursuant to Section VI herein.

Notwithstanding the foregoing, the Parties by mutual agreement may extend the Term of this Agreement for a period or periods not to exceed two years per extension, pursuant to Section VI.A herein, if the extension is granted pursuant to ROH Section 33-1.5(a)(6).

D. **Enforcement**. Until its expiration or sooner termination pursuant to its terms, this Agreement, as it may be amended from time to time, shall be enforceable by any Party, or its successors in interest or assigns, notwithstanding any change in any applicable law which alters or amends HRS Chapter 46, Part VII or ROH Chapter 33.

II. DEVELOPMENT AND VESTED RIGHTS

A. **Development of the Project.**

(1) Developer intends for the Development to conform to the Master Plan as set forth on Exhibit C. The Developer may revise, amend, and change elements of the Master Plan, provided, however, that any such revision must be in compliance with the Existing Land Use Regulations and other laws, ordinances, resolutions, rules, regulations and policies that may apply or such other Subsequent Land Use Regulation or portion thereof as Developer may elect, subject to the provisions of subsection B.(4) of this Section II. Without limitation, as provided in such subsection B.(4) prior written consent from the City is required if the Developer wishes to revise, amend or change those Master Plan elements identified on Exhibit C as requiring City approval.

(2) Developer intends for the Development to proceed in accordance with the timeline set forth on Exhibit D attached hereto. Any express timeframes set forth in Exhibit D for the commencement and completion of phases of the Project may be extended at the discretion of the Director at the request of the Developer upon good cause shown, and “good cause” for purposes of this Section shall mean a request based on the Developer’s subjective business judgment. Deadline extensions, however, may not be made past the expiration of this Agreement, as it may be extended, as set forth in Section I.C. The City will not require the provision of further public benefits as a condition to any such deadline extension. Any Phase of the Project may be commenced or completed earlier than shown in Exhibit D and Developer may elect to forego development of one or more Phases in accordance with its sole and subjective business judgment taking into account market conditions and demand and economic considerations.

B. **Subsequent Land Use Regulations and Compliance With Law Generally.** The Developer has the vested right to develop the Project subject to the terms and conditions of this

Agreement and the Existing Land Use Regulations. Any Subsequent Land Use Regulation shall be void as applied to the Property, provided that:

(1) This Section shall not prevent the City from requiring Developer or the Developer's successors and permitted assigns to comply with City laws, ordinances, resolutions, rules, regulations and policies of general applicability and not specific to Developer or the Property enacted subsequent to the Effective Date, if:

(a) such laws, ordinances, resolutions, rules, regulations and policies could have been lawfully applied to the Property at the Effective Date and the City finds it necessary to impose the requirement because a failure to do so would place the residents of the Project or the immediate community, or both, in a condition perilous to the residents' health or safety, or both; or

(b) such laws, ordinances, resolutions, rules, regulations and policies are specifically mandated and required by State or Federal laws and regulations.

(2) Developer further acknowledges that, as of the Effective Date, the City has not reviewed the Project for compliance with Existing Land Use Regulations or any other City laws, ordinances, resolutions, rules, regulations, and policies and that the City makes no warranties or representations with respect to the Project's or Master Plan's compliance with any of the foregoing.

(3) Subject to the provisions of Section IX, Developer shall be solely responsible for the Project's compliance with City laws, ordinances, resolutions, rules, regulations, and policies, and any non-compliance or violation will be addressed by the City, including, but not limited to fines and administrative and civil proceedings, in accordance with the Existing Land Use Regulations (except as set forth in Section II.B.(4) below) or other non-land use City law, ordinance, resolution, rule, regulation, or policy, as appropriate.

(4) The Developer may develop the Project in accordance with a Subsequent Land Use Regulation or portion thereof with prior written notice to the Director. Such notice shall identify the Subsequent Land Use Regulation or portion thereof on which the Developer intends to rely, acknowledge that non-compliance or violation of such Subsequent Land Use Regulation or the applicable portion thereof upon which the Developer has elected to rely will be addressed by the City in accordance with such Subsequent Land Use Regulation, and confirm that the Master Plan elements identified on Exhibit C as requiring City approval for amendment or change will not be amended or changed by virtue of the Developer's reliance on a Subsequent Land Use Regulation or portion thereof unless such City approval is first obtained.

C. Future Development Approvals.

(1) With regard to any applications to the City by Developer for any and all Future Development Approvals, the City shall process such applications and grant such Future Development Approvals in accordance with the Existing Land Use Regulations.

(2) Developer acknowledges that the Existing Land Use Regulations contemplate the issuance of further Discretionary Permits by the City. Nothing in this Agreement shall be

construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of City and any of its officers or officials in complying with or applying Existing Land Use Regulations in its review of the Project.

(3) Subject to the terms of this Agreement, the City shall have the right to impose conditions in connection with Future Development Approvals not inconsistent with the Existing Land Use Regulations; provided, however, that such conditions shall not impose additional dedication requirements, exactions or public improvement or benefit obligations, or require payment of fees in lieu of such dedication requirements, exactions, or public improvement or benefit obligations, in excess of those identified in Section III herein and Exhibit E, attached hereto.

(4) The City shall accept and process application(s) for any and all Future Development Approvals within such time frames as specified within the Existing Land Use Regulations; provided, however, that if the Existing Land Use Regulations do not contain a specific time frame for processing such application(s), the application(s) shall be processed within a reasonable amount of time from the date of receipt of a complete application(s) by the City; and provided further that if, for any reason, the application(s) as submitted by Developer is/are not complete, the City shall promptly request from Developer any information or materials necessary to complete the application(s).

D. **Permitted Fees.** In connection with the Existing Land Use Regulations, the City shall only charge and impose those fees, including, without limitation, any fees relating to the Development or the privilege of developing the Property in accordance with this Agreement and as are set forth in the Existing Land Use Regulations. All other fees, not derived from Existing Land Use Regulations, shall be charged and imposed by the City based on then applicable City non-land use laws, ordinances, resolutions, rules, regulations, and policies.

E. **Permitted Uses.** The City agrees that except as set forth in Section II.A(1) herein Developer may use the Property or any portion thereof during the term of this Agreement for any use which: (1) legally exists on the Property as of the Effective Date; or (2) is otherwise permitted under the Existing Land Use Regulations; or (3) subject to Developer's rights and obligations under Section II.B.(4) above, as permitted by Subsequent Land Use Regulation.

F. **Permitted Density and Size.** The maximum density and size of the buildings on the Property shall be: (1) as provided in the Existing Land Use Regulations; or (2) subject to Developer's rights and obligations under Section II.B.(4) above, as permitted by Subsequent Land Use Regulation; provided that in any event no more than 1,500 homes may be constructed.

III. PUBLIC BENEFITS

The Developer shall, subject to the terms and conditions of this Agreement, complete or provide the Public Benefits as and when required in connection with the development of the applicable Phase and in accordance with the timing within the applicable Phase as set forth in Exhibit E. The City agrees that it will cooperate in good faith with the Developer in fulfilling the Developer's obligations but the Developer shall be solely responsible, unless otherwise stated herein, for all costs, fees and expenses related to the completion or provision of the Public

Benefits, including, but not limited to all design, engineering, and construction costs, fees and expenses.

IV. ANNUAL REPORTING

A. **Report**. On an annual basis, the Developer shall submit a written status report to the City documenting its satisfaction of, and/or describing its progress towards completing or providing, the Public Benefits. The written status report shall address each Public Benefit and the current status with respect to its completion or provision.

B. **Annually**. The written status report shall be submitted to the City annually on or before the anniversary of the Effective Date and shall continue to be submitted annually until such time as this Agreement has expired or is sooner terminated; provided that, after this Agreement has expired or has been terminated, the Developer shall continue to report annually the status of compliance with the obligations under the headings “Subsidized bus/transit passes” and “Contribution to non-profit organizations” in Exhibit E attached hereto (the “Ongoing Obligations”), until such time as the Ongoing Obligations no longer apply; provided further that the reporting for the Ongoing Obligations may be imposed on the master association if provided in the CCRs as a DA Required Provision (all as defined in Exhibit E).

V. AGREEMENT COMPLIANCE; REMEDIES

A. **Periodic Review**. On or before the yearly anniversary of the Effective Date, or at any time that the Department has reason to believe this Agreement is being or has been violated, the Department shall review this Agreement and the Project to determine Developer’s compliance with the terms and conditions of this Agreement. If the Department determines that Developer has committed a material breach of the terms or conditions of this Agreement, including, but not limited to, a failure to complete or provide Public Benefits as set forth in the provisions of Section III hereof (an “Event of Default”), the following procedure shall be followed:

(1) Within fifteen (15) days after the Department determines that an Event of Default has occurred, the Department shall provide written notice to the Developer (the “Default Notice”), which Default Notice shall: (a) set forth the specific breach found and the evidence supporting the finding, and (b) provide a reasonable period of time, as determined by the City, within which the Developer may cure the Event of Default (the “Cure Period”). The Cure Period shall be expressed as a specific number of days, but in no event less than one hundred twenty (120) days, after: (i) the Developer’s receipt of the Default Notice if the Developer does not make a timely election to rebut the determination as provided in Section V.A.(2), or (ii) a final, non-appealable determination or settlement of the contested case hearing if the Developer does make a timely election to rebut the determination.

(2) Developer may request a hearing before the Director or the Director’s designee to rebut the determination of the Department. If a hearing is requested by Developer, the Department shall hold a hearing on the matter in accordance with the procedures set forth in HRS Chapter 91 relating to contested case hearings.

(3) Alternatively, if the Department determines that an amendment to this Agreement would meet its concerns with respect to the Event of Default, the Department shall provide Developer with a reasonable period of time to consent to such an amendment.

B. City Council Notification of Action.

(1) The Department shall notify the City Council if: (a) the Developer fails to cure the Event of Default within the Cure Period, or (b) the Developer consents to an amendment to this Agreement, as set forth in Section V.A(3) herein.

(2) Upon receipt of the notification described above, the City Council:

(a) May, if the Developer failed to cure the Event of Default within the Cure Period, terminate this Agreement pursuant to and in accordance with Section VI.B or take no action.

(b) May, if the Developer consents to an amendment as set forth in Section V.A.(3) hereof, terminate this Agreement pursuant to and in accordance with Section VI.B or amend this Agreement or take no action.

C. Default of Developer/Building Permits. If the Department determines that an Event of Default has occurred, as set forth above, and has given Developer the Default Notice, the City may, in its sole discretion, refuse to accept building permit applications, refuse to issue building permits, or refuse to issue temporary or final certificates of occupancy for any structures located within the Property until the earlier to occur of: (1) Developer successfully rebutting the Department's finding that an Event of Default has occurred as set forth in Section V.A.(2) hereof, (2) Developer curing the breach prior to a termination of this Agreement, or (3) the Parties amending this Agreement as set forth in Section V.B.(2)(b) hereof.

D. Effect of Partial Assignment. Notwithstanding any provision in this Section V or Section VI to the contrary, if this Agreement has been partially assigned and assumed as provided in Section IX, the consequences of any Event of Default by a Developer holding title to only a portion of the Property (whether an amendment to or termination of this Agreement or refusal of the City to accept applications for or issue building permits or to issue certificates of occupancy) shall apply only to the Developer in default and to this Agreement only insofar as it applies to the portion of the Property owned by the defaulting Developer, and this Agreement shall remain in full force and effect and unmodified as to the other non-defaulting Developers and portions of the Property held by such non-defaulting Developers.

**VI. EXPIRATION, TERMINATION, AMENDMENT,
AND MINOR MODIFICATIONS OF AGREEMENT**

A. Amendment or Termination. This Agreement may be amended or terminated, in whole or in part, by mutual consent of the Parties to this Agreement, or their successors in interest; provided any such amendment or termination shall be approved by resolution of the City Council and provided that, if this Agreement has been partially assigned and assumed as provided in Section IX, this Agreement may be amended or terminated, insofar as such amendment or

termination applies to only to a portion of this Agreement, without the consent of the Developers whose interests in this Agreement are not affected. Additionally, the City Council will hold a public hearing for any proposed termination and any proposed amendment which the City Council determines would substantially alter this Agreement.

B. **Unilateral Termination Upon Event of Default.** This Agreement (or the applicable portion thereof as provided in Section V.D. herein), may be terminated in the sole discretion of the City Council upon receipt of a notice from the Department that the Developer has failed to cure an Event of Default within the Cure Period or that the Developer has consented to an amendment to this Agreement with respect to an Event of Default as set forth in Section V.B. hereof; provided such termination shall be approved by resolution of the City Council and a public hearing shall be held by the City Council prior to such termination.

C. **Expiration or Sooner Termination.** Following the expiration of the Term including any extension thereof, or if sooner terminated in whole or in part (and if in part, then subject to the provisions of Sections V.D and VI.A): (1) this Agreement shall have no force and effect and all terms and conditions of this Agreement, including the Existing Land Use Regulations, shall no longer be vested hereby with respect to the Property, (2) the Property shall be subject to all City laws, ordinances, resolutions, rules, regulations, and policies applicable to the Property and then in effect, and (3) City shall no longer be limited by this Agreement in making any changes or modifications to City laws, ordinances, resolutions, rules, regulations, and policies applicable to the Property. Notwithstanding the foregoing, the Developer's indemnification obligations, as set forth in Section VIII herein, the Developer's reporting obligations with respect to Ongoing Obligations as provided in Section IV.B. herein, and the City's ability to refuse to accept building permit applications, refuse to issue building permits, or refuse to issue temporary or final certificates of occupancy, as set forth in Section V.C herein but subject to the provisions of Section V.D. herein, shall survive the expiration or sooner termination of this Agreement.

D. **Effect of Expiration or Sooner Termination.**

(1) **Completed Improvements.** If this Agreement expires or is terminated following any Event of Default or for any other reason, such expiration or termination shall not cause any building or improvement within the Property which has been constructed pursuant to a building permit issued by the City and has been issued a temporary or final certificate of occupancy as of the date of expiration or termination of this Agreement, to be considered retroactively subject to or constructed in violation of any Subsequent Land Use Regulation notwithstanding that such Subsequent Land Use Regulation may have been in existence prior to the issuance of the building permit for such building or improvement.

(2) **Incomplete Improvements.** Provided no Default Notice has been issued, the expiration or consensual termination of this Agreement shall not prevent Developer from completing construction of, or obtaining a certificate of occupancy for, any building or other improvement authorized pursuant to a building permit previously issued by the City if such building is under construction or completed at the time of expiration or consensual termination of this Agreement, it being understood that Developer must also provide the applicable Public Benefits required in connection with the construction of such building or improvement in accordance with this Agreement. If a Default Notice has been issued, then the provisions of

Article V (including any applicable Cure Period) shall continue to apply to the Event of Default beyond the expiration or consensual termination of this Agreement. If Developer either cures the Event of Default within such Cure Period or successfully rebuts the determination of an Event of Default, then Developer may complete construction of, and obtain a certificate of occupancy for, any building or other improvement authorized pursuant to a building permit previously issued by the City if such building was under construction or completed at the time of expiration or consensual termination of this Agreement. If a required Public Benefit is not completed or provided as required herein, the City may take any actions as allowed by this Agreement. This section is subject to the provisions of Section V.D. herein.

E. **Minor Modifications.** Clarifications or modifications to this Agreement may be appropriate with respect to minor and non-substantive details of the Master Plan, the Project or the Public Benefits. If and when, from time to time during the term of this Agreement, the City and Developer agree that such clarifications or modifications of this Agreement, including any Exhibits, are necessary or appropriate and they are of a minor and non-substantive nature, the parties shall effectuate such clarifications through operating memoranda approved in writing by the City and Developer which, after execution, shall be attached hereto and become a part of this Agreement, and the same may be further clarified from time to time as necessary with future written approval by the City and Developer. Operating memoranda are not intended to constitute an amendment to this Agreement. The Director is hereby authorized to execute any operating memoranda hereunder without further action by City Council.

VII. MORTGAGEE PROTECTION AND ESTOPPEL CERTIFICATES

A. **Encumbrances and Mortgage Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any mortgage. Developer represents and warrants that, as of the Effective Date, there are no liens placed upon the Property, or any portion thereof.

This Agreement shall not prevent or limit Developer, at Developer's sole discretion, or Developer's successors-in-interest of all or any portion of the Property, from encumbering the Property or any portion thereof or any improvement thereon in any manner whatsoever by any mortgage, deed of trust or other security device securing financing with respect to the Property. The City acknowledges that the lender(s) providing such financing may require certain clarifications or amendments and agrees, provided such clarification or amendment is consistent with the intent and purposes of this Agreement, upon request, from time to time, to meet with Developer and representatives of such lender(s) to negotiate in good faith any such request for clarification or amendment. Any Mortgagee shall be entitled to the following rights and privileges:

(1) A Mortgagee who has submitted to the City a written request to receive copies of notices to the Developer, such request having been made in the manner specified herein for giving notices, shall be entitled to receive a copy of each notice given to the Developer by the City under this Agreement, including but not limited to, any notice of default by Developer in the performance of Developer's obligations under this Agreement, such copy of the notice to be provided to Mortgagee concurrently with the giving of such notice to the Developer.

(2) The Mortgagee shall have the right, but not the obligation, to cure an Event of Default during the cure period allowed Developer under this Agreement.

(3) Any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of foreclosure, shall take the Property or portion thereof subject to the terms of this Agreement; provided, however, that in no event shall such Mortgagee be held liable for any default or monetary obligation of Developer that arises prior to acquisition of title to the Property by such Mortgagee, unless such Mortgagee desires to continue development of the Property consistent with this Agreement and the Existing Land Use Regulations, in which case the Mortgagee shall assume the obligations of the Developer pursuant to an assignment and assumption agreement substantially in the form of Exhibit F attached hereto.

B. **Estoppel Certificates.** City agrees, from time to time, within twenty (20) business days after request of Developer, to execute and deliver to Developer, or Developer's designee, an estoppel certificate requested and drafted by Developer, stating that this Agreement is in full force and effect, that Developer is not in default hereunder (or specifying in detail the nature of Developer's default), the expiration date of this Agreement and such other matters pertaining to this Agreement as may be reasonably requested by Developer, provided that the foregoing are true and accurate statements of fact.

VIII. INDEMNIFICATION

A. **Indemnification.** Except as otherwise set forth below in Sections VIII.B. and C., Developer and its successors-in-interest and assigns, hereby agree to defend (with counsel selected by the Developer but reasonably acceptable to the City), indemnify, and hold harmless the City and its elected and appointed officials and employees (including contract employees) (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") from any reasonable costs (including, without limitation, all reasonable costs, expenses, attorneys' fees and expert witness fees), liability, loss or damage they may suffer as a result of or in connection with any litigation, claim, action, legal proceeding or demand brought by third parties unrelated and unaffiliated with any Indemnified Party against any of the Indemnified Parties (collectively a "Legal Proceeding") directly resulting or arising from, the following: (i) this Agreement; (ii) the statutes, ordinances, and laws that enable the City to enter into this Agreement but only if included in a Legal Proceeding specifically identifying and challenging this Agreement and only for so long as this Agreement continues to be challenged in such Legal Proceeding (the Developer having no obligation to defend, indemnify or hold harmless the Indemnified Parties for any amounts that are incurred by the Indemnified Parties from and after the date such Legal Proceeding ceases to specifically include a challenge to this Agreement) (a "Statutory Challenge"); and (iii) the actions taken by the Indemnified Parties in authorizing this Agreement (each cost, liability, loss or damage as described in this Section VIII.A., a "Claim").

B. **No Indemnification for Willful Misconduct.** Nothing in this indemnification provision shall be construed to mean that Developer shall defend, indemnify, and hold harmless any Indemnified Party for any Indemnified Party's willful misconduct.

C. **Costs Not Included.** This indemnity does not include any amounts attributable to the time or efforts of employees of the City or any of the other Indemnified Parties in defending the Claim, nor to the fees and costs of any counsel that may be directly engaged by the City or any of the other Indemnified Parties to represent their respective interests.

D. **Notice of Claim.** The City shall promptly notify Developer of any such indemnified Claim, and the City shall, and shall cause the other Indemnified Parties to, cooperate in the defense of the Claim.

E. **Claims Involving Multiple Development Agreements.** If and only for so long as any Legal Proceeding specifically identifies and challenges this Agreement and one or more other development agreements relating to projects that are unrelated to the Project, the Developer's share of the indemnified amounts under this Agreement shall be a fair and equitable amount of the applicable Claim taking into account such matters as the relative values of the projects challenged (the projects with larger values bearing a proportionately larger amount of the Claim) and the extent to which the Legal Proceeding involves challenges particular to one development agreement but not the other development agreements. Promptly after notice to the Developer by the Indemnified Parties of an indemnified Claim that specifies multiple development agreements or projects, the developers will seek to establish a procedure whereby: (1) the Developer has the right to control the defense of the Indemnified Parties, (2) the share of all indemnified amounts payable by Developer under this Agreement are paid directly by the Developer to the Persons to whom such amount is payable, and (3) the other developer(s) of the other projects agree to pay their respective shares of the remaining amount that is not included within the indemnified amounts under this Agreement. This Subsection VIII.E is inapplicable to projects that are being developed by developers who are related or affiliated with the Developer or its successors-in-interest and assigns. Failure by the developers to reach an agreement with regard to such procedure shall not affect the validity, effectiveness and enforceability of this Agreement.

F. **Litigation Strategy.** Developer shall have the sole right to determine the litigation strategy in its defense of Claims resulting, or arising from, this Agreement (as opposed to Claims resulting, or arising from, a Statutory Challenge); Developer shall keep the City timely informed of Developer's litigation strategy; and the City shall cooperate in effectuating such litigation strategy. The Parties will cooperate in determining and effectuating the litigation strategy for Claims resulting, or arising from, a Statutory Challenge.

G. **Right to Cancel Agreement.** At any time during the pendency of a Claim, the Developer shall have the right to cancel this Agreement, subject only to approval by the City Council in accordance with ROH Section 33-1.9. The City shall promptly initiate such action as is necessary to schedule any public hearing by the City Council required for it to consider and take action on Developer's request for cancellation of this Agreement. The Developer shall have no obligation to defend the Indemnified Parties from and after the date of the Developer's written request for cancellation of this Agreement and Developer shall only have the obligation to indemnify and hold harmless the Indemnified Parties for liabilities under this Section VIII that accrued prior to the date of Developer's written request for cancellation of this Agreement.

IX. ASSIGNMENT

A. Assignment of Property and Agreement.

(1) Developer shall have the right to sell, ground lease, transfer, or assign all or any portion of the Property which it may own and to assign the rights under this Agreement to any other person or entity at any time during the term of this Agreement. Any such sale, ground lease, transfer, or assignment shall be made in writing and, further, subject to Section VII.A.(3), any sale, transfer or assignment, shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement as applicable to the portion of the Property so transferred (including the obligation to provide any Public Benefit located on or allocated to the portion of the Property or Project so transferred as set forth in Exhibit F) pursuant to an assignment and assumption agreement substantially in the form of Exhibit F attached hereto which clearly identifies the rights, duties and obligations so assigned and assumed. Furthermore, no sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Property. Any written assignment and assumption agreement shall be recorded in the Bureau of Conveyances of the State of Hawaii.

B. Release Upon Assignment. Upon the delegation of all duties and obligations and the sale, transfer, or assignment of all or any portion of the Property, the transferring Developer shall be released from its obligations under this Agreement with respect to the Property or portion thereof so transferred arising subsequent to the effective date of such transfer if the transferee has agreed in writing to be subject to all of the provisions applicable to the portion of the Property so transferred pursuant to an assignment and assumption agreement substantially in the form of Exhibit F attached hereto.

Upon any such transfer of any portion of the Property and the express assumption of the transferring Developer's obligations under this Agreement by such transferee, the City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. Any such transferee shall be entitled to the benefits of this Agreement, and shall be subject to the obligations of this Agreement, applicable to the portion of the Property transferred. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way any other Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. Any amendment to this Agreement between the City and a transferee shall only affect the portion of the Property owned by such transferee.

X. MISCELLANEOUS

A. Waiver. The failure of any Party to this Agreement to insist upon strict performance of any of the covenants or conditions herein, or to exercise any option herein conferred, or the waiver of a breach, shall not be deemed a waiver of such Party's right to demand strict compliance by such other Party in the future, nor shall it be deemed a relinquishment or waiver for the future of any rights, covenants, conditions or options under this Agreement.

- B. **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 any provision thereof against any Party as drafter.
- C. **No Partnership.** Nothing contained in this Agreement is intended, nor shall be construed to establish an agency relationship, a partnership or a joint venture between the Parties.
- D. **Project Is A Private Undertaking.** It is agreed between the Parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions and in the delivery of Public Benefits as set forth herein.
- E. **Applicable Law.** This Agreement shall be governed by the laws of the State of Hawaii both as to interpretation and performance.
- F. **Force Majeure.** If either Party shall be delayed or hindered in or prevented from the performance of any duties, obligations or conditions provided for and required under this Agreement by reason of strikes or other disturbances, lockouts, labor troubles, riots, insurrection, war or civil disturbance, fire or earthquake, tidal wave, acts of God, the elements, government legislation, regulation or controls, or economic controls, making it impossible to complete any duties, obligations, or conditions provided for and required under this Agreement, then performance of such duty, obligation, or condition shall be excused for the period of the delay and the period for the performance of any such duty, obligation, or condition shall be extended for a period equivalent to the period of such delay; provided that Developer or the City shall notify the other in writing of any force majeure event upon which Developer or the City intends to rely upon for an extension of the period for the performance of any such duty, obligation, or condition, and shall also notify the other in writing of the date on which any such force majeure event ended.
- G. **Computation of Periods.** All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays; provided, however, that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.
- H. **Severability.** If any provision 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 any provisions thereof to other Persons or circumstances shall not be thereby affected.
- I. **Entire Agreement.** This Agreement embodies the entire agreement of the Parties and supersedes any other agreements or understandings with respect to the subject matter hereof that may ever have existed between the Parties.
- J. **Section and Paragraph Headings.** Section and paragraph headings are inserted only for convenience and reference and in no way define, limit, extend or describe the scope of intent of this Agreement, or any provisions thereof.

K. **Administrative Act.** The approval of this Agreement shall, under HRS §46-131, be deemed an administrative act of the City.

L. **Binding Effect.** Except as provided to the contrary herein, the terms and conditions of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to and assigns of the Parties, and the covenants contained herein shall run with the land.

M. **Entities Obligated.** Except as provided to the contrary herein, individual lot and condominium purchasers or builders, Mortgagees or beneficiaries shall not have the obligation or duty under this Agreement to perform the obligations of Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance.

N. **Partial Release.** Any terms and restrictions of this Agreement which are satisfied as of the annual review shall be released upon request of Developer and delivery of a proposed release to the Department, which release may, if applicable, provide for the Department's acknowledgement that all Public Benefits have been provided, except for the Ongoing Obligations. Provided the Department is in agreement that such terms and restrictions are satisfied, it shall execute the release which shall be in recordable form that Developer may record in the Bureau of Conveyances of the State of Hawaii.

O. **Compliance Certificate.** If, during the annual review conducted pursuant to Section V.A. hereof, the Department finds compliance by Developer with the terms of this Agreement, upon request of Developer and delivery of a proposed certificate of compliance, the Department shall issue a certificate of compliance in recordable form that Developer may record in the Bureau of Conveyances of the State of Hawaii.

P. **Administration of this Agreement.** The Department shall be responsible for the overall administration of this Agreement.

Q. **Recordation.** The City shall file or record copies of this Agreement and any amendment hereto in the Bureau of Conveyances of the State of Hawaii, within twenty (20) days after the execution of this Agreement, or twenty (20) days after any amendment hereto.

R. **Incorporation of Exhibits.** Each of the Exhibits attached hereto is incorporated herein by this reference and made a part hereof for all purposes.

S. **Notices.** Unless otherwise provided herein, any notice to either Party given under this Agreement shall be in writing and given by delivering the same to such Party in person, or by sending the same by registered, certified or express mail, return receipt requested, first class postage prepaid, to the Party's address indicated below, or as otherwise provided through written notice to the other Party:

If to City:

The City and County of Honolulu
Department of Planning and Permitting
Attn: Director
650 South King Street

Honolulu, Hawaii 96813

With a copy to:

Office of the Corporation Counsel
Attn: Corporation Counsel
530 South King Street, Room 110
Honolulu, HI 96813

If to Developer:

CP Kam Properties, LLC
120 North Robertson Blvd.
Los Angeles, CA 90048-3115
Attn: John Manavian

And a copy to:

CP Kam Properties, LLC
120 North Robertson Blvd.
Los Angeles, CA 90048-3115
Attn: General Counsel

And to:

Deborah Macer Chun, Esq.
745 Fort Street, Suite 900
Topa Financial Center, Fort Street Tower
Honolulu, HI 96813

IN WITNESS WHEREOF, the Parties have each executed this Agreement on the date first written above.

“City”

City and County of Honolulu

By: _____
KIRK CALDWELL
Mayor

Approved as to Form and Legality

By: _____
Deputy Corporation Counsel
City and County of Honolulu

“Developer”

CP Kam Properties, LLC, a Delaware limited liability company

By: California Drive-In Theatres, Inc.,
a California corporation
Its: Manager

By: _____
Name:
Title:

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

On this the ___ day of _____, 2013, before me personally appeared **KIRK CALDWELL** personally known to me **-OR-** proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)	
Document Identification or Description: <u>Development Agreement</u>	
Doc. Date: _____	
No. of Pages: _____	Jurisdiction: _____ Circuit (in which notarial act is performed)
Signature of Notary _____	Date of Certificate _____
Printed Name of Notary _____	(Official Stamp or Seal)

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

On this the ___ day of _____, 2013, before me personally
appeared _____ personally known to me -OR- proved to
Name of Signer
me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and deed of such person(s), and if
applicable in the capacities shown, having been duly authorized to execute such instrument in such
capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)	
Document Identification or Description: <u>Development Agreement</u>	
Doc. Date: _____	
No. of Pages: _____	Jurisdiction: _____ Circuit (in which notarial act is performed)
Signature of Notary _____	Date of Certificate _____
Printed Name of Notary _____	(Official Stamp or Seal)

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

On this the ___ day of _____, 2013, before me personally
appeared _____ personally known to me -OR- proved to
Name of Signer
me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and deed of such person(s), and if
applicable in the capacities shown, having been duly authorized to execute such instrument in such
capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

<u>NOTARY CERTIFICATE</u> (Hawaii Administrative Rules §5-11-8)	
Document Identification or Description: <u>Development Agreement</u>	
Doc. Date: _____	
No. of Pages: _____	Jurisdiction: _____ Circuit (in which notarial act is performed)
Signature of Notary _____	Date of Certificate _____
Printed Name of Notary _____	(Official Stamp or Seal)

EXHIBIT A

PROPERTY DESCRIPTION

PARCEL I

ALL OF THAT PARCEL OF LAND (BEING PORTION(S) OF THE LAND(S) DESCRIBED IN AN COVERED BY ROYAL PATENT NUMBER 1963, LAND COMMISSION AWARD NUMBER 5524, APANA 6 TO L. KONIA) SITUATE, LYING AND BEING AT KALAUAO, DISTRICT OF EWA, CITY AND COUNTY OF HONOLULU, STATE OF HAWAII, AS DELINEATED ON BISHOP ESTATE MAPS 2354 AND 6149C, AND THUS BOUNDED AND DESCRIBED:

BEGINNING AT THE SOUTHEAST CORNER OF THIS PARCEL OF LAND ON THE NORTHWEST SIDE OF KAONOHI STREET, THE COORDINATES OF WHICH REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "SALT LAKE" BEING 7,868.61 FEET NORTH AND 12,271.88 FEET WEST, AND RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

- | | | | | | |
|----|------|-----|-----|--------|--|
| 1. | 95° | 56' | 00" | 619.42 | FEET ALONG REMAINDER OF R.P. 1963, L.C. AW. 5524, APANA 6 TO L. KONIA; |
| 2. | 210° | 10' | 00" | 929.00 | FEET ALONG THE LAND OF WAIMALU; |
| 3. | 293° | 08' | 00" | 842.98 | FEET ALONG THE SOUTH SIDE OF MOANALUA ROAD; |
| | | | | | THENCE ALONG THE SOUTHWEST SIDE OF MOANALUA ROAD, ON A CURVE TO THE RIGHT WITH A RADIUS OF 40.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING; |
| 4. | 349° | 07' | 30" | 66.32 | FEET; |
| 5. | 45° | 07' | 00" | 90.24 | FEET ALONG THE NORTHWEST SIDE OF KAONOHI STREET; |
| | | | | | THENCE ALONG THE NORTHWEST SIDE OF KAONOHI STREET, ON A CURVE TO THE RIGHT WITH A RADIUS OF 1,000.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING: |
| 6. | 50° | 39' | 00" | 192.85 | FEET; |
| 7. | 56° | 11' | 00" | 512.00 | FEET ALONG THE NORTHWEST SIDE OF KAONOHI STREET TO THE POINT OF |

BEGINNING AND CONTAINING AN AREA OF
13.980 ACRES, MORE OR LESS.

BEING THE LAND CONVEYED BY THE TRUSTEES OF THE ESTATE OF BERNICE
PAUHI BISHOP TO THE ENTITIES AS NOTED BELOW:

1. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII ("BUREAU") AS DOCUMENT NO. 2007-115303 IN FAVOR OF PEARL CITY CONSOLIDATED, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 33.92% INTEREST, AS GRANTEE.
2. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU AS DOCUMENT NO. 2007-115304 IN FAVOR OF PEARL CITY – CP PROPERTIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 34.04% INTEREST, AS GRANTEE.
3. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU AS DOCUMENT NO. 2007-115305 IN FAVOR OF PEARL CITY – DOME, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 4.33% INTEREST, AS GRANTEE.
4. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU AS DOCUMENT NO. 2007-115306 IN FAVOR OF BORDWEST, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 25.00% INTEREST, AS GRANTEE.
5. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU AS DOCUMENT NO. 2007-115307 IN FAVOR OF PEARL CITY KDI INVESTORS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 2.71% INTEREST, AS GRANTEE.

NOTE:

AFFIDAVIT RECORDED APRIL 12, 2010 IN THE BUREAU AS DOCUMENT NO. 2010-0478183 DISCLOSES THE FOLLOWING:

THE MERGER OF "BORDWEST, LLC", A CALIFORNIA LIMITED LIABILITY COMPANY, WITH AND INTO "CP KAM PROPERTIES, LLC", A DELAWARE LIMITED LIABILITY COMPANY.

THE MERGER OF "PEARL CITY KDI INVESTORS, LLC", A DELAWARE LIMITED LIABILITY COMPANY, WITH AND INTO "CP KAM PROPERTIES, LLC", A DELAWARE LIMITED LIABILITY COMPANY.

THE MERGER OF "PEARL CITY - DOME, LLC", A DELAWARE LIMITED LIABILITY COMPANY, WITH AND INTO "CP KAM PROPERTIES, LLC", A DELAWARE LIMITED LIABILITY COMPANY.

Exhibit "A"

EXHIBIT B

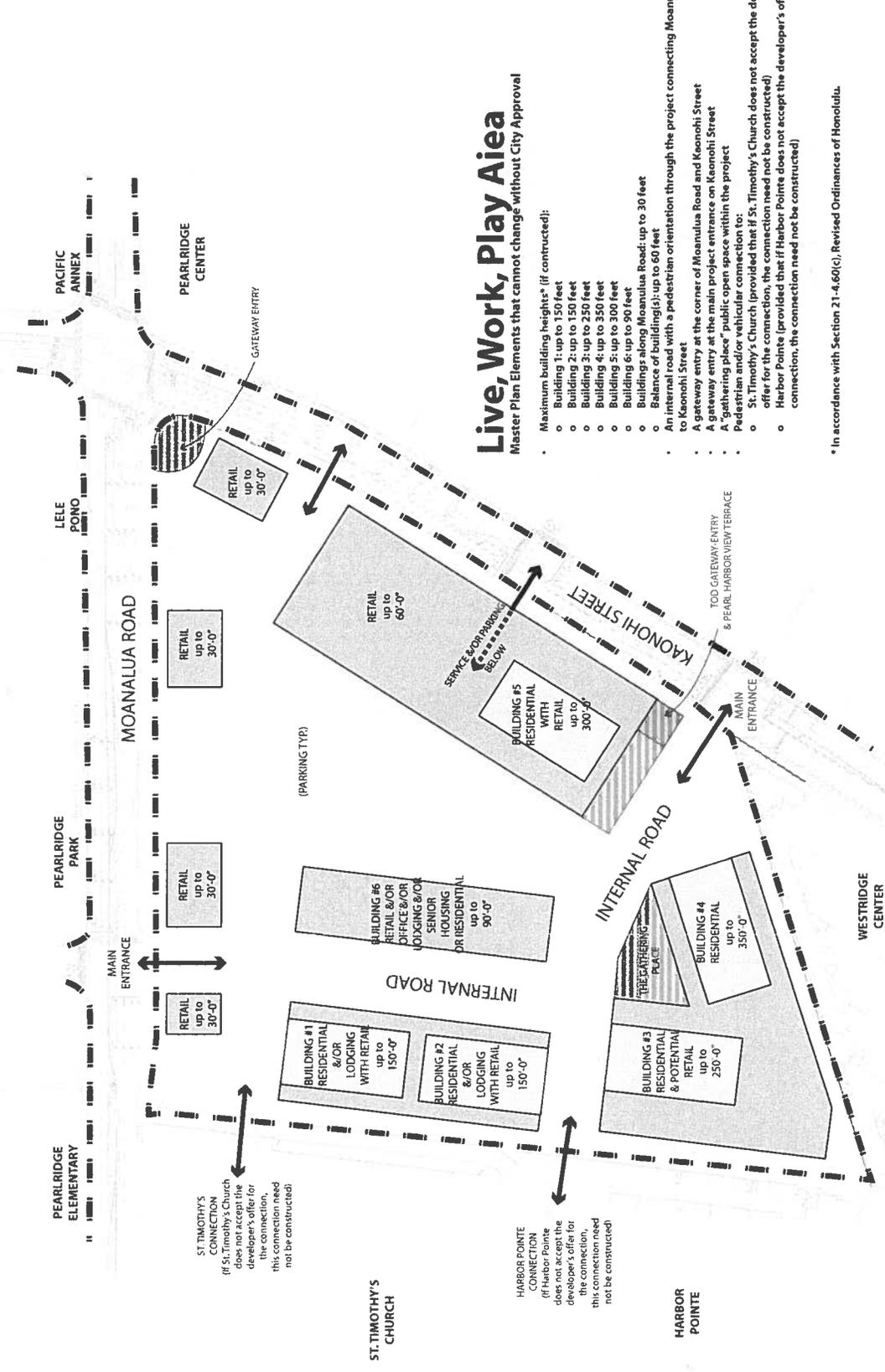
EXISTING LAND USE REGULATIONS

The following, and all laws, ordinances, resolutions, rules, regulations and policies pertaining thereto:

- Revised Ordinances of Honolulu 1990 (ROH), Chapter 21 Land Use Ordinance
- The official Special Management Area as established pursuant to ROH Chapter 25, and shown on the Special Management Area maps in effect on the Effective Date.
- The Shoreline Setback line as established pursuant to ROH Section 23-1.4(a) and in effect on the Effective Date.
- ROH, Chapter 22, Article 7, Parks and Playgrounds.
- Resolution 09-241 of the City Council of the City and County of Honolulu and the affordable housing rules adopted by the Department of Planning and Permitting (which is made applicable to the Project as a Public Benefit pursuant and subject to the terms and conditions of Exhibit E).

EXHIBIT C
MASTER PLAN

Exhibit "C"



Live, Work, Play Aiea

Master Plan Elements that cannot change without City Approval

- Maximum building heights* (if constructed):
 - Building 1: up to 150 feet
 - Building 2: up to 150 feet
 - Building 3: up to 250 feet
 - Building 4: up to 350 feet
 - Building 5: up to 300 feet
 - Building 6: up to 90 feet
 - Buildings along Moanalua Road: up to 30 feet
 - Balance of building(s): up to 60 feet
- An internal road with a pedestrian orientation through the project connecting Moanalua Road to Kaonohi Street
- A gateway entry at the corner of Moanalua Road and Kaonohi Street
- A gateway entry at the main project entrance on Kaonohi Street
- A "gathering place" public open space within the project
- Pedestrian and/or vehicular connection to:
 - St. Timothy's Church (provided that if St. Timothy's Church does not accept the developer's offer for the connection, the connection need not be constructed)
 - Harbor Pointe (provided that if Harbor Pointe does not accept the developer's offer for the connection, the connection need not be constructed)

* In accordance with section 21-4.60(c), Revised Ordinances of Honolulu.

ST. TIMOTHY'S CONNECTION
 (if St. Timothy's Church does not accept the developer's offer for the connection, this connection need not be constructed)

HARBOR POINTE CONNECTION
 (if Harbor Pointe does not accept the developer's offer for the connection, this connection need not be constructed)

HARBOR POINTE

ST. TIMOTHY'S CHURCH

WESTRIDGE CENTER

PEARLRIDGE ELEMENTARY

PEARLRIDGE PARK

LELE PONO

PACIFIC ANNEX

PEARLRIDGE CENTER

GATEWAY ENTRY

MOANALUA ROAD

MAIN ENTRANCE

(PARKING TYP)

INTERNAL ROAD

INTERNAL ROAD

KAONOHI STREET

TOD GATEWAY ENTRY & PEARL HARBOR VIEW TERRACE

MAIN ENTRANCE

RETAIL up to 30'-0"

RETAIL up to 30'-0"

RETAIL up to 30'-0"

RETAIL up to 30'-0"

RETAIL up to 60'-0"

BUILDING #5 RESIDENTIAL WITH RETAIL up to 300'-0"

BUILDING #6 RETAIL &/OR OFFICE &/OR LODGING &/OR SENIOR HOUSING OR RESIDENTIAL up to 90'-0"

BUILDING #1 RESIDENTIAL &/OR LODGING WITH RETAIL up to 150'-0"

BUILDING #2 RESIDENTIAL &/OR LODGING WITH RETAIL up to 150'-0"

THE GATHERING PLACE

BUILDING #4 RESIDENTIAL up to 350'-0"

BUILDING #3 RESIDENTIAL & POTENTIAL RETAIL up to 250'-0"

SERVICE & POP PARKING BELOW

EXHIBIT D

PHASING PLAN AND TIMELINE

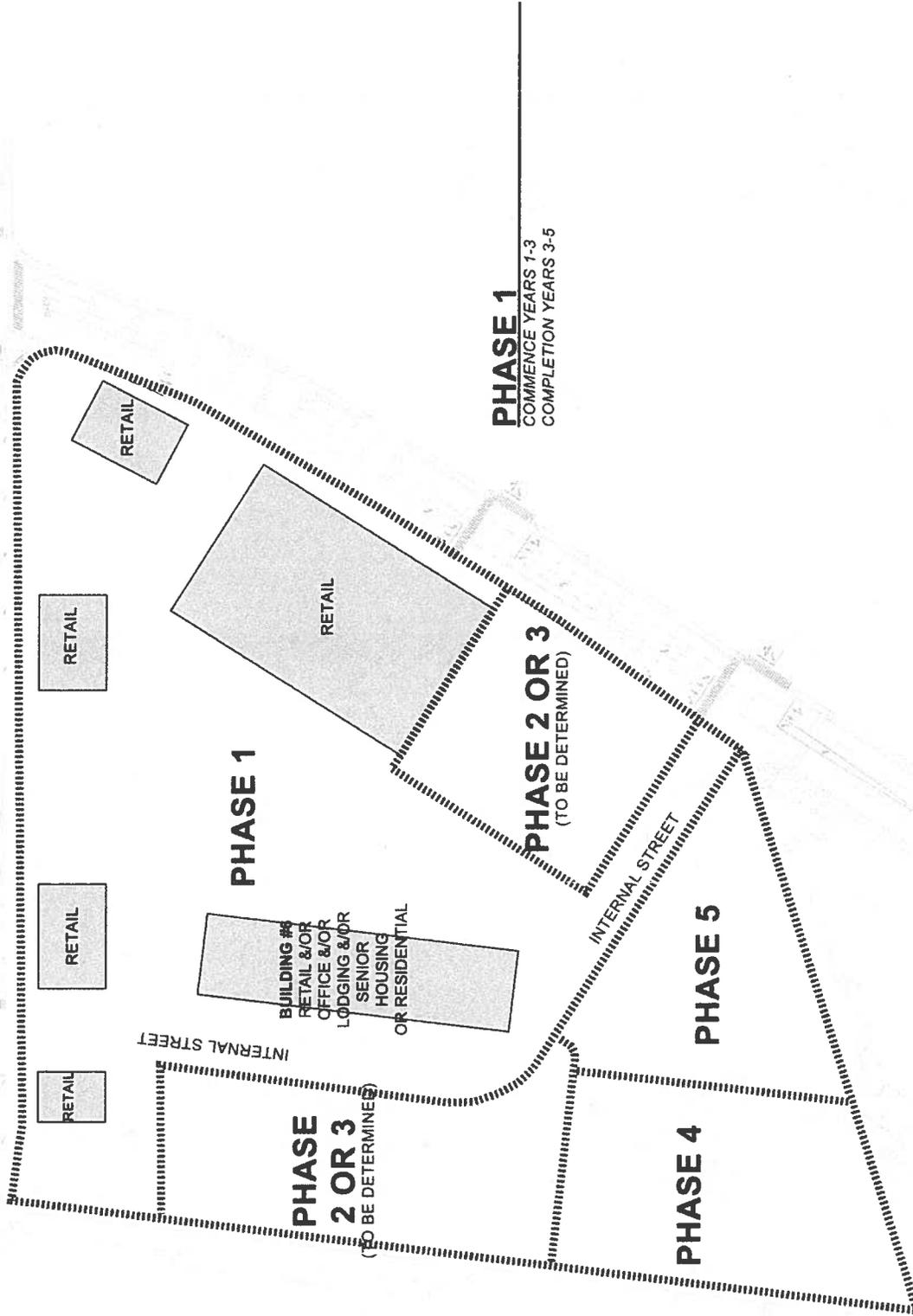
LIVE, WORK, PLAY
'AIEA
HONOLULU, HAWAII

ROBERTSON
PROPERTIES GROUP

DATE 08/12/2013
PROJECT # 2009-2022
SCALE

SHEET #

PHASE 1



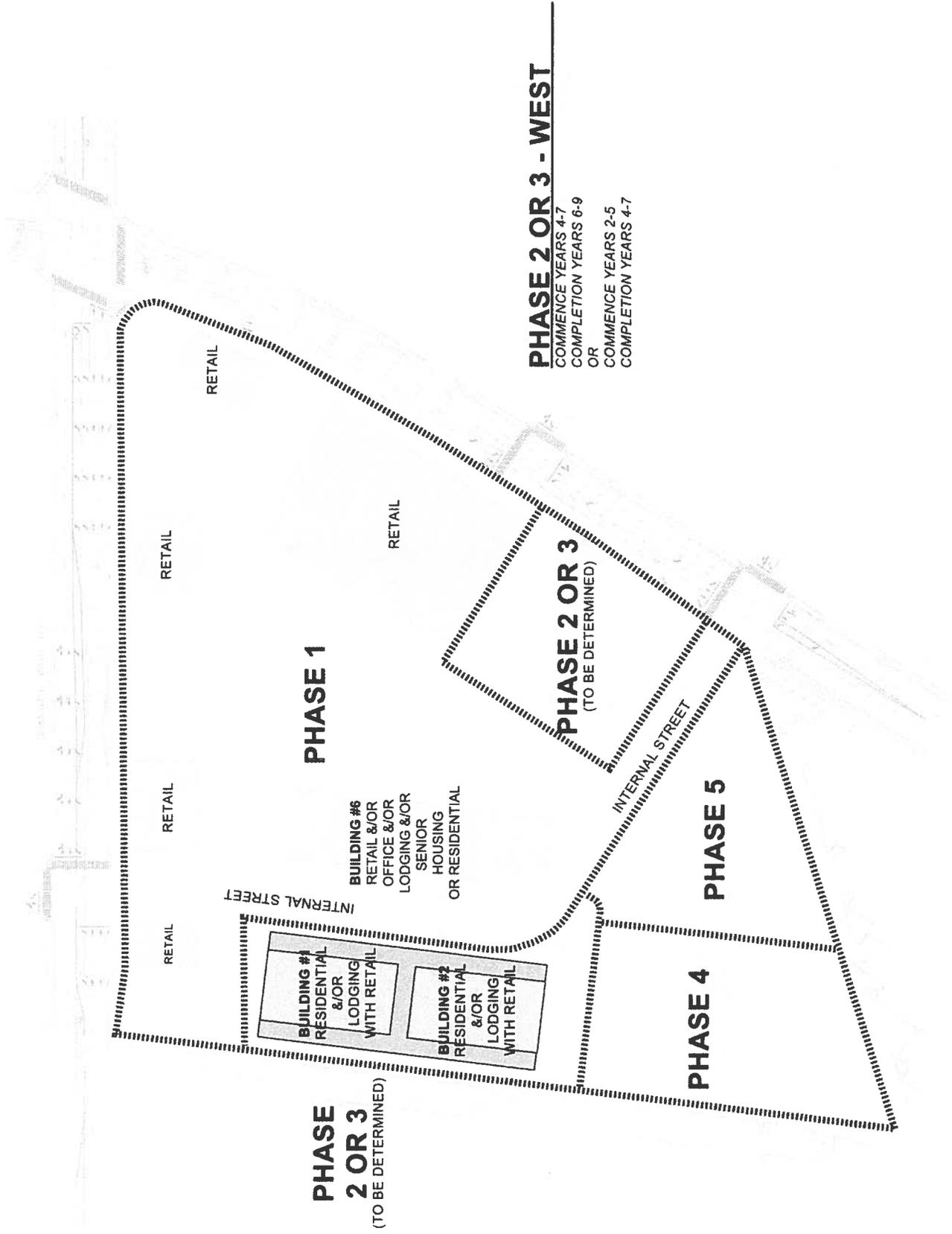
LIVE, WORK, PLAY
'AIEA
HONOLULU, HAWAII

ROBERTSON
PROPERTIES GROUP

DATE: 08/17/2013
PROJECT # : A2097005
SCALE:

SHEET #:

PHASE 2 OR 3
WEST



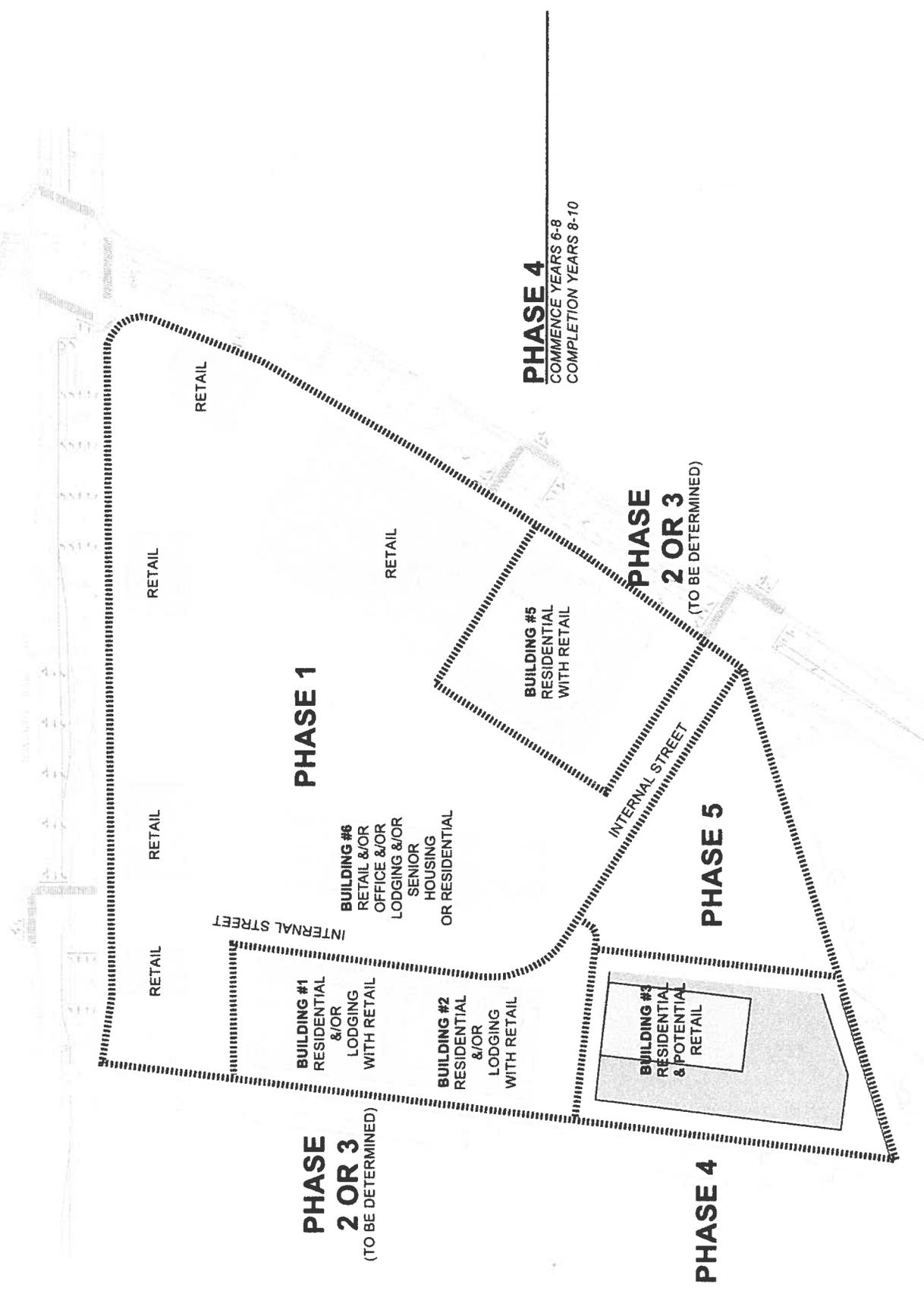
LIVE, WORK, PLAY
'AIEA
HONOLULU, HAWAII

ROBERTSON
PROPERTIES GROUP

DATE: 06/13/2013
PROJECT #: 2009-2025
SCALE:

SHEET #:

PHASE 4



PHASE 4
COMMENCE YEARS 6-8
COMPLETION YEARS 8-10

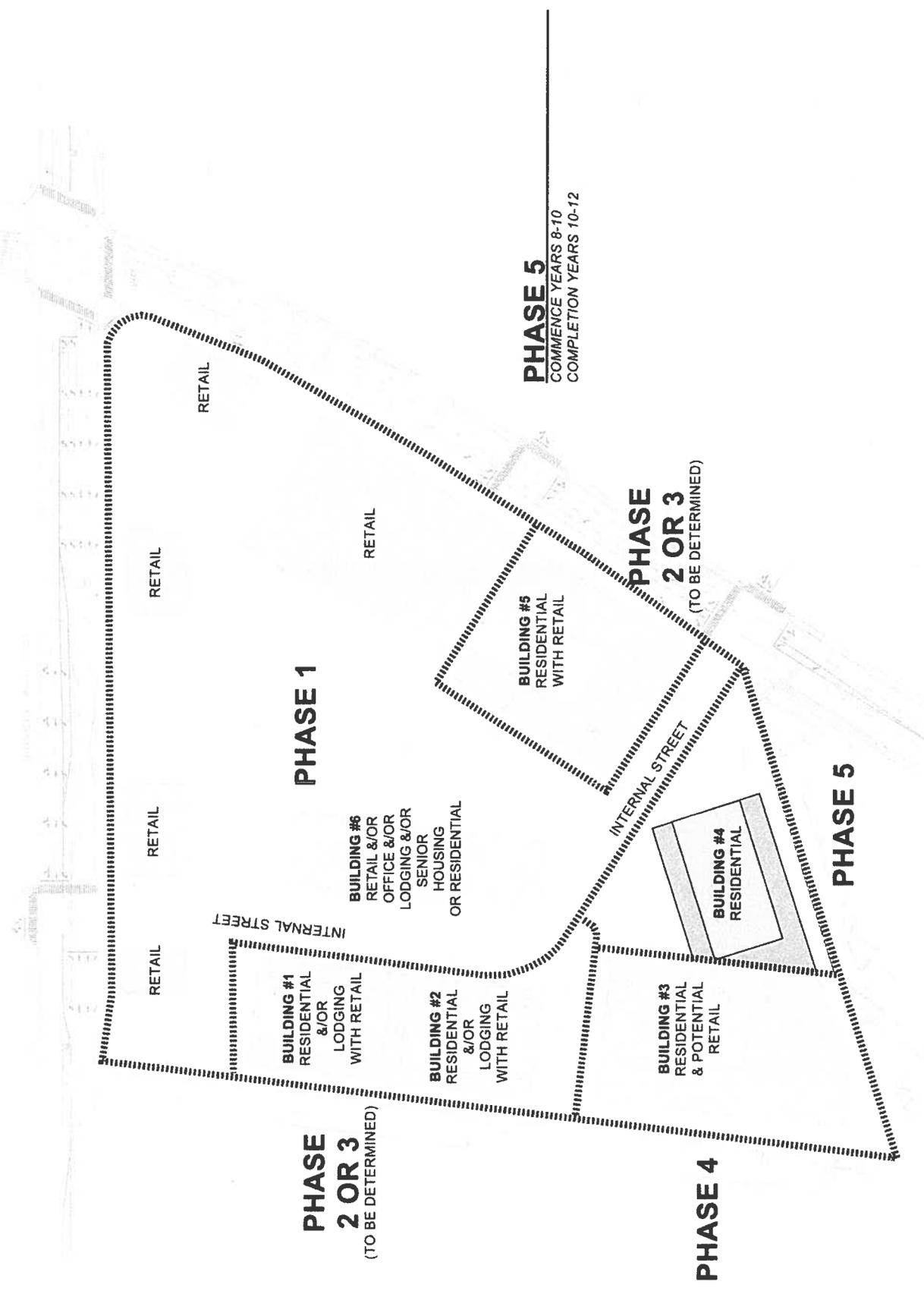
PHASE 2 OR 3
(TO BE DETERMINED)

PHASE 2 OR 3
(TO BE DETERMINED)

PHASE 4

PHASE 1

PHASE 5



PHASE 5
COMMENCE YEARS 8-10
COMPLETION YEARS 10-12

EXHIBIT E

PUBLIC BENEFITS AND TIMING

Exhibit "E"

Exhibit E - Public Benefits
(9/19/2013)

(Capitalized terms shall have the meaning assigned herein or in the Development Agreement (“Development Agreement”) to which it is attached)

Topic	Public Benefit	Timing
Affordable Housing	<p>Execute an affordable housing agreement in form and content reasonably acceptable to the DPP and in conformance with Resolution 09-241 of the City Council of the City and County of Honolulu and the affordable housing rules adopted by the DPP on February 12, 2010 as modified or supplemented by this Section and as if all references to a unilateral agreement were to the DA (the “Existing AH Rules”) or any alternative (such as separate affordable housing rules applicable to or available in TOD districts only, even if the developer does not otherwise elect to make the Project subject to other transit oriented development district rules or zoning) or any amendment to or substitution for any of them if the developer elects the application of such alternative, amendment or substitution as provided in the Development Agreement . Each affordable housing agreement shall provide that one-half of the required affordable housing units for such Phase be located within the Project; the remaining balance of the required units may be provided off-site on other lands if the lands are within one-half mile of the Pearlridge Transit Station. The affordable housing requirement may be satisfied by payment of in-lieu fees for no more than five percent (5%) of the affordable housing requirement. To the extent the affordable housing units constructed and/or the affordable housing units constructed within the Project for previous Phases is in excess of that required for such prior Phases, such excess units or excess of units constructed within the Project may be applied toward satisfaction of the affordable housing requirements for subsequent Phases. For purposes of determining the factors applicable for various unit types under section 2-6 of the Existing AH Rules, the Project shall be treated as if it is a transit oriented development, as defined in the Existing AH Rules.</p>	<p>An affordable housing agreement will be executed for each residential building prior to the issuance of any building permit for such residential building.</p> <p>Each affordable housing agreement will stipulate timing of actual delivery of the affordable housing units for the building to which it pertains.</p>

Topic	Public Benefit	Timing
	<p>As used in this Exhibit E, a "Phase" means a construction phase (i.e., Phase 1 through and including Phase 5) as specified in Exhibit D of the Development Agreement.</p>	
Master Plan	<p>1. The Master Plan as set forth in Exhibit C of the Development Agreement addresses the following:</p> <ul style="list-style-type: none"> a. Pedestrian and vehicular connection to: <ul style="list-style-type: none"> i. St. Timothy's Church (provided that, if the church does not accept the developer's offer for the connection as evidenced by documentation reasonably acceptable to the DPP, the connection need not be constructed); ii. Harbor Pointe (provided that, if Harbor Pointe does not accept the developer's offer for the connection as evidenced by documentation reasonably acceptable to the DPP, the connection need not be constructed); b. Pedestrian and vehicular ingress/egress: <ul style="list-style-type: none"> i. across from Pearlridge Center driveway (includes 	<p>Unless compliance is waived by DPP or as otherwise provided in the left column, each of the Master Plan elements described in the left column must be constructed in the Phase specified for it below prior to the issuance of a (temporary) certificate of occupancy for any building in that Phase or, as to Phase I, prior to the issuance of a (temporary) certificate of occupancy for any building in that Phase other than up to four (4) pad buildings, each of which are not more than 9,000 square feet if one story and not more than 16,000 square feet if two stories, along Moanalua Road or Kaonohi Street (the "Pad Buildings").</p> <p>The following specifies the applicable Phase(s) for each element described in the left column:</p> <ul style="list-style-type: none"> 1. a.i. Phase 1 1.a.ii. Phase 2 or Phase 3 West 1.b.i. Phase 2 or Phase 3 East

Topic	Public Benefit	Timing
	<p>TOD gateway entrance at Kaonohi Street);</p> <ul style="list-style-type: none"> ii. across from Pearl Ridge Elementary School; and iii. near Moanalua Road/Kaonohi Street. <p>c. An internal road through the Project connecting Moanalua Road to Kaonohi Street.</p> <p>d. An aggregate of 20,000 square feet of public open space within the Project for gathering purposes. One of these open spaces shall be a public area of 10,000 square feet minimum.</p> <p>2. Covenants, conditions and restrictions meeting the requirements set forth below ("CCRs") shall be recorded to encumber the Phase 1 land and an amendment to the CCRs (the "CCR Amendments") shall be recorded to annex and encumber the land comprising each subsequent Phase, which CCRs and CCR Amendments shall include provisions reasonably acceptable to the DPP requiring that each of the Master Plan elements described above as being applicable to the particular Phase must, after construction, be retained unless and until the DPP otherwise consents, (the foregoing required provisions and each other required provision as hereinafter designated in this Exhibit E being referred to as the "DA Required Provisions").</p> <p>The CCRs shall include provisions reasonably acceptable to the DPP with respect to all DA Required Provisions: (1) naming the City as a third party beneficiary of the DA Required Provisions; (2) providing that the City may enforce the DA Required Provisions; and (3) providing that, as to DA Required Provisions and the provisions required by this paragraph, the CCRs and CCR</p>	<ul style="list-style-type: none"> 1.b.ii. Phase 1 1.b.iii. Phase 1 1.c. Phase 1 1.d. Each Phase is to provide a portion of the aggregate public open space as shown on the Master Plan; however, the 10,000 square foot public area will be provided in Phase 5. 2. The CCRs shall be recorded prior to issuance of the first (temporary) certificate of occupancy for any building in Phase 1 other than the Pad Buildings, and the CCR Amendment for each Phase shall be recorded prior to issuance of the first (temporary) certificate of occupancy for any building in such other Phase.

Topic	Public Benefit	Timing
Site Design and Building Architecture	<p>Amendments may not be amended without the prior written consent of the DPP.</p> <p>1. Site Design</p> <p>a. To emphasize and enhance the pedestrian experience along Moanalua Road and Kaonohi Street (onsite and within the public right-of-way), the Project shall provide:</p> <ul style="list-style-type: none"> i. Properly designed walkways and sidewalks that encourage pedestrian crossing at intersections and discourage jaywalking. ii. Human-scaled elements at the ground level, that offer interest along the streets. Features may include recesses, shading devices, seating, landscaping and artwork (See 3. Building Architecture). iii. Architecture along both Moanalua Road and Kaonohi Street will utilize concepts of 360 degree architecture such that even if the main entrances are from the interior of the site there is visual and landscape connection to the street. To the extent economically viable and practical, for Moanalua Road, visual connection includes but is not limited to window or outdoor seating areas that are visible from the street such that pedestrians have a line of sight to some of the activities associated with the retail commercial buildings. Landscape connection means an integration of the landscape along the street to the landscape around the buildings. Such integration may include continuity of plantings, similarities of species or landscape palette or pathways and stairs where economically viable and practical. 	<p>For each Phase, prior to building permit approval, plans are to be submitted to DPP in a pre-application design submittal for review and confirmation by DPP that the required design concepts have been incorporated in the plans.</p>

Topic	Public Benefit	Timing
	<ul style="list-style-type: none"> iv. Along Kaonoahi Street the architecture should be designed such that, even though the plan is to approach the establishment internally from the parking lot, to the extent practical and economically viable, consideration should be given to a potential for possible future access from the street. b. Create an active urban village with walkable streets, and convenient access to transit and neighborhood uses and services. c. Create a livable, vibrant sense of place with a variety of uses, where residents and visitors can enjoy shopping, dining, visiting with friends and neighbors, and just sitting and people watching. <ul style="list-style-type: none"> i. Design public areas to accommodate a variety of community uses. ii. Create an attractive, functional, and active pedestrian promenade on the primary internal road incorporating articulated storefronts with canopies or awnings, landscaping, and street furniture. iii. Throughout the Project, provide pedestrian-oriented elements focusing on gathering areas, street furniture, landscaping, and articulated façades at the ground level. iv. Integrate indoor/outdoor spaces for retail stores and restaurants through building massing, articulation, and outdoor seating and other areas sheltered by canopies and shade trees. d. Provide adequate parking facilities for a variety of 	

Topic	Public Benefit	Timing
	<p>transportation modes, including bicycles and motor bikes.</p> <p>2. Entry Gateways</p> <p>a. Create attractive and welcoming gateways at key points around the site.</p> <p>b. Provide public gathering areas that engage pedestrians with attractive features, lighting, landscaping and hardscape.</p> <p>3. Building Architecture</p> <p>a. Architectural design will reflect a contemporary urban village character without a homogeneous architectural theme.</p> <p>b. Provide four sided architecture that establishes a building "front" or entry from internal parking areas, but also incorporates fenestration and architectural details to present an inviting and pedestrian-friendly appearance on all building elevations. Blank walls and "back of house" exposures to public views shall be avoided.</p> <p>c. Create visual interest on building façades with three-dimensional detailing and incorporating elements to provide visual interest, such as balconies, awnings, projections, trellises, and arcades and other details.</p> <p>d. Provide residential buildings at various heights per the Master Plan, and with articulated building façades. Provide visual interest at the pedestrian-level and scale through architectural features.</p>	

Topic	Public Benefit	Timing
	<p>4. Landscape</p> <ul style="list-style-type: none"> a. Use landscaping to enhance the Project gateways. b. Soften the impact and scale of building masses and parking garages through vertical plantings. c. To greatest extent feasible, utilize xeriscaping principles and plant materials. <p>5. Outdoor Lighting</p> <ul style="list-style-type: none"> a. Use fully shielded exterior fixtures to minimize glare to adjoining properties and night sky. b. In surface parking areas, fixtures should be scaled to the pedestrian with maximum height of 20 feet. <p>6. The CCRs are to include, as DA Required Provisions, the requirements set forth above.</p>	<p>6. The CCRs shall be recorded prior to issuance of the first (temporary) certificate of occupancy for any building in Phase 1 other than the Pad Buildings, and the CCR Amendment for each Phase shall be recorded prior to issuance of the first (temporary) certificate of occupancy for any building in such other Phase.</p>

Topic	Public Benefit	Timing
Transportation	<p>1. Submit a Transportation Schedule, establishing the anticipated timeframes for commencement and completion of the following:</p> <ul style="list-style-type: none"> a. The major phasing components of this development-- i.e., the traffic and streetscape improvements, basic buildings, and public works; b. The construction management plan (“CMP”) for each Phase, which is typically submitted for review and approval prior to the issuance of demolition/building permits for major construction work requiring access by heavy trucks or large number of construction related vehicles to the site or if there will be major work on the surrounding streets, such as street widening or traffic signal installation; c. The traffic management plan (“TMP”) for each Phase, which is generally submitted for review and approval prior to the issuance of the (temporary) certificate of occupancy for any major structure within the Phase, such as a residential tower or commercial building; and d. Other than prior to commencement of Phase 1, an update and/or validation (“Updated TIAR”) to the findings of the initial traffic impact analysis report dated December 12, 2011 and prepared by Austin, Tsutsumi & Associates, Inc. (“Initial TIAR”). A new traffic impact analysis report (“New TIAR”) may be required if there is a significant change to the scope or timing of the major work items for a Phase as set forth in the Initial TIAR. The City may require further work consistent with the recommendations of the Updated TIAR or (if applicable) the New TIAR for a Phase if such further work is necessary to support related traffic impacts directly attributable to the Project, as 	<p>1. The Transportation Schedule must be consistent with the timeframes set forth in Exhibit D of the Development Agreement and submitted prior to issuance of the grading permit or final subdivision approval for the Project, whichever occurs first.</p>

Topic	Public Benefit determined by the Updated TIAR.	Timing
	<p>2. Construction/installation of the following traffic improvements as provided in the Initial TIAR, the Updated TIAR or (if applicable) the New TIAR (these improvements may be modified to incorporate complete street elements as the Parties may agree):</p> <ul style="list-style-type: none"> a. Widen Moanalua Road and create a second eastbound left-turn lane at the intersection of Moanalua Road and Kaonohi Street. b. Widen Kaonohi Street and create an additional southbound lane. c. Remove median along the northbound approach of Kaonohi Street. d. Signalize and provide crosswalks at the intersection at Moanalua Road and the Project entrance, opposite of the driveway to Pearl Ridge Elementary School. Intersection improvements will include left turn storage lanes on Moanalua Road for left turns into Pearl Ridge Elementary School and into the Project entrance. e. Signalize and provide crosswalks at the intersection at Kaonohi Street and the Project entrance, opposite of the Pearlridge Center driveway. Intersection improvements will include left turn storage lanes on Kaonohi Street for left turns into Pearlridge Center and into the Project entrance and a separate right turn lane into the Project entrance with no taper transition in the through lanes. f. Uphill (mauka bound) bike lane and downhill (makai bound) sharrow on Kaonohi Street. 	<p>2. Construction plans for each of the improvements in the left column must be submitted for the Phase such improvement is needed, as outlined in the Initial TIAR, the Updated TIAR or (if applicable) New TIAR, and DPP approval of these plans must be obtained prior to construction plan review.</p> <p>These improvements must be constructed prior to issuance of (temporary) certificate(s) of occupancy for the buildings in the applicable Phase pursuant to the Transportation Schedule from paragraph 1 of this Topic.</p>

Topic	Public Benefit	Timing
	<p>g. Such further improvements as determined by an Updated TIAR or (if applicable) New TIAR, provided that the Developer will not be required to wholly or partially demolish any building constructed or under construction on the Project.</p> <p>3. The CMP shall address the following:</p> <ul style="list-style-type: none"> a. Identification of the type, frequency and routing of heavy trucks and construction related vehicles to and from the Project site. b. Identification of vehicular activity related to the construction work and limitation of this activity to periods outside of the peak periods of traffic, minimization of impacts by utilizing alternate routes for heavy trucks, provisions for either on-site or off-site staging areas for construction related workers and vehicles to limit the use of on-street parking around the Project site and other mitigation measures related to traffic and potential neighborhood impacts. c. Identification of periods when there will be heavy traffic, such as holidays and parades, and adjustment of the construction schedule accordingly. d. Preliminary or conceptual traffic control plans for work on public streets. e. Documentation of the condition of roadways prior to the start of construction activities and provision of remedial measures as necessary, such as restriping, road resurfacing and/or reconstruction if the condition of the roadways has deteriorated as a result of the related construction activities. 	<p>3. The CMP must be submitted for each Phase on the earlier of the date listed on the Transportation Schedule for the applicable Phase or prior to the issuance of demolition/building permits for major construction work requiring access by heavy trucks or a large number of construction related vehicles to the site for such Phase or if there will be major work on the surrounding streets for such Phase, such as street widening or traffic signal installation.</p>

Topic	Public Benefit	Timing
	<p>4. The TMP shall address the following:</p> <ul style="list-style-type: none"> a. Traffic demand management (“TDM”) strategies to minimize the amount of vehicular trips being generated by this development and to incorporate TOD components. The TDM strategies could include opening the commercial activities during the early stages of the development in an effort to increase internal capture within the site and encouraging transit, bicycle and pedestrian incentives, such as bus passes, more bicycle racks and shower facilities in commercial buildings. b. A “Safe Routes to School National Partnership” program or other similar programs established by the developer of the Phase or by the master association or sub-association pursuant to the CCRs (if a residential component is included in Phase 1) and/or the CCR Amendments, as a DA Required Provision . c. A post TMP three months after the end of construction of each Phase to validate the relative effectiveness of the various TDM strategies identified in the initial TMP for the Phase. A transportation coordinator may be hired or retained by the developer for the Phase or by the master association or sub-association to assure the TDM strategies, as proposed by the developer, are being followed, and. d. Evaluation of the feasibility of constructing a grade separated pedestrian connection between the Project site and the Pearl Ridge Shopping Center as a traffic management strategy. If the Initial TIAR, Updated TIAR or (if applicable) New TIAR does not recommend a grade separated pedestrian connection or if the 	<p>4. The TMP must be submitted for each Phase by the earlier of the date listed on the Transportation Schedule for such Phase or prior to the issuance of the (temporary) certificate of occupancy for any major structure within such Phase, such as a residential tower or commercial building.</p> <p>4.c. The requirement for a transportation coordinator shall be a DA Required Provision to be included in the CCR Amendment for the last Phase.</p>

Topic	Public Benefit	Timing
	<p>evaluation of the connection demonstrates that it is not feasible or that it is impractical based on the expense to construct it, then the construction of the grade separated pedestrian connection will not be required.</p> <p>5. The updates and/or validation to the findings for the applicable Phase contained in the Initial TIAR (“Post-Construction Update”) shall address the following:</p> <ul style="list-style-type: none"> a. Analysis of the adequacy of the lengths of left- and right-turn auxiliary lanes along all the major roadways adjacent to the Project, performance of traffic signal warrants based on projected traffic volumes, and provisions for the installation of the signals or alternative measures, if recommended by the Post-Construction Update. b. Installation of traffic signals along two intersections as shown on Exhibit C around this development until full build-out of the Project. c. If there is a need to extend the lengths of any auxiliary lanes or provide additional laneage resulting from trip generation rates being higher than initially projected or if the internal capture rates are lower than projected, the Developer shall be required to provide the necessary improvements to maintain the level-of-service outlined in the Initial TIAR, if recommended in the Post-Construction Update. Left turns at the first internal intersection from Moanalua Road may need to be restricted if traffic is queuing into the new signalized intersection. If additional traffic mitigation measures or modifications are necessary to support related traffic impacts directly attributable to this Project, as determined by the Post-Construction Update, the Developer shall be required to implement these 	<p>5. The Post-Construction Update must be submitted three months after the completion of construction of each Phase and as set forth on the Transportation Schedule and prior to the issuance of the (temporary) certificate of occupancy for the last building of the Phase.</p>

Topic	Public Benefit	Timing
	<p>measures; provided that the Developer will not be required to wholly or partially demolish any building constructed or under construction on the Project.</p> <p>6. Prior to the submittal of construction plans for each Phase requiring traffic work, submit detailed drawings, showing vehicle and bicycle lane widths, size of pedestrian islands, auxiliary turn lane lengths, intersection design for all the planned roadway improvements around the site for review and approval by the DPP. All right-turn movements at major driveways at the top of the Internal Road and the bottom of the Internal Road off Kaonohi Street shall have a separate deceleration lane. Pedestrian islands at the intersection of Moanalua Road and Kaonohi Street, and possibly at the driveway intersection on Kaonohi Street and the Internal Road, should be provided at new signalized intersections to reduce the distance pedestrians need to walk across an intersection and to reduce the potential conflict between right turning traffic with pedestrians. Pedestrian crosswalks should be provided at all legs of a signalized intersection, unless the Initial TIAR or the Updated TIAR determines that such a pedestrian crossing may cause traffic operational problems.</p> <p>If the Updated TIAR or (if applicable) the New TIAR for any Phase recommends an un-signalized crossing across Kaonohi Street at the un-signalized Kaonohi Street/Pearlridge Center driveway below Macy's, the developer of such Phase shall provide additional information on the measures to be implemented to increase pedestrian safety of such un-signalized crossing.</p> <p>7. Driveway grades shall not exceed 5 percent for a minimum distance recommended by the Initial TIAR or, if applicable, the Updated TIAR or (if applicable) the New TIAR, from the property line. Entry gates and ticket dispensers should be</p>	<p>6. Detailed drawings must be submitted prior to approval of the building permits for Phase 1, and construction of the off-site improvements must be completed prior to issuance of the (temporary) certificate of occupancy for the first Phase 1 building other than the Pad Buildings.</p> <p>7. Prior to the issuance of a (temporary) certificate of occupancy for the first building in Phase 1 other than the Pad Buildings.</p>

Topic	Public Benefit	Timing
	<p>recessed as far into the driveway as necessary to avoid any queuing onto public streets as recommended by the Initial TIAR or, if applicable, the Updated TIAR or (if applicable) the New TIAR.</p>	
Water	<ol style="list-style-type: none"> 1. When submitting construction plans or building permit application plans for major construction work within a Phase to the Board of Water Supply (“BWS”) for review and approval or to obtain approval from the BWS to confirm compliance with the BWS requirements, the plans or applications must include: <ol style="list-style-type: none"> a. Landscape irrigation system for the Phase with a separate water service lateral for connection to the Kalauao nonpotable water system when nonpotable water service becomes available in this area. b. Incorporation of water conservation measures, including utilization of nonpotable water for irrigation using rain catchment and chiller/air handler condensate, drought tolerant plants, and the use of Water Sense labeled ultra-low-flow water fixtures and toilets. 2. When submitting construction plans or building permit application plans for the residential buildings within a Phase to the BWS for review and approval, include necessary water system improvements for high-rise buildings. Additionally, as requested by BWS, include the installation of water hammer arrestors or expansion tanks 	<ol style="list-style-type: none"> 1. For each Phase prior to the issuance of a building permit for the construction of a major improvement within such Phase. 2. For each Phase prior to the issuance of a building permit for the construction of a residential building within such Phase.

Topic	Public Benefit	Timing
	to reduce pressure spikes and potential main breaks in the City's water system.	
Education	The developer of a Phase with a residential building and the State Department of Education (DOE) shall agree to the terms of the developer's compliance with the school impact fees for such Phase. The developer shall provide written confirmation from the DOE of these terms.	The agreement for a Phase with a residential building (which may also include other residential Phases) shall be executed prior to the issuance of a building permit for such residential Phase. In the alternative, the applicable school impact fee can be paid at the time of issuance of each building permit for residential use.
Streetscape improvements along Kaonohi Street to Kamehameha Hwy	Provide streetscape improvements within the existing City right-of-way and existing curb line, which may provide for improved sidewalks, street trees, crosswalks, a dedicated bike lane mauka bound and sharrows makai bound, along Kaonohi Street, from the boundary of the Project site to the boundary of Kamehameha Highway (State right-of-way) and in any event within the City right-of-way.	Phase 1 -- Construction plans must be submitted prior to issuance of the grading permit or final subdivision approval, whichever comes first. Furthermore, each of these streetscape improvements must be constructed in accordance with the building permit construction plans prior to the issuance of a (temporary) certificate of occupancy for the first building in Phase 1 other than the Pad Buildings.
Subsidized bus/transit passes	Major anchor retail tenants (over 40,000 square feet) shall offer to provide bus/transit passes to thirty (30) of their employees. Notwithstanding the foregoing, if no retail tenant is over 40,000 square feet, then one or more tenants shall offer to provide, in the aggregate, bus/transit passes to thirty (30) of their employees (e.g., one tenant may provide 20 bus/transit passes and another tenant may provide 10 bus/transit passes [or any combination thereof] to satisfy this Public Benefit requirement). The CCRs shall include this requirement as well as a requirement to provide to the DPP an annual report on the status and number of bus passes issued as DA Required Provisions. Until such time as the annual report is made pursuant to the CCRs, the Developer's annual report to the DPP shall include the status and number of bus passes issued.	To be offered to employees within one year of the issuance of the (temporary) certificate of occupancy for the applicable retail tenant space, and to end whenever a comparable city transit ridership incentive program is adopted or, if earlier, upon expiration of the initial term (15-20 years) of the lease. Retail tenant space leases will obligate such major anchor retail tenants to provide bus/transit passes consistent with this Public Benefit. Prior to issuance of the (temporary) certificate of occupancy for the building in which the retail space is located, Developer shall provide evidence to the DPP that each such lease includes the required provision.

Topic	Public Benefit	Timing
Park & Bus Transit Facility	Provide \$50,000 to the City to fund a conceptual study for the proposed park and bus transit facility makai of the rail transit station. The study will examine opportunities to provide an open space connection to Pearl Harbor and Pearl Harbor Historic Trail.	To be paid during Phase 1 concurrently with the developer's submittal of the TMP for Phase 1.
Meeting Room	Provision of a meeting room with a minimum capacity of 40 people on the Project site for community groups including a men's and a women's handicap restroom in close proximity to the meeting room, which restrooms will also be available to those using a public open space. The meeting room is to be made available to the public, subject to payment of a nominal fee to cover utilities, maintenance, clean-up and similar costs in connection with the use, payment of a security deposit, and reasonable rules and regulations. The CCR Amendment applicable to the Phase within which the meeting room and restroom facility will be located shall include this requirement as a DA Required Provision.	At the Developer's election, within Phase 4 or any earlier Phase. The Developer's election shall be made at the latest prior to the issuance of the (temporary) certificate of occupancy for the last building within Phase 3 East and set forth in a CCR Amendment for the selected Phase.
Contribution to non-profit organizations	Creation of an on-going charitable contribution program for one or more non-profit organizations for the purpose of providing services for the benefit of the Aiea-Pearl City community funded by the master association through the CCRs with annual contributions not less than \$25,000 per year for 20 years.	The first annual contribution of \$25,000 will be made within six months after the date of issuance of the site grading permit for Phase I, and each of the ensuing 19 annual contributions shall be due on each anniversary of the date of such first contribution. The obligation of owners of any portion of the Project to contribute to the charitable contribution program shall be contained in CC&Rs and the CCR Amendments as a DA Required Provision.

Exhibit "E"

EXHIBIT F
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

LAND COURT SYSTEM	REGULAR SYSTEM
TYPE OF DOCUMENT: (TOTAL PAGES: _____)	
[PARTIAL] ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT	
PARTIES TO DOCUMENT:	
ASSIGNOR:	
ASSIGNEE:	
TAX MAP KEY FOR PROPERTY:	

[PARTIAL] ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

This [Partial] Assignment and Assumption of Development Agreement is made effective as of the _____ day of _____, 20__ (“**Effective Date**”), by and between _____, a _____, (“**Assignor**”), and _____, a _____, whose address is _____ (“**Assignee**”).

RECITALS:

[Describe the transaction (sale, assignment, etc.) by which the Assignee is concurrently acquiring an interest in all or a portion of the property which is subject to the Development Agreement and other relevant facts such as prior assignments].

NOW THEREFORE, in consideration of the covenants and agreements of the Assignee set forth herein and to be faithfully kept and performed by the Assignee and for other valuable consideration, receipt whereof is hereby acknowledged, Assignor hereby assigns to Assignee all of the rights, duties and obligations of Assignor under the Development Agreement dated _____, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____ [describe any prior amendments of the Development Agreement] (“**Development Agreement**”), [FOR PARTIAL ASSIGNMENT ONLY: but only insofar as such rights, duties and obligations pertain to the real property described in Exhibit A attached

EXHIBIT F
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

hereto (“**Property**”)], subject, however, to the terms, covenants and conditions contained in the Development Agreement.

Assignee, in consideration of the premises, does hereby covenant and agree to and with the Assignor and to and with the City and County of Honolulu, a municipal corporation of the State of Hawaii (“**City**”) that that Assignee will faithfully observe and perform all of the duties and obligations under the Development Agreement to be performed by the “Developer” thereunder [FOR PARTIAL ASSIGNMENT ONLY: but only insofar as such duties and obligations pertain to the Property and specifically including the obligation to provide any Public Benefit (as defined in the Development Agreement) located on or allocated to the Property as set forth in Exhibit E to the Development Agreement]. [Describe specifics as to rights, duties and/or obligations assigned and assumed with respect to a partial assignment.]

The City acknowledges and agrees that, pursuant to Section IX.B. of the Development Agreement, Assignor is hereby released from Assignor’s duties and obligations under the Development Agreement [FOR PARTIAL ASSIGNMENT ONLY: to the extent pertaining to the Property as specified above and] arising subsequent to the Effective Date.

EXHIBIT F
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

IN WITNESS WHEREOF, the parties have each executed this document on the date first written above.

“Assignor”

“Assignee”

Approved as to Form and Legality

By: _____
Deputy Corporation Counsel
City and County of Honolulu

“City”

City and County of Honolulu

By: _____

[Attach notary pages]

EXHIBIT B

EXHIBIT B

Recommended revisions to Development Agreement, "Public Benefits" (Exhibit E):

1. Page 1 of 16 – Affordable Housing. Delete sentence from Public Benefits section which states:

"...[The affordable housing requirement may be satisfied by payment of in-lieu fees for no more than five percent (5%) of the affordable housing requirement.]..."

2. Page 15 of 16 - Streetscape improvements along Kaonohi Street to Kamehameha Highway. Revise the language as follows:

"Provide streetscape improvements within the existing City right-of-way and existing curb line, which [may] shall provide for improved sidewalks, [street trees,] crosswalks, a dedicated bike lane mauka bound and sharrows makai bound, along Kaonohi Street, from the boundary of the Project site to the boundary of Kamehameha Highway (State right-of-way) and in any event within the City right-of-way. Improvements may also include street trees where feasible."

3. New topic relating to updates to the Aiea Neighborhood Board No. 20. The Applicant shall be required to update the Board, on an annual basis, on the development of the project. This update shall occur until the termination of the DA.

ATTACHMENT 3
(Zone Change Report)

Authorization George I. Atta
Advertisement Sept. 20, 2013
Public Hearing Oct. 2, 2013

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR
ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

September 16, 2013

2013/Z-3(sn)

MEMORANDUM

TO: Ka'iulani K. Sodaro, Chair
and Members of the Planning Commission

FROM: *George I. Atta*
George I. Atta, FAICP, Director
Department of Planning and Permitting

SUBJECT: Request for a Change in Zoning from the B-2 Community Business District to the BMX-3 Community Business Mixed Use District with a Height Limit of 350 feet Waimalu, Oahu, Tax Map Key: 9-8-013:013 and 015

RECEIVED
13 SEP 17 P3:18
DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

Transmitted for appropriate action is our report and recommendation for a proposed zone change. The Applicant, CP Kam Properties LLC, requests to change the zoning of approximately 13.99 acres of land from the B-2 Community Business District with a height limit of 60 feet to the BMX-3 Community Business Mixed Use District with a height limit of 350 feet.

The purpose of the proposed zone change is to redevelop the former Kam Drive-In site with Live, Work, Play Aiea, a mixed-use project involving residential and commercial uses. The proposed zone change is consistent with the General Plan and Primary Urban Center Development Plan. The Aiea Neighborhood Board No. 20 did not take a position on the project. The Department of Planning and Permitting (DPP) also received comments from the public which were both in support and opposition of the project.

The DPP recommends approval of the zone change subject to the execution of a Development Agreement (DA). As discussed in the report, the Applicant intends to pursue a DA in lieu of conditional zoning. The draft DA has a separate approval process and the draft DA is expected to be finalized shortly. A copy of the latest working draft has been attached for your reference while evaluating the zone change. The final draft will be forwarded to the Planning Commission, when available.

Please review the zone change report and recommendation and forward them, together with your findings and recommendation through the Mayor, to the City Council.

GIA:js
1063859
Attachments

cc: Ember Lee Shinn, Managing Director
CP Kam Properties LLC
PBR Hawaii

DEPARTMENT OF PLANNING AND PERMITTING
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)
)
 OF) FILE NO. 2013/Z-3
)
 CP KAM PROPERTIES LLC FOR A ZONE)
 CHANGE FROM B-2 COMMUNITY BUSINESS)
 DISTRICT TO BMX-3 COMMUNITY)
 BUSINESS MIXED USE DISTRICT)
)

FINDINGS OF FACT, ANALYSIS,
CONCLUSIONS OF LAW, AND RECOMMENDATION

I. APPLICATION

A. Basic Information

PROJECT NAME : Live, Work, Play Aiea

APPLICANT : CP Kam Properties LLC

LANDOWNER : CP Kam Properties LLC

AGENT : PBR Hawaii

LOCATION : 98-850 Moanalua Road, Oahu
(Attachment 1)

TAX MAP KEYS : 9-8-013:013 and 015

LAND AREA : Parcel 13 - 13.98 Acres
Parcel 15 - 0.014 Acres (617 square feet)
Total - about 13.99 Acres

RECORDATION : Regular System

STATE LAND USE DISTRICT : Urban District (Attachment 2)

DEVELOPMENT PLAN AREA : Primary Urban Center

DEVELOPMENT PLAN : Within the Urban Community Boundary and in an
LAND USE POLICY : area planned for District Commercial uses

PUBLIC INFRASTRUCTURE : Kaonohi Street widening and streetscape
MAP : beautification

EXISTING ZONING	:	B-2 Community Business District with 60-foot height limit (Attachment 2)
SPECIAL DISTRICT	:	Not within a Special District
SHORELINE SETBACK/ SPECIAL MANAGEMENT AREA	:	Outside of both the Shoreline Setback and the Special Management Areas
EXISTING USE	:	Commercial (Kamehameha Swap Meet three times a week); former Kamehameha Drive-In Theater
SURROUNDING LAND USES	:	Commercial, multi-family dwellings, a meeting facility (church) with day-care and public uses

- B. Proposal. The Applicant, CP Kam Properties LLC, proposes to rezone the site from B-2 Community Business District with a 60-foot height limit to BMX-3 Community Business Mixed Use District with a 350-foot height limit to develop Live, Work, Play Aiea, a mixed-use project.

The project will combine residential, commercial, and gathering areas/open spaces in an urban village and consist of:

- About 1,500 new multi-family dwelling units in primarily five buildings ranging in height from 150 to 350 feet (two buildings at 150 feet and one building each at 250 feet, 300 feet, and 350 feet). The residential buildings, except the 350-foot building, may have retail or other commercial uses below the residential units.
- A mixed use building, up to 70 feet in height, with ground floor retail and restaurants and upper floor offices, homes, and possibly a limited service hotel or senior-oriented facilities such as housing or assisted-living, medical, or other services.

Retail buildings, ranging in height from 25 to 40 feet, including a grocery store and smaller stand-alone buildings.

- About 377 surface parking and 2,772 subterranean or structured parking for an estimated total of 3,149 off-street parking spaces.

The project will be developed in phases with full build-out expected in about 13 years, subject to market conditions. The first phase will primarily consist of the commercial space, including the grocery store and mixed use office building. The first residential phase could be built concurrently with or following the first phase.

- C. Amend Zone Change Application. On May 9, 2013, after receipt of a letter by the Applicant regarding a Development Agreement (DA), the Director determined that the anticipated submittal of a DA (as further explained in Section II.C.1) was a significant change to the zone change application. As such, in accordance with Section 2.40-2(c)(8) of the Land Use Ordinance (LUO), the processing of the application was extended up to 90 days.

II. FINDINGS OF FACT

On the basis of the evidence presented, the Director has found:

A. Description of Site/Surrounding Land Uses

1. Location and Current Use. On April 11, 2013, the Department of Planning and Permitting (DPP) staff conducted a site visit. The project site is located at the southwestern corner of Moanalua Road and Kaonohi Street and consists of a 13.98 acre lot (Parcel 13) and a 617-square-foot remnant lot, previously owned by the State of Hawaii. On May 24, 2013, the Applicant acquired the remnant lot from the State. Vehicular access to the site is currently from Kaonohi Street.

Most of the site is paved and contains several small buildings used by the former drive-in, including the concession stand, maintenance building, and ticket booths. The site is currently used several times a week by the Kamehameha Swap Meet.

2. Topography. The project site elevations range from approximately 34 feet above mean sea level (MSL) at the lower Kaonohi Street entrance (southeast) to 97 feet above MSL at the northeast corner.

The site was previously graded and filled to make a large, relatively flat area for the drive-in theater. As such, the slopes on the main part of the site are generally between 2 and 5 percent with steeper areas at the existing driveways and on the embankments. A sloped embankment with a 2- to 10-foot drop occurs from north to south along the west side. Along the east and southeast sides, there are retaining walls and an embankment, with an overall drop of as much as 30 feet down to Kaonohi Street.

3. Soils. According to the U. S. Department of Agriculture Natural Resource Conservation Service (NRCS) soil survey, the soil on the project site consists of two types of Lahaina silty clay from the Lahaina Series and Waipahu silty clay from the Waipahu Series. The Lahaina Series soils are generally found on the western half of the site and the Waipahu Series soil on the eastern half. The two types of Lahaina silty clay soils ranges from 3 to 7 percent slopes and 7 to 15 percent slopes and has slow to medium runoff and slight to moderate erosion hazard. The Waipahu silty clay, with 6 to 12 percent slopes, has slow runoff and slight erosion hazard.

The University of Hawaii Land Study Bureau (LSB) Detailed Land Classification-Island of Oahu (1972) states that soils are classified by land type for an overall productivity rating, which ranges from A to E, with A representing the highest productivity class, and E the lowest. The project site is not classified by this rating.

The Agricultural Lands of Importance to the State of Hawaii (ALISH) system rates agricultural lands as Prime, Unique, or Other. The remaining lands are not classified. The project site is not classified by the ALISH system and, as such, not considered important agricultural land.

4. Surrounding Uses. Surrounding land uses include commercial, multi-family dwellings, a meeting facility (church) with day-care, and public uses.

The site adjoins Moanalua Road to the north, Kaonohi Street to the east, Westridge Shopping Center to the south, and St. Timothy's Episcopal Church and the Harbor Pointe condominiums to the west. Pearl Ridge Elementary School, Pearl Ridge Community Park and multi-family dwellings, including Lele Pono, are located across Moanalua Road. Pearlridge Shopping Center is located across Kaonohi Street.

The Honolulu Area Rapid Transit Project's Pearlridge rail station is proposed to be located about one-fourth mile south of the site, near the intersection of Kaonohi Street and Kamehameha Highway.

- B. Environmental Compliance. Environmental Impact Statement (EIS) documents for the proposed project were processed pursuant to Chapter 343, Environmental Impact Statements, Hawaii Revised Statutes (HRS), as amended; and Title 11, Chapter 200, Hawaii Administrative Rules. The DPP accepted the Applicant's Final EIS on August 27, 2012.
- C. Other Permits/Approvals Required. The Applicant will need to obtain all necessary Federal, State, and City permits and approvals, including a DA.
- Development Agreement. The Applicant intends to pursue a DA rather than conditional zoning for the proposed zone change.

Conditional zoning is subject to Section 21-2.80 of the LUO. Under this Section, the City Council may impose conditions, before the enactment of an ordinance for a zone change, to protect the public from potentially adverse effects of the land use proposed and/or to fulfill needs for public services created by the proposed zone change. If conditions are imposed by the City Council, they are set forth in a Unilateral Agreement (UA), which runs with the land.

Conversely, a DA is not subject to Section 21-2.80 and may be initiated in conjunction with a rezoning or other discretionary permits. In accordance with Chapter 46, HRS and Chapter 33, Revised Ordinances of Honolulu (ROH), a DA can be requested by a developer, the City, or the State as a means to vest development rights for a specific period of time. The DA protects development rights from the effect of subsequently enacted county legislation which may conflict with any term or provision of the agreement. Public benefits that go beyond zone change conditions and "rational nexus" may be negotiated in the DA in return for reducing uncertainty in the development process. The DA is a separate process from the zone change application; however, it may be processed in conjunction with the rezoning or issuance of a discretionary permit. Unlike a UA which must be executed prior to zone change approval and then incorporated into the zone change ordinance, the DA is approved by a City Council resolution and becomes effective upon its execution by all parties to the agreement, including the Mayor, after the zone change is approved. Also, the City Council may still choose to impose conditions through a UA.

The Applicant will submit an application to enter into the DA with the City. The Applicant requests that certain land use regulations, primarily the City's zoning code, in effect at the time of the execution of the DA, be vested for at least ten years. Chapter 33, ROH provides for a termination date of a DA not to exceed ten years and allows for extending the termination date by mutual agreement. In exchange for

this vesting, the Applicant will commit to providing public infrastructure improvements and other public benefits beyond that which would be typically required under the UA.

The DPP will prepare a separate report and recommendation for the DA. The report will then be transmitted directly to the City Council, and not through the Planning Commission, as set forth under Section 33-1.7. However, the substance of the DA will be discussed throughout this report, including the recommended conditions to address impacts attributable to this zone change and public benefits.

- D. Public Agency Notification/Comments. The following public agencies were requested to evaluate the impact of the proposed zone change on their facilities and services. Many of these agencies also provided comments during the EIS process. Agencies that submitted written comments on the zone change are identified with a plus sign (+). Agencies stating that they have “no comments,” “no objections,” or “no impacts on services provided” are identified with an asterisk (*). Significant comments received are addressed in Section III of this report. All written comments received prior to the signing of this report are included in their entirety in **Attachment 3**. Comments received after the signing of this report will be transmitted separately to the Planning Commission or City Council for their consideration.

1. City Agencies:

Board of Water Supply (BWS) +
Department of Community Services +
Department of Emergency Services
Department of Environmental Services (ENV) +
Department of Facility Maintenance +*
Department of Parks and Recreation (DPR) +
Department of Transportation Services (DTS) +
Honolulu Authority for Rapid Transportation (HART) +
Honolulu Fire Department (HFD) +
Honolulu Police Department (HPD) +

2. State Agencies:

Department of Accounting and General Services +*
Department of Education (DOE) +
Department of Health +
Department of Land and Natural Resources (DLNR) +*
Department of Transportation (DOT) +
Oahu Metropolitan Planning Organization

3. Federal Agencies:

U. S. Department of Transportation, Federal Aviation Administration +

- E. Community and Adjoining Property Owners Notification/Comments. The Applicant presented the proposed zone change to the Aiea Neighborhood Board (NB) No. 20 on December 10, 2012. Pursuant to Section 21-2.40-2(b)(2) of the LUO, the Applicant notified adjacent property owners of the NB presentation. The Board’s discussion on the project included: the project’s connectivity with the rail transit station and other neighboring developments; new housing opportunities for long time area residents; traffic concerns to be addressed, including the construction of traffic improvements, prior

to any development at the site; and the need for additional variances or transit oriented development (TOD) exemptions. The Board did not take a position on the project.

Upon acceptance of the zone change application for processing, the DPP sent informational notices to the Aiea NB, Pearlridge Satellite City Hall, elected area officials, and other community organizations. In accordance with the LUO, the Applicant notified property owners located within 300 feet of the project site about the pending zone change application.

A March 13, 2013 letter from the Aiea NB indicated that it had no comment on the zone change, but that it had a comment on the proposed project. The Board suggested that restroom facilities be made available for persons who use the grassy, open space area on the southwest portion of the site, including patrons of the development and members of the public.

The Pearl City NB No. 21 also commented on the project based on the February 26, 2013 presentation by the Applicant. The Board explained that while the project is not directly in their neighborhood, it appreciates that the Applicant acknowledged the potential effects the project would have on the Pearl City area and helped to address their concerns. The Board felt that the project would have many benefits (affordable housing and more options for retail, restaurants, and jobs) for both the Aiea and Pearl City communities. The Board voted to support the zone change application.

The DPP also received comments from the public expressing both opposition and support for the project. In general, those opposing the project expressed concerns about:

- The height of the proposed zone change and the proposed residential buildings are not appropriate for the area and will impact existing views.
- The increased density is not appropriate for the area and will adversely impact public infrastructure and services, including water, sewers, police, and other emergency services. The increased density will create more hazardous traffic conditions for both pedestrians and vehicles, further increase traffic congestion, and the demand for on-street parking.
- The zone change should be delayed until rail is built and operational.

Those that supported the project indicated that:

- The proposed project will increase housing opportunities, including affordable homes in the area, and increase the short- and long-term job opportunities.
- The new development will give the older community a face-lift.
- The project will be in close proximity to retail stores, restaurants, medical services, and the planned rail station.
- The hotel will be a good option for residents other than the hotels in Waikiki or Ko Olina which primarily serve tourists.

The comments from the NBs and the community are included in their entirety in **Attachment 3**.

III. ANALYSIS

A. Compliance with State Land Use Legislation.

1. Chapter 205, HRS, Land Use Commission. The proposed zone change area is in the State Urban District. The State Urban District includes lands characterized by “city-like” concentration of people, structures, and services; jurisdiction lies primarily with the respective counties; and generally, permitted lot sizes and uses are established by the respective county through ordinances and rules. The proposed BMX-3 Community Business Mixed Use District is consistent with the purpose of the State Urban District.

B. Compliance with City Land Use Legislation.

1. General Plan of the City and County of Honolulu (Amended October 3, 2002 by Resolution 02-205, CD1). The proposed zone change supports the following General Plan objectives and policies.

- a. Population Objective C:

“To establish a pattern of population distribution that will allow the people of Oahu to live and work in harmony.”

Policy 1: “Facilitate the full development of the primary urban center.”

The site is located in the Primary Urban Center (PUC). The existing B-2 zoning of the site only permits commercial uses. The proposed zone change will allow for a wider range of uses, including commercial and residential, with increased heights and density. When fully built out, the proposed project is expected to consist of commercial and office space, and up to 1,500 new dwelling units.

The General Plan (GP) shows a population distribution of 46 percent of Oahu’s population to the PUC. The DPP population estimates for 2010 indicate that approximately 46 percent of Oahu’s population currently resides in the PUC. The DPP population projections indicate that about 20,000 more residents would be accommodated in the PUC by 2025, resulting in about 44 percent of Oahu’s population. The proposed project will contribute toward this distribution with an expected population of about 4,808 persons.

- b. Economic Activity Objective A:

“To promote employment opportunities that will enable all the people of Oahu to attain a decent standard of living.”

Policy 1: “Encourage the growth and diversification of Oahu’s economic base.”

Policy 2: "Encourage the development of small businesses and larger industries which will contribute to the economic and social well-being of Oahu residents."

The proposed BMX-3 zoning is consistent and compatible with the objectives and policies cited above. The proposed zone change is expected to provide commercial retail and office space which will create new permanent employment opportunities ranging from entry-level to professional.

c. Housing Objective C:

"To provide the people of Oahu with a choice of living environments which are reasonably close to employment, recreation, and commercial centers and which are adequately served by public utilities."

Policy 1: "Encourage residential developments that offer a variety of homes to people of different income levels and to families of various sizes."

Policy 3: "Encourage residential development near employment centers."

The proposed zone change supports this objective and policies. The proposed project will provide up to 1,500 multi-family dwelling units at a variety of sizes and prices, including affordable and workforce priced units. The mixture of commercial and residential uses within the site and the site's close proximity to other employment centers such as Pearlridge Shopping Center and Pali Momi Medical Center will provide opportunities for workers to live near their jobs.

d. Physical Development and Urban Design Objective B:

"To develop Honolulu (Waiialae-Kahala to Halawa), Aiea, and Pearl City as the Island's primary urban center."

Policy 3: "Encourage the establishment of mixed-use districts with appropriate design and development controls to insure an attractive living environment and compatibility with surrounding land uses."

The proposed zone change contributes toward creating a mixed-use district in the Aiea and Pearl City area. The proposed residential and commercial uses will be compatible with the surrounding neighborhood which includes multi-family dwellings and the Pearlridge Shopping Center.

Also, as recommended in the DA, the project will be subject to provisions relating to building design, connectivity, and active streets to further promote compatibility with surrounding uses and an attractive living environment.

2. Chapter 24, ROH, Article 2, Primary Urban Center Development Plan (PUC DP), Ordinance No. 04-14, June 2004 and Aiea-Pearl City Livable Communities Plan, Resolution No. 05-048, CD1, May 2004. The project is located within the PUC DP area. Section 24-2.5(c), ROH, provides that all proposed developments be evaluated against their consistency with the vision, policies, and guidelines of the PUC DP. The proposed development will also be evaluated against the Aiea-Pearl City Livable Communities Plan (Resolution No. 05-048, CD1), which is a Special Area Plan of the PUC DP.

The planning goal for the PUC is to enhance its livability while accommodating a moderate amount of growth. As part of the City's overall strategy to "keep the country, country" and to maintain a compact urban core, most of the projected growth in residential population and jobs go to the PUC and Ewa. The vision for the PUC emphasizes retaining qualities that attract both residents and visitors, while encouraging growth and redevelopment to accommodate the projected increases in jobs and residential population.

The project site is within the Urban Community Boundary in an area designated as District Commercial. This area refers to a wide variety of commercial uses and related activities intended to serve district-, regional- and/or island-wide populations. Mixed uses, including appropriately integrated medium- or higher-density residential facilities, and higher densities are encouraged in these areas. The PUC DP and Aiea-Pearl City Livable Communities Plan further identifies the site as within the Pearl Harbor Regional Town Center, which emphasizes a high diversity of mixed land uses, including the integration of medium- or higher-density residential and commercial development.

The proposed BMX-3 zoning will allow a significant amount of residential units in addition to commercial uses at medium to high densities on a site which was previously used as a drive-in theater. The provision of housing and job opportunities on the site will help reduce pressure to develop lands elsewhere on Oahu and, thus, contribute toward maintaining a compact urban core. The proposed zone change will also be consistent with key elements of the vision for the PUC, including:

- a. Honolulu's Natural, Cultural, and Scenic Resources are Protected and Enhanced. The natural, cultural, and scenic resources provide the context for the PUC, including the urban skyline. The PUC DP notes that the skyline in the western portion (includes Pearl City - Aiea area) of the PUC is less pronounced than in Honolulu and that redevelopment could affect the skyline in this area unless lower building height limits are established. However, the PUC DP does not specifically identify building heights for the mixed use districts. It also indicates that the maximum desired building heights for apartment zoned districts should be established on the basis of viewplane studies to preserve views of natural landmarks.

Public views identified by the PUC DP and Aiea-Pearl City Livable Communities Plan within the vicinity of the project include the panoramic view from the shoreline near Rainbow Bay Marina toward Pearl Harbor East Loch and Pearl City, and mauka-makai views along Kaonohi Street.

The proposal to increase the maximum height limit from 60 to 350 feet with the mixed use zoning will allow higher density vertical developments, which support the PUC DP and Aiea-Pearl City Livable Communities Plan. A visual analysis was prepared for the EIS documents and included in the zone change application. Based on the visual analysis, the varied heights of the proposed buildings, with generally a mauka-makai orientation, will help break up the skyline. The analysis also shows that the proposed buildings will not adversely impact the public view from Rainbow Bay or the mauka-makai views along Kaonohi Street as the existing views show other buildings within the vicinity of the project. Although a 350-foot height limit is being requested, the commercial and other non-residential buildings will range in heights from 25 to 70 feet while the five multi-family dwellings will range in heights from 150 to 350 feet (two buildings at 150 feet, one at 250 feet, one at 300 feet, and one at 350 feet).

Also, as indicated by the Applicant, the skyline above the project site already reflects a highly urban environment. The Applicant explains that there are about ten existing high-rise buildings in the vicinity of the project that are taller than 150 feet, including two over 250 feet and two that are 300 feet or higher. Although they are all located mauka of Moanalua Road, several of these buildings are at a higher elevation than the project site, making the existing buildings appear to be taller and more prominent. As such, the proposed project will be an "in-fill" development which will not adversely affect the skyline or public views in the area.

As recommended in the DA, the varying building heights with generally a mauka-makai orientation are significant elements of the project which should be implemented by the Applicant and, thus, cannot be modified without City approval.

- b. Livable Neighborhoods have Business Districts, Parks and Plazas, and Walkable Streets. Key livability components include residences within close proximity to employment, businesses, community services, and recreational amenities, with facilities integrated in a manner that enhances accessibility and convenience, encourages walking and bicycling as alternative forms of mobility and promotes sidewalk activity.

The proposed zone change supports the livable neighborhood vision by allowing development of a project which will integrate residential and commercial uses on a site that is in close proximity to jobs, shopping, transit, and other services. The proposal to establish ground floor retail, restaurants, and public gathering areas with upper floor office space, residential, and other uses along a proposed "Main Street" will help create an active and vibrant environment within the project site.

Main Street will link Moanalua Road and Kaonohi Street and provide an alternative mauka-makai route for local traffic and residents. This internal roadway will accommodate one travel lane in each direction with on-street parking, and traffic calming measures to establish a safe and comfortable pedestrian environment. The project will also provide access connections to the adjoining properties to the west, thus, improving neighborhood

circulation patterns. The project has convenient access to multiple forms of transportation facilities, including major roads, bus lines, and the planned rail transit station.

To support pedestrian circulation on adjacent streets, including the routes to bus stops and the planned transit station, the Applicant proposes to construct the following:

- Sidewalk improvements along Kaonohi Street to provide a welcoming environment for pedestrians and bicyclists, including landscaping with canopy trees, recessed areas, and a dedicated bike lane along the diamond head side of Kaonohi Street and sharrows on the ewa side. Building design, architectural details, and landscaping will help minimize the visual impact of the 50- to 70-foot elevation change between Kaonohi Street and the retail structures. An entry portal (gateway feature) at the corner of Kaonohi Street and Main Street will be designed to invite pedestrians and also guide people from Kaonohi Street to a panoramic view plaza and the retail level, about 45 feet above the street.
- A gateway plaza at the intersection of Kaonohi Street and Moanalua Road to welcome pedestrians entering the site from surrounding mauka areas.
- Commercial buildings along Moanalua Road, designed with fenestration and other details to provide pedestrian friendly facade (no blank facades) along Moanalua Road. Direct pedestrian entrances from the street to the buildings are not proposed because of the 2- to 10-foot elevation change from street level to the site.

The above improvements along with those proposed for the internal Main Street contribute to pedestrian-friendly environments and, as recommended in the DA, are significant elements of the Master Plan that should be retained throughout the development of the project. The DPP, however, feels that the Moanalua Road and Kaonohi Street frontages can be further improved by refining architectural and site design elements relating to pedestrian-oriented improvements. The DPP review of final design elements is recommended as a provision of the DA.

The Applicant's proposal to improve the pedestrian environment beyond their project frontage with streetscape improvements along the remainder of Kaonohi Street to the end of the City's jurisdiction (at Kamehameha Highway) is also recommended as a provision of the DA. The streetscape improvements will include improved sidewalks and street trees.

- c. The PUC Offers In-town Housing Choices for People of All Ages and Incomes. The proposed zone change will enable the provision of in-town housing choices for people of all ages and incomes. When fully built out, the project will provide up to 1,500 new multi-family dwelling units, including affordable and workforce units. The standard 30 percent affordable housing requirement is recommended in the DA.

- d. The Pacific's Leading City. The PUC is recognized as an economic center of importance to both Oahu and the State of Hawaii. The role of town centers should be supported, and a mixture of land uses in Aiea-Pearl City should be promoted, including establishing the Pearlridge area as a Pearl Harbor Regional Town Center. This town center should be designated for a greater diversity of uses than the other town centers, emphasizing an integration of medium- or higher-density residential and commercial development and its proximity to Pearl Harbor.

The proposed zone change will allow the development of a mixed use project with higher density residential buildings and thus, facilitate the build-out of the Pearl Harbor Regional Town Center. In turn, the mixed use town center will help promote the PUC as an attractive place to do business.

3. Chapter 4, ROH, Article 8, Public Infrastructure Map (PIM). The PUC PIM was revised by Resolution No. 07-026, adopted on June 6, 2007, to add a major collector or arterial roadway symbol for Kaonohi Street fronting the project site. The project would widen the street right-of-way on the ewa side of Kaonohi Street in order to allow the construction of a second makai-bound travel lane to replace the one that was lost when a second mauka-bound left-turn lane onto Moanalua Road was constructed. The project would also involve streetscape beautification.

The Applicant will widen Kaonohi Street adjacent to the project site, to create an additional southbound lane and other streetscape improvements, as recommended provisions of the DA. Thus, once the improvements are completed, the PIM symbol can be removed.

4. Chapter 21, ROH, LUO.

- a. Business Mixed Use Districts. LUO Section 21-3.120.

- (1) The purpose of the business mixed use districts is to recognize that certain areas of the City have historically been mixtures of commercial and residential uses, occurring vertically and horizontally and to encourage the continuance and strengthening of this pattern. It is the intent to provide residences in very close proximity to employment and retail opportunities, provide innovative and stimulating living environments, and reduce overall neighborhood energy consumption.
- (2) The intent of the BMX-3 community business mixed use districts is to provide areas for both commercial and residential uses outside of the central business mixed use district and at a lower intensity than the central business mixed use district. Typically this district would be applied to areas along major thoroughfares adjacent to B-2, BMX-4, A-3, AMX-2, and AMX-3 zoning districts. It is also intended that it be applied to areas where the existing land use pattern is already a mixture of commercial and residential uses, occurring horizontally, vertically, or both.

The proposed zone change is consistent with the purpose and intent of the business mixed use districts. The proposed BMX-3 will help implement the PUC DP which identifies the project site as in an area designated for higher density mixed residential and commercial development. The project will provide residences within close proximity to new and existing job and retail opportunities. The site has convenient access to multiple forms of transportation, including major roads, bus lines, and the planned rail transit station.

The Applicant requests an increase in the height limit from 60 to 350 feet for the proposed BMX-3 zoning. The DPP received comments from the public objecting to the increase in height, including the appropriateness of 350 feet in an area where the existing height limits for the commercial, residential, and apartment zoning districts range from 25 to 150 feet.

The Applicant indicates that the additional height limit is needed to accommodate the desired density, greater open space, more affordable and workforce housing, and cover site development costs.

Although the existing zoning height limits in the area range from 25 to 150 feet, the proposed 350-foot height limit for this site can be supported as it will help implement the City's long-range plans and policies which encourage a compact urban core to discourage sprawl and higher density commercial and residential mixed use developments within the Pearl Harbor Regional Town Center area.

Also, as identified by the Applicant, there are about ten nonconforming structures which already exceed 150 feet in height, including two that are taller than 250 feet and two which are at least 300 feet, within the vicinity of the project site. The project will be developed amid these taller buildings, making the proposed buildings more compatible with the surrounding urban environment. Further, since those nonconforming structures occupied by conforming, multi-family dwelling units could be rebuilt under certain circumstances, the existing building heights may be continued.

Pursuant to the DA, the Applicant requests that the City's zoning code, in effect at the time of the execution of the DA, be "vested" for a specific period of time. Essentially, the proposed BMX-3 zoning with the 350-foot height and the remainder of the existing LUO, as is, will be applied through the build-out of the project or the DA time period. The DPP agrees that the vesting of the zoning code is reasonable and will support the City's land use policies for the area in return for community benefits to be specified in the DA.

- b. Flood Hazard Districts. LUO Section 9.10. According to the Flood Insurance Rate Map (FIRM) No. 0243G dated January 19, 2011, the project site is located in Flood Zone D, where flood hazards are undetermined. The DLNR confirmed that the site is in Zone D and that the National Flood Insurance Program does not have any regulations for developments within this zone. As such, a provision to address this in the DA is not recommended.

5. Aiea-Pearl City Neighborhood TOD Plan, Public Review Draft, November 2010. The Aiea-Pearl City Neighborhood Transit-Oriented Development (TOD) Plan, Public Review Draft, dated November 2010, is intended as an overall framework for growth and as a guide for local decision making around the planned Leeward Community College, Pearl Highlands, and Pearridge rail stations.

The project site is within the planned Pearridge rail station TOD precinct. The proposed zone change supports the TOD plan for a mixed-use regional center around the Pearridge station and a "Main Street" connecting Moanalua Road and Kaonohi Street.

The draft recommends a base height limit of 150 feet on Kaonohi Street with higher heights allowed if community benefits are provided. Although a 350-foot height limit is proposed, the Applicant indicates that the project will provide benefits to the surrounding community, including: up to 1,500 new homes, including affordable and workforce; new "public access" through the site; a compact pedestrian-oriented community with links to neighboring properties; and new job opportunities. Also, as recommended in the DA, the Applicant will provide other public benefits such as subsidizing bus passes for employees, contributions to non-profit organizations, contributions to fund a conceptual study relating to a park and bus transit facility around the proposed Pearridge rail station, and the provision of a meeting room on the project site for community groups.

C. Compliance with Environmental Legislation

1. Chapter 6E, HRS, Historic Preservation. An archaeological literature review and field check (2006) was prepared for the site and submitted to the DLNR State Historic Preservation Division (SHPD) on March 23, 2011. The report, which was also included in the Final EIS, indicated that no impacts to archaeological or historic resources are anticipated since no resources are likely to be present.

However, several of the existing structures constructed for the drive-in theater are over 50 years old. Since these structures will be demolished as part of the redevelopment of the project site, Chapter 6E-42, HRS provides SHPD an opportunity to review and comment on the effect the proposed project may have on historic properties. The Applicant's consultant prepared a historic context study of the drive-in (dated May 2013). On June 29, 2013, the SHPD accepted the photos, plans, and report as mitigation for the rezoning and redevelopment of the former drive-in site.

The Applicant also indicates that it will comply with all governmental laws and rules regarding the preservation of archaeological and historic sites. Therefore, a provision to further address this issue in the DA is not recommended.

2. Chapter 23, ROH, Shoreline Setbacks, and Chapter 25, ROH, Special Management Area (SMA) Ordinances. The project site is outside of both the Shoreline Setback Area and the SMA. Therefore, the project site is not subject to the requirements under Chapters 23 and 25, ROH, respectively.

3. Endangered/Threatened Species. According to the EIS documents, no known rare, endangered, or threatened plant, avian or mammal species are believed to inhabit the project site or nearby properties. As such, the proposed rezoning is not anticipated to have a significant impact on rare, endangered, or threatened species, and a provision to further address this issue in the DA is not recommended.
4. Noise and Odor. During construction, it is anticipated that there will be some short-term impacts to noise and air quality due to construction equipment, grading activities, and vehicles traveling to the site. During construction, the Applicant will be required to adhere to applicable State and City rules and regulations relating to noise and air quality control.
5. Visual Resources. The DPP received public comments that the proposed development with a 350-foot height limit will be incompatible with the surrounding homes and businesses that are less than 60 feet in height and will adversely impact existing views.

The project site does not contain any visual resources or landmarks. As discussed in Section III.B.2 of this report, the visual analysis included in the EIS documents and the zone change application, show that the varied heights of the proposed buildings with generally a mauka-makai orientation will help break up the skyline. It will also minimize impacts on public views in the area, as identified by the PUC DP and Livable Communities Plan, including the panoramic view from the shoreline near Rainbow Bay Marina toward Pearl Harbor East Loch and Pearl City and mauka-makai views along Kaonohi Street.

As recommended in the DA, the varying building heights with generally a mauka-makai orientation are significant elements of the project which should be implemented by the Applicant and, thus, cannot be modified without City approval.

Views from private properties are not regulated by the City. However, the Applicant indicates that private views were considered in their visual analysis and that the current proposal allows for better views of Pearl Harbor from the existing residential building located north of the site than a previous proposal considered by the Applicant.

- D. Public Facilities and Services. The review conducted by various agencies was based on the Applicant's zone change proposal. Agency comments received regarding the specific public facilities and services are summarized below.

1. Transportation. The project site is located at the ewa/makai corner of Moanalua Road and Kaonohi Street. Vehicular access is currently from existing driveways off Kaonohi Street. The proposed development will consist of a new internal roadway (Main Street) connecting Moanalua Road and Kaonohi Street, and a second access off Kaonohi Street.

A Traffic Impact Analysis Report (TIAR) was prepared for the project in December 2011 and evaluated by various agencies during the EIS process. The proposed roadway improvements to be incorporated into the project include the following:

- Signalization of the proposed Moanalua Road/Main Street intersection opposite of the driveway to Pearl Ridge Elementary School. Intersection improvements will include left turn storage lanes on Moanalua Road for left turns into Pearl Ridge Elementary School and into Main Street. A crosswalk to Pearl Ridge Elementary School will also be provided.
- Signalization of the proposed Kaonohi Street/Main Street intersection opposite of the Pearlridge Center driveway. Intersection improvements will include left-turn storage lanes on Kaonohi Street for left turns into Pearlridge Center and into Main Street. A crosswalk will also be provided.
- Widening Moanalua Road and creating a second eastbound left-turn lane at the intersection of Moanalua Road/Kaonohi Street.
- Widening Kaonohi Street and creating an additional southbound lane.
- Removal of the medial along the northbound approach of Kaonohi Street.
- Provide access for Harbor Pointe and St. Timothy's Episcopal Church to the newly signalized intersections at Moanalua Road/Main Street and Kaonohi Street/Main Street via an internal connection to Main Street with the existing Harbor Pointe/St. Timothy's Episcopal Church access road.

The Applicant proposes to implement a majority of these improvements during the first phase and prior to occupancy. Similar to existing conditions, traffic conditions at full build-out, with the improvements, will be most congested during the PM peak hour traffic and several intersections on Kamehameha Highway will continue to operate at over-capacity conditions and at a Level of Service (LOS) E or worse. Wait times at congested intersections, however, will be longer as compared to existing conditions. The through movements on Kamehameha Highway, Moanalua Road, and Kaonohi Street will continue to operate at an overall LOS D or better during the AM and Saturday mid-day peak hour of traffic. Several of the left-turn movements and approaches from side streets, however, are projected to operate at LOS E or worse.

Subsequent to the EIS, the Applicant met with the DPP to review transportation improvements for the project. A representative from the DTS was also present at that meeting. The Applicant has been unable to meet with the DOT. The zone change application included the TIAR and a summary of the current traffic discussion with the DPP and DTS.

DOT

The DOT noted that although the Final EIS (FEIS) identified that about 1,200 trips would be generated during the PM peak hour, with about 60 percent of the trips via Kamehameha Highway, no transportation improvements were recommended for the intersection of Kaonohi Street and Kamehameha Highway or on Kamehameha Highway. As such, the DOT recommends the following:

- Since the through movements on Kamehameha Highway and the left-turn movements onto Kaonohi Street (with or without the proposed development)

will operate at LOS F during the PM peak hour and there will be a longer delay with the proposed development, improve this intersection to a LOS E or better.

- Improve the intersections of Kamehameha Highway with Pali Momi Street and with Hekaha Street for the movements on Kamehameha Highway to LOS E or better as the road capacity at the Kaonohi Street intersection and on Kamehameha Highway will be reduced as a result of the trips generated by the development.
- Provide pedestrian infrastructure improvements at the intersection of Kamehameha Highway and Kaonohi Street and along Kamehameha Highway to the Honolulu High-Capacity Transit Corridor Project or Rail Transit Project.
- Submit the TIAR and supplemental addendum that reflects the above comments for DOT's review and acceptance, prior to approval of the subject zone change.

On July 12, 2013, the Applicant responded to the DOT comments. The Applicant contends that the improvements recommended by the DOT would be necessary today, without the project, to improve existing traffic operations in the study area along Kamehameha Highway from LOS F to E. The improvements would require acquisition of additional right-of-way, road widening, relocation of utility poles and street lights, modification of traffic signals, re-striping, landscaping, and other items which are estimated to exceed \$32.6 million.

The Applicant explained that existing dwellings and businesses adjacent to the DOT right-of-way would be impacted and that the City's rail transit project would also likely affect improvements along this right-of-way. The total cost of impacts to private properties, as well as the proposed rail transit project, has not been calculated but could be in the tens of millions of dollars.

The Applicant also contends that if the improvements to Kamehameha Highway to address existing traffic conditions and improve the LOS from F to E were already in place when the project is completed, the only necessary additional improvements as a result of the project would be at the Hekaha Street/ Kamehameha Highway intersection. However, the Applicant explains that even if the improvements were made to increase the capacity of Kamehameha Highway through the study area, upstream and downstream capacity conditions would cause bottlenecks. As such, improvements in the study area may not be effective unless other roadway improvements upstream and downstream are implemented.

The Applicant concluded that due to the extent and expense of improvements needed to improve traffic operations in the study area along Kamehameha Highway from LOS F to E, it would not be practical or cost-effective for DOT to undertake the improvements at this time or in the future. Similarly, it would not be practical or feasible for the Applicant to undertake the improvements that would be necessary even without the addition of the project.

At this time, the DPP concurs that it would be unreasonable to require the Applicant to improve the LOS from F to E since the impacts of concern could not be attributed to the proposed zone change. As such, improvements within the study area along Kamehameha Highway are not recommended in the DA.

DPP and DTS

The DPP and DTS comments are summarized below:

- Provide, for review and approval, a timeline establishing the anticipated commencement and completion dates of the major phasing components of the development; construction management plan to minimize impacts from construction vehicles and related activities; traffic management plan, including traffic demand strategies to minimize the amount of vehicular trips being generated by this development; and updates and/or validation to the findings of the initial TIAR which may require the applicant to implement additional traffic mitigation measures or modifications to support related traffic impacts directly attributable to this project.
- Provide, for review and approval, detailed drawings, showing vehicle and bicycle lane widths, size of pedestrian islands, auxiliary turn lane lengths, and intersection design for all the planned roadway improvements around the site.
- Evaluate the provision of a grade separated pedestrian connection between the project site and the Pearlridge Shopping Center as a traffic management strategy and to encourage pedestrian activity around the site.
- Provide an uphill (mauka-bound) bike lane and downhill (makai-bound) sharrows since Kaonohi Street is a designated bicycle facility in the Oahu Bicycle Master Plan.
- Widen the sidewalk on the ewa-side of Kaonohi Street, from the project site down to Moanalua Loop, to provide easy pedestrian access to the nearby future Pearlridge rail transit station.

The DTS also requested several improvements which were already proposed by the Applicant. As recommended in the DA, the Applicant will be required to address the recommendations of the DPP and DTS, including the implementation and construction of various traffic and roadway improvements.

Honolulu Authority of Rapid Transportation (HART)

The HART comments are summarized below:

- Since automobile use is anticipated to be reduced with the use of public transit (bus and rail), the standard parking requirements could also be lowered. Thus, the parking in excess of that typically required could be designated for public parking for transit users from outlying areas.
- Based on the TOD concept that encourages pedestrian and bicycle travels, sidewalk improvements should be extended from the project site to the

planned Pearlridge rail transit station (unofficial name) near the Kaonohi Street-Kamehameha Highway intersection.

- Consider maintaining and improving a pedestrian route to Kamehameha Highway, which includes an existing stairway at the ewa-makai corner of the site which links to the abutting commercial property (Westridge Center) and an unimproved walkway across Moanalua Loop.

On July 12, 2013, the Applicant responded that, as indicated in the FEIS, on-site parking for the project will be in conformance with the requirements of the LUO and no exemptions from parking requirements will be requested. Community members and the HPD expressed concerns that adequate parking should be provided on the project site to minimize possible impacts to surrounding streets. The Applicant does, however, recognize that as more people rely on walking, biking, and transit for daily trips, it is possible that there may be parking spaces which could be used by other residents of the project, residents in the surrounding community, or rail users.

The Applicant also explained that it does not have the ability to maintain and improve the pedestrian route identified by HART since the route, including the stairway, is located on private property not owned by the Applicant. Also, current plans are to discontinue this access point because, once the project is constructed, that portion of the project site will be at the base of a residential building parking podium.

The Applicant will, instead, improve the pedestrian and biking experience along Kaonohi Street by providing streetscape improvements, which may include improved sidewalks, street trees, and a dedicate bike lane, along Kaonohi Street, from the project site to the end of the City's jurisdiction at Kamehameha Highway. These improvements are recommended in the DA.

2. Water. The site is served by the City's water system. Currently, only a limited quantity of water is used at the site for irrigation and operation of the swap meet. Based on the BWS water system standards, the Applicant estimates that the average daily domestic water demand at build out to be 544,000 gallons per day (gpd), including water for irrigation.

The BWS provided the following comments:

- The existing water system is adequate to accommodate the proposed development. However, this determination is based on current data and subject to change. The final determination of water availability will be confirmed at the time of building permit approval. When water is made available, the Applicant will be required to pay the BWS' Water System Facilities Charge for resource development, transmission, and daily storage.
- BWS Rules and Regulations require the use of non-potable water for the irrigation of large landscaped areas if a suitable water supply is available. Landscape irrigation for the proposed project should be designed with a separate water service lateral for connection to the Kalauao nonpotable water system when nonpotable water service becomes available in this area.

- Water conservation measures are required for all proposed developments, including utilization of nonpotable water for irrigation using rain catchment and chiller/air handler condensate, drought tolerant plants, and the use of Water Sense labeled ultra-low-flow water fixtures and toilets.
- High-rise buildings with booster pumps will be required to install water hammer arrestors or expansion tanks to reduce pressure spikes and potential main breaks in the City's water system.
- On-site fire protection requirements should be coordinated with the Fire Prevention Bureau of the HFD.

The Applicant indicated that the project will be designed to connect to the non-potable water system when it becomes available and is considering water conservation strategies to reduce consumption and conserve resources. The Applicant also indicated that all fire prevention improvements will be in conformance with the Uniform Fire Code, as adapted for use by the HFD.

The availability of water to serve the proposed project, including adherence to fire protection standards, will be handled through the regular permitting process. Therefore, a provision to address this in the DA is not recommended. However, the water conservation measures and improvements for high-rise buildings are not necessarily addressed during the regular permitting process and a requirement for the Applicant to address these comments is recommended in the DA.

3. Wastewater. The site is connected to the City's wastewater system. The Applicant estimates the total average wastewater flow at build out to be 338,300 gpd. An on-site wastewater collection system will be installed within the project site and sewer lines will be sized to meet the requirements of the Uniform Plumbing Code. Wastewater from the project will discharge into the City's existing sewer line along the east side of Kaonohi Street, which then connects to the Pearl City Wastewater Pump Station (WWPS) and then to the Waipahu WWPS. The wastewater is eventually conveyed to the City's Honouliuli Wastewater Treatment Plant.

The Applicant explained that the entire project will be built in phases over a 13-year period and that completion of any commercial and/or residential uses is not anticipated until at least 2015. The Applicant will continue to coordinate with the City on phasing and identifying needed improvements to the regional wastewater collection system to accommodate the full build-out of the project.

A Site Development Master Application for Sewer Connection is required for sewer capacity reservation. The Applicant submitted an application to the DPP for Phase 1 and a portion of the residential units. On July 29, 2013, the ENV recommended that the application be granted conditional approval based on the completion of the Waipahu Wastewater Treatment Pump Station valve replacement project which is currently scheduled for completion at the end of 2014. Since the DPP is responsible for the approval of the sewer connection application, a provision in the DA regarding the adequacy of the wastewater system is not recommended.

4. Drainage. Based on a Preliminary Engineering Report prepared by the Applicant for the EIS process, the development of the project will reduce the overall amount of runoff from the site by increasing pervious areas. The proposed landscaped urban parks and gathering areas will allow more storm water to penetrate the ground as compared to the existing conditions where nearly the entire site is paved.

The project's drainage system will consist of roof downspouts, drain inlets, and catch basins connected by new underground storm drain lines. On-site runoff will generally drain toward new internal curbed roadways and parking lot areas where it will be collected by the inlets and catch basins. Storm water runoff from most of the site will be directed to the existing drain inlet at the southeastern portion of the site that connects to the City drainage system. Drainage improvements may be necessary to remedy the current overflow condition that happens during heavy rains. Appropriate filtration will be provided on site before the private system connects with the City's drainage system at the property boundary.

A small portion of the site that directly fronts Kaonohi Street will continue to drain as surface flow to Kaonohi Street, except that the amount of flow will be reduced from existing conditions due to replacement of some paved surfaces with landscaping. Flows from the southwestern corner of the site will continue to drain toward Westridge Shopping Center due to the low elevation, except that the amount of runoff will also be reduced from existing conditions.

The Applicant indicated that all drainage improvements will be in conformance with the City's storm drainage standards which require that there be no increase in runoff compared to existing conditions and that the on-site drainage improvements will be a private system.

All necessary drainage improvement plans must be submitted to the DPP for review and approval. As such, a provision in the DA regarding drainage is not recommended.

5. Solid Waste. Solid waste from the project will be collected by a private refuse collection service. The ENV had no comments or concerns on the rezoning. Therefore, a provision in the DA regarding solid waste is not recommended.
6. Police Protection. The site is located in the HPD's District 3 (Pearl City). The HPD is concerned that the proposed project will increase the number of people and vehicular traffic in the project area, resulting in an increase in calls for police services.

Historically, the additional need for police services is addressed by real property taxes collected from the new development. Also, the DTS and the DPP reviewed the proposal for vehicular and pedestrian traffic safety issues. As discussed in the transportation section, the DPP recommends that the DA require the Applicant to address roadway and traffic improvements. Thus, a separate condition to address the HPD's traffic concerns is not recommended.

7. Fire Protection. Fire protection services in the vicinity of the project site are provided by the HFD's Aiea and Waiiau fire stations, located about 0.9 miles east

and 1.3 miles west of the site, respectively. On the roads fronting the site are two fire hydrants along Kaonohi Street and three fire hydrants along Moanalua Road.

The HFD commented that the project will need to meet applicable fire code requirements, including those relating to access roads, adequate water supply for fire fighting purposes, and submittal of civil drawings for their review and approval.

All HFD requirements must be met as part of the standard approval process. Therefore, a provision in the DA is not recommended.

8. Parks and Recreation. The Pearl Ridge Community Park, located directly across Moanalua Road, is the closest public park to the site. The proposed development will include landscaped urban parks, plazas, and gathering areas open to the public but privately maintained. In addition, the proposed residential buildings will include private recreation areas and facilities (such as pools, recreation decks, fitness facilities, and other areas) for use by the building's residents.

The project is subject to park dedication requirements under Chapter 22, Article 7, ROH. The Applicant indicates that the project is being designed to provide on-site facilities and, if necessary, fees to satisfy these requirements. The Department of Parks and Recreation had no objections to the zone change application.

In addition to satisfying the park dedication requirements, the Applicant intends to provide a minimum of \$50,000 to the City to fund a conceptual study for a potential park and bus transit facility makai of the planned rail transit station. The study will examine opportunities to provide an open space connection to Pearl Harbor and Pearl Harbor Historic Trail. A provision relating to the funding of the study is recommended in the DA.

The Applicant also intends to provide an on-site meeting room for community groups and public restrooms for users of the meeting room and the public gathering area. These provisions are recommended in the DA.

9. Federal Aviation Administration (FAA). The U. S. Department of Transportation, FAA commented that the Applicant is required to notify the FAA of any construction or alteration of more than 200 feet in height above the ground level to determine the safe and efficient use of navigable airspace. Three of the residential buildings exceed 200 feet in height. The Applicant clarifies that this comment was addressed during the EIS process. On April 20, 2012, the Applicant was notified that the FAA conducted an aeronautical study on the three buildings which revealed that the structures do not exceed obstruction standards and would not be a hazard to air navigation, provided the structures are marked/lighted in accordance with the FAA requirements and the FAA is notified once construction reaches its greatest height. These notification letters were included in the Final EIS. As such, a provision in the DA is not recommended.

The FAA also noted that the buildings are located in proximity to an airport and occupants may be subjected to noise from aircraft operating to and from the airport.

E. Social and Economic Impacts.

1. Population. As discussed in the General Plan section of this report, the expected population of 4,808 persons from the development of the project is consistent with the City's General Plan policies which show a population distribution of 46 percent of Oahu's population to the PUC.
2. Education. In its comments during the EIS process, the DOE estimated that, at build-out, the project may increase public school enrollment in area schools by 570 students: 330 elementary students, 105 middle school students, and 135 high school students. At that time, the DOE stated that it would determine which schools would serve the project closer to the occupancy of the project and that the determination would probably be based on anticipated enrollment impact of the entire project development.

The DOE updated their comments for the zone change application, indicating that it met with the Applicant. It was generally satisfied with the Applicant's responses regarding various issues, including potential impacts on student enrollment for various schools within the Aiea High School complex, impacts on vehicular and pedestrian traffic leading to and from Pearl Ridge Elementary School, and compliance with the school impact fee law (the DOE confirmed that the site is in the Leeward Oahu School Impact District, as authorized by State law Chapter 302A-1601 to 1612, HRS).

The proposed Main Street entrance will be opposite the existing driveway to Pearl Ridge Elementary School on Moanalua Road. The existing driveway is unsignalized. When Main Street is constructed, the existing "T" intersection will be converted to a four-way signalized intersection. A crosswalk will be provided at the new intersection to facilitate safe crossing of students across Moanalua Road. Also, as recommended by the DPP, the Applicant will prepare a safe route to school plan, establishing an internal staging area on the project site for students to walk to school with an adult monitor or other similar program. As discussed in the transportation section, a recommended provision of the DA requires the Applicant to address roadway and traffic improvements. Thus, a separate provision to address DOE's concerns is not recommended.

A provision to ensure the Applicant's compliance with the school impact fee law is recommended in the DA, which could be satisfied either with fees at the time of building permit or by separate agreement with the DOE.

3. Employment. The Applicant indicates that the project will increase both short-term and long-term employment opportunities. The project is estimated to generate 980 jobs during its construction and 951 permanent jobs following its build-out. As discussed in the General Plan and PUC DP sections of this report, the creation of new job opportunities is consistent with City policies.

4. **Affordable Housing.** The Applicant indicates that affordable housing will be provided since the project consists of a residential component. Resolution No. 09-241 requires that no less than 30 percent of the total number of dwelling units in the project be affordable to households with incomes not exceeding 140 percent of the median income for Honolulu, with no less than 20 percent of the total number of units being affordable to households with incomes not exceeding 120 percent of the median income, and with no less than 10 percent of the total number of units being affordable to households with incomes not exceeding 80 percent of the median income.

The City's affordable housing rules only apply when the City Council imposes the affordable housing condition through a UA. Therefore, it is recommended that the DA include provisions requiring the Applicant to provide affordable housing in accordance with the City's current affordable housing rules.

IV. CONCLUSIONS OF LAW

The Director hereby makes the following conclusions:

Based on the foregoing Findings of Fact and Analysis, the proposed zone change from the B-2 Community Business District with a 60-foot height limit to the BMX-3 Community Business Mixed Use District with a 350-foot height limit is consistent with State and City land use plans and policies, including the General Plan and the Primary Urban Center Development Plan. The proposal also meets the purpose and intent of the BMX-3 zoning district, and, as discussed in the foregoing analysis, should not significantly impact the surrounding land uses and infrastructure capacity if the provisions to mitigate potential impacts from the project, as recommended in the Development Agreement (DA), are met. Public benefits beyond that which would be typically required under a UA, in return for "freezing" existing LUO provisions and other regulations for the duration of the DA, are also recommended in the DA. In summary, the recommended DA provisions address the following:

- **Affordable housing.** Provide affordable housing for the project in accordance with the City's affordable housing rules, which requires an obligation equivalent to no less than 30 percent of the total number of dwelling units in the project be affordable.
- **Urban design.** Review and approval of elements relating to "connectivity", building heights and orientation, pedestrian-friendly ground level and streets, entry gateways, building architecture, and landscaping.
- **Transportation.** Require compliance with transportation-related requirements, including the completion of a construction management plan, traffic demand management plan, updated traffic reports, and the construction of street and other traffic improvements.
- **Water.** Require compliance with water-related requirements, including water conservation measures and improvements for high-rise buildings.
- **Education.** Require compliance with the school impact fee requirements.
- **Streetscape improvements along Kaonohi Street to Kamehameha Highway.** Streetscape improvements will be provided which support a friendlier pedestrian and biking experience,

within the City right-of-way along Kaonohi Street, from the boundary of the project site to the boundary of Kamehameha Highway (State right-of-way).

- Subsidized bus/transit passes. The major anchor retail tenant will provide 30 bus/transit passes to employees for 20 years.
- Park and bus transit facility. Funds will be provided for a conceptual study for a proposed park and bus transit facility makai of the rail transit station.
- Meeting room. A meeting room will be provided, for a nominal charge, on the project site for community groups.
- Public restrooms. Restrooms will be provided for users of the meeting room and the public gathering area.
- Contribution to non-profit organizations. Annual cash contributions will be provided to non-profit organizations through the creation of a charitable contribution program over a 20-year span.

As discussed in an earlier section, the draft DA has a separate approval process and is subject to review and approval by the City Council, followed with execution of the agreement by the Mayor and all other parties to the agreement. The draft DA and the recommended provisions may change. However, at a minimum, the Department of Planning and Permitting (DPP) will strongly recommend retaining those provisions that demonstrates "rational and proportionate nexus"; i.e., address impacts directly attributable to the rezoning.

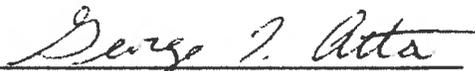
In accordance with Section 33-1.3, the DA can only be executed after the zone change is approved. In the event the DA is not executed, the DPP must immediately initiate action to rezone the property to the zoning that existed prior to the effective date of the rezoning ordinance. However, to ensure that the zone change does not take effect without the appropriate measures to mitigate impacts on surrounding land uses and public facilities and services, the DPP recommends that the proposed zone change take effect upon execution of the DA instead of the date the ordinance is approved.

V. RECOMMENDATION

Pursuant to the foregoing Findings of Fact, Analysis, and Conclusions of Law, the Director of the Department of Planning and Permitting recommends that a change in zoning from B-2 Community Business District with a 60-foot height limit to BMX-3 Community Business Mixed Use District with a 350-foot height limit be APPROVED as shown on the map marked **Exhibit A** in the attached draft Ordinance (**Attachment 4**), subject to the execution of a Development Agreement.

Dated at Honolulu, Hawaii, this 16th day of September, 2013.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

By 
George I. Atta, FAICP
Director

GIA:js

1038799

Attachments

ATTACHMENT 4
(Agency and Community Comments)

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843



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December 10, 2013 DEC 24 09:07

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

KIRK CALDWELL, MAYOR

DUANE R. MIYASHIRO, Chairman
MAHEALANI CYPHER, Vice Chair
THERESIA C. McMURDO
ADAM C. WONG
DAVID C. HULIHEE

ROSS S. SASAMURA, Ex-Officio
GLENN M. OKIMOTO, Ex-Officio

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.
Deputy Manager and Chief Engineer *Ellen*

TO: GEORGE I. ATTA, FAICP, LEED AP, CEI, DIRECTOR
DEPARTMENT OF PLANNING AND PERMITTING

FROM: ERNEST Y. W. LAU, P.E. MANAGER AND CHIEF ENGINEER *EYL*

SUBJECT: YOUR MEMORANDUM DATED OCTOBER 31, 2013, REQUESTING
COMMENTS ON APPLICATION FOR DEVELOPMENT AGREEMENT
FOR LIVE, WORK, PLAY AIEA – TAX MAP KEY: 9-8-013:013, 015

We do not have comments on the Application for the Development Agreement for the Live, Work, Play Aiea development.

The comments in our letter dated March 12, 2013, in regards to the application for a zone change, are still applicable.

If you have any questions, please contact Robert Chun at 748-5443.

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

1000 ULUOHIA STREET, SUITE 308, KAPOLEI, HAWAII 96707
TELEPHONE: (808) 768-3486 • FAX: (808) 768-3487 • WEBSITE: <http://envhonolulu.org>

KIRK CALDWELL
MAYOR



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*13 DEC 17 2:57 PM
DORIS M. KAHIKINA, P.E.
DIRECTOR

TIMOTHY A. HOUGHTON
DEPUTY DIRECTOR

DEPT. OF PLANNING
AND PERMITTING
ROSS S. TANIMOTO, P.E.
DEPUTY DIRECTOR
CITY & COUNTY OF HONOLULU
IN REPLY REFER TO
PRO 13-113

December 12, 2013

MEMORANDUM

TO: George I. Atta, FAICP, Director
Department of Planning and Permitting

FROM: 
Lori M.K. Kahikina, P.E.
Director

SUBJECT: Application for Development Agreement
Live, Work, Play Aiea
Tax Map Keys: 9-8-013 and 015

We have reviewed the subject document as transmitted to us by your memo dated October 31, 2013, reference number 2013/GEN-12. We have no objections to the application. Our Environmental Quality Division/ Storm Water Branch has the following comment:

1. Page 5, Development Agreement Overview: We suggest adding the following to the list of ordinances, resolutions, rules, regulations, and policies:
 - ROH, Chapter 14-12, Drainage, Flood and Pollution Control
 - DPP "Rules Relating to Storm Drainage Standards"
 - DPP "Rules Relating to Soil Erosion Standards and Guidelines"

Questions regarding the above comment may be directed to Gerald Takayesu at 768-3287. Should you have other questions, please call Jack Pobuk, CIP Program Coordinator, at 768-3464.

DEPARTMENT OF FACILITY MAINTENANCE
CITY AND COUNTY OF HONOLULU

1000 Ulu'ohia Street, Suite 215, Kapolei, Hawaii 96707
Phone: (808) 768-3343 • Fax: (808) 768-3381
Website: www.honolulu.gov

KIRK CALDWELL
MAYOR



ROSS S. SASAMURA, P.E.
DIRECTOR AND CHIEF ENGINEER

EDUARDO P. MANGLALLAN
DEPUTY DIRECTOR

IN REPLY REFER TO:
DRM 13-1052

December 4, 2013

MEMORANDUM

TO: GEORGE I. ATTA, FAICP, DIRECTOR
DEPARTMENT OF PLANNING AND PERMITTING

ATTENTION: SHARON NISHIURA AND/OR RANDY HARA

FROM: 
ROSS S. SASAMURA, P.E.
DIRECTOR AND CHIEF ENGINEER
DEPARTMENT OF FACILITY MAINTENANCE

SUBJECT: APPLICATION FOR DEVELOPMENT AGREEMENT
LIVE, WORK, PLAY AIEA
TAX MAP KEYS; 9-8-013:013 AND 015

DEPT. OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU, HI

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RECEIVED

Thank you for the opportunity to review and comment on the subject's "Application For Development Agreement; Live, Work, Play Aiea; Tax Map Keys; 9-8-013 and 015" dated October 31, 2013.

Our only comment at this time (see yellow tab on returned documents):

- In Exhibit E – "Public Benefits" – Who will be responsible to maintain the "Streetscape Improvements along Kaonohi Street to Kamehameha Highway?"

If you have any questions, please call Kyle Oyasato of the Division of Road Maintenance at 768-3697.

Enclosure

DEPARTMENT OF PARKS & RECREATION

CITY AND COUNTY OF HONOLULU RECEIVED

1000 Uluohia Street, Suite 309, Kapolei, Hawaii 96707
Phone: (808) 768-3003 • Fax: (808) 768-3053
Website: www.honolulu.gov

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KIRK CALDWELL
MAYOR



TONI P. ROBINSON
DIRECTOR

DEPT OF PLANNING AND PERMITTING
CITY & COUNTY OF HONOLULU
JEANNE C. ISHIKAWA
DEPUTY DIRECTOR

November 20, 2013

MEMORANDUM

TO: George I. Atta, FAICP, Director
Department of Planning and Permitting

FROM: Toni P. Robinson *Toni P. Robinson*
Director

SUBJECT: Application for Development Agreement
Live, Work, Play Aiea
Tax Map Keys: 9-8-013:013 and 015
2013/GEN-12

Thank you for the opportunity to review and comment on CP Kam Properties LLC Application for Development Agreement.

The Department of Parks and Recreation has no comment at this time

Should you have any questions, please contact Mr. John Reid, Planner, at 768-3017.

TPR:jr
(537670)

DEPARTMENT OF TRANSPORTATION SERVICES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 3RD FLOOR
HONOLULU, HAWAII 96813

Phone: (808) 768-8305 • Fax: (808) 768-4730 • Internet: www.honolulu.gov

KIRK CALDWELL
MAYOR

14 JAN -6 10:09



DEPT. OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

MICHAEL D. FORMBY
DIRECTOR

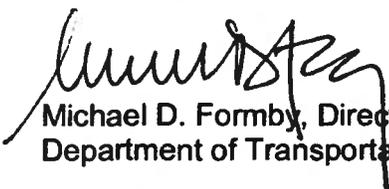
MARK N. GARRITY, AICP
DEPUTY DIRECTOR

TP11/13-537673R

December 26, 2013

MEMORANDUM

TO: George I. Atta, FAICP, LEED AP, CEI, Director
Department of Planning and Permitting

FROM: 
Michael D. Formby, Director
Department of Transportation Services

SUBJECT: Application for Development Agreement
Live, Work, Play Aiea
Tax Map Keys: 9-8-013:013 and 015

This responds to your correspondence dated October 31, 2013, regarding the application for a Development Agreement for the subject project. We reaffirm the comments made in our correspondence of June 26, 2013, (see attached) with the addition of the following comment:

Under Exhibit E, page 13 of 16, No. 6 – We disagree with an at-grade crosswalk across of Kaonohi Street at the PearlrIDGE Center driveway below Macy's. If a grade-separated crossing cannot be made, we recommend that pedestrian crossings of Kaonohi Street at the driveway should be prevented.

Thank you for the opportunity to review this matter. Should you have any further questions on the matter, you may contact Virginia Sosh of my staff at Local 85461.

Attachment

RECEIVED

'14 JAN -6 AIC:09

DEPARTMENT OF TRANSPORTATION SERVICES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 3RD FLOOR
HONOLULU, HAWAII 96813

Phone: (808) 768-8305 • Fax: (808) 768-4730 • Internet: www.honolulu.gov

DEPT. OF PLANNING
KIRK CALDWELL, AICP
MAYOR OF CITY OF HONOLULU



MICHAEL D. FORMBY
DIRECTOR

MARK N. GARRITY, AICP
DEPUTY DIRECTOR

TP2/13-503150R

June 26, 2013

MEMORANDUM

TO: George I. Atta, FAICP, LEED AP, CEI, Director
Department of Planning and Permitting

FROM: 
Michael D. Formby, Director
Department of Transportation Services

SUBJECT: Application for a Zone Change from B-2 Community Business District with a 60-Foot Height Limit to Bmx-3 Community Business Mixed Use District with a 350 Height Limit, Aiea, Oahu, Tax Map Keys: 9-8-013:013 and 015

This responds to your correspondence dated February 11, 2013, regarding the rezone request for the subject project. We have the following comments:

- CP Kam Properties LLC, development should not absolve their zoning obligations at this time. A post traffic study should be performed to evaluate and verify the effectiveness and accuracy of the submitted traffic study conditions and mitigation measures. If a future post study reveals subsequent problems due to the development, further mitigation measures and/or corrective measures should be required of the developer.
- Page 67 – Discussion on Kaonohi Street should be updated regarding the ingress and egress for the Kam Drive Inn Swap Meet site. The current Swap Meet entrance and exit along Kaonohi Street has been switched.
- Kaonohi Street is a designated bicycle facility in the Oahu Bicycle Master Plan. It is recommended that an uphill (mauka-bound) bike lane and downhill (makai-bound) sharrows be required.
- Kaonohi Street should be widened to provide two thru standard travel lanes makai bound.

George I. Atta, FAICP, LEED AP, CEI, Director
June 26, 2013
Page 2

- The Roadway Improvements Plan shown on Exhibit 15 depicts a marked pedestrian crossing across of Kaonohi Street at the unsignalized Kaonohi Street/Pearlridge Center driveway below Macy's. We request additional information on what type of measures will be implemented to increase pedestrian safety of the unprotected crossing. It is our recommendation that an overhead pedestrian bridge be seriously studied and considered.
- Double left turn lanes from Moanalua Road to mauka bound Kaonohi must be evaluated.

The following is a brief summary of the on-going discussions with DTS and DPP regarding potential recommendations to the developer:

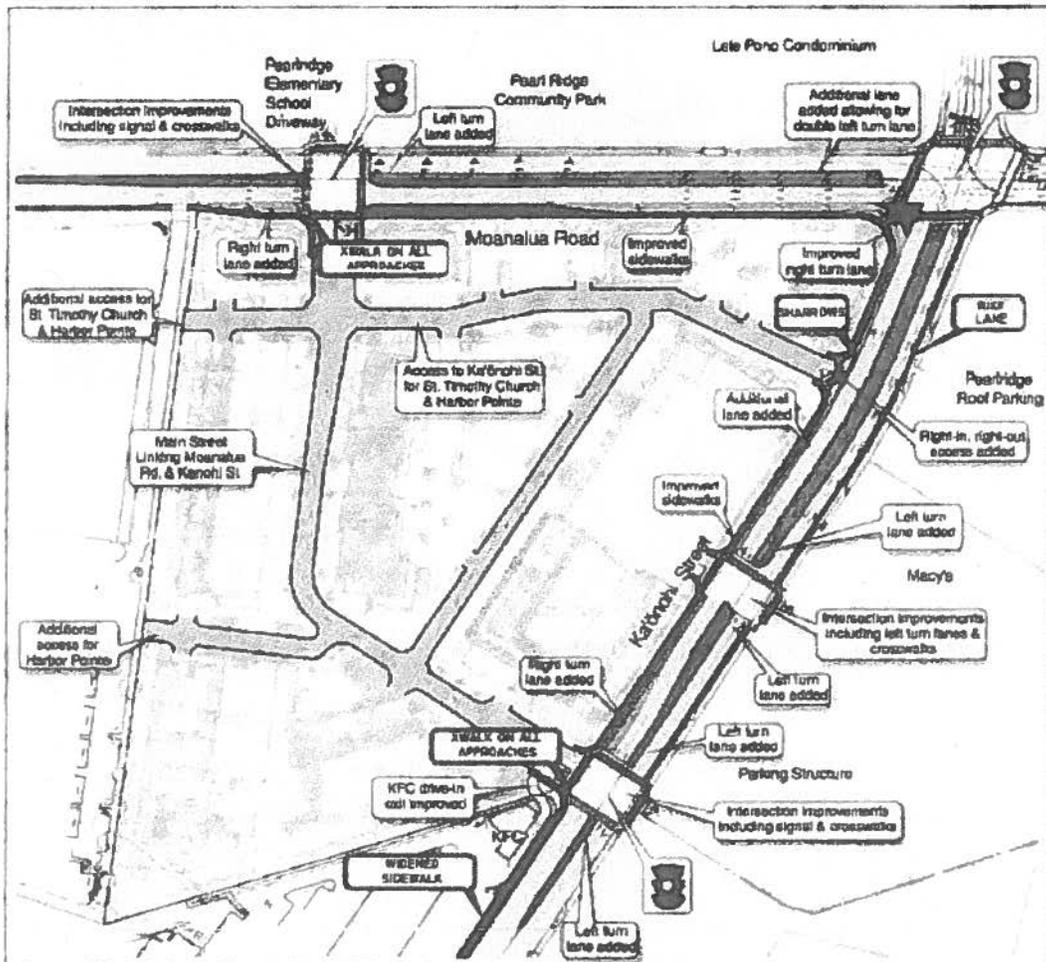
- Consider a right turn lane from only Moanalua Road to makai bound Kaonohi with a possible pedestrian island. Marked crosswalks should be maintained on all approaches for pedestrian access and safety.
- Consider a traffic signal and related improvements on Moanalua Road across from Pearl Ridge Elementary to align with the proposed access road to the project. Marked crosswalks should be designated on all approaches to facilitate safe and easy pedestrian access.
- Consider improved and widened sidewalks along Moanalua Road and Kaonohi Street adjacent to the proposed development. In addition, the sidewalk on the Ewa-side of Kaonohi Street, from mauka of KFC, down to Moanalua Loop, should be widened to provide easy pedestrian access to the nearby future Pearlridge rail transit station.
- Please see the attached map for a summary of our proposed improvements.

We suggest that the affected Neighborhood Board, residents, and businesses are informed and updated about the scope and duration of the project.

Thank you for the opportunity to review this matter. Should you have any further questions on the matter, you may contact Virginia Bisho of my staff at Local 85461.

Attachment

Proposed Kaonohi Street Improvements Map



Map source:
 Mark N. Garrity, AICP
 Deputy Director of Transportation Services
 Map produced:
 April 3, 2013



IN REPLY REFER TO:
CMS-AP00ENV-00332

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Daniel A. Grabauskas
EXECUTIVE DIRECTOR AND CEO

January 3, 2014

BOARD OF DIRECTORS

Ivan M. Lui-Kwan, Esq.
CHAIR

Donald G. Horner
VICE CHAIR

MEMORANDUM

TO: GEORGE I. ATTA, FACIP, DIRECTOR
DEPARTMENT OF PLANNING AND PERMITTING

FROM: DANIEL A. GRABAUSKAS, EXECUTIVE DIRECTOR AND CEO

SUBJECT: APPLICATION FOR DEVELOPMENT AGREEMENT
LIVE, WORK, PLAY AIEA
TAX MAP KEYS 9 - 8 - 13: 13 AND 15

George I. Atta
Robert Bunda
Michael D. Formby
William "Buzz" Hong
Keslie W.K. Hui
Damien T.K. Kim
Glenn M. Okimoto, Ph.D.
Carrie K.S. Okinaga, Esq.

This responds to your October 31, 2013 request for comments on the proposed Development Agreement, File No. 2013/GEN-12.

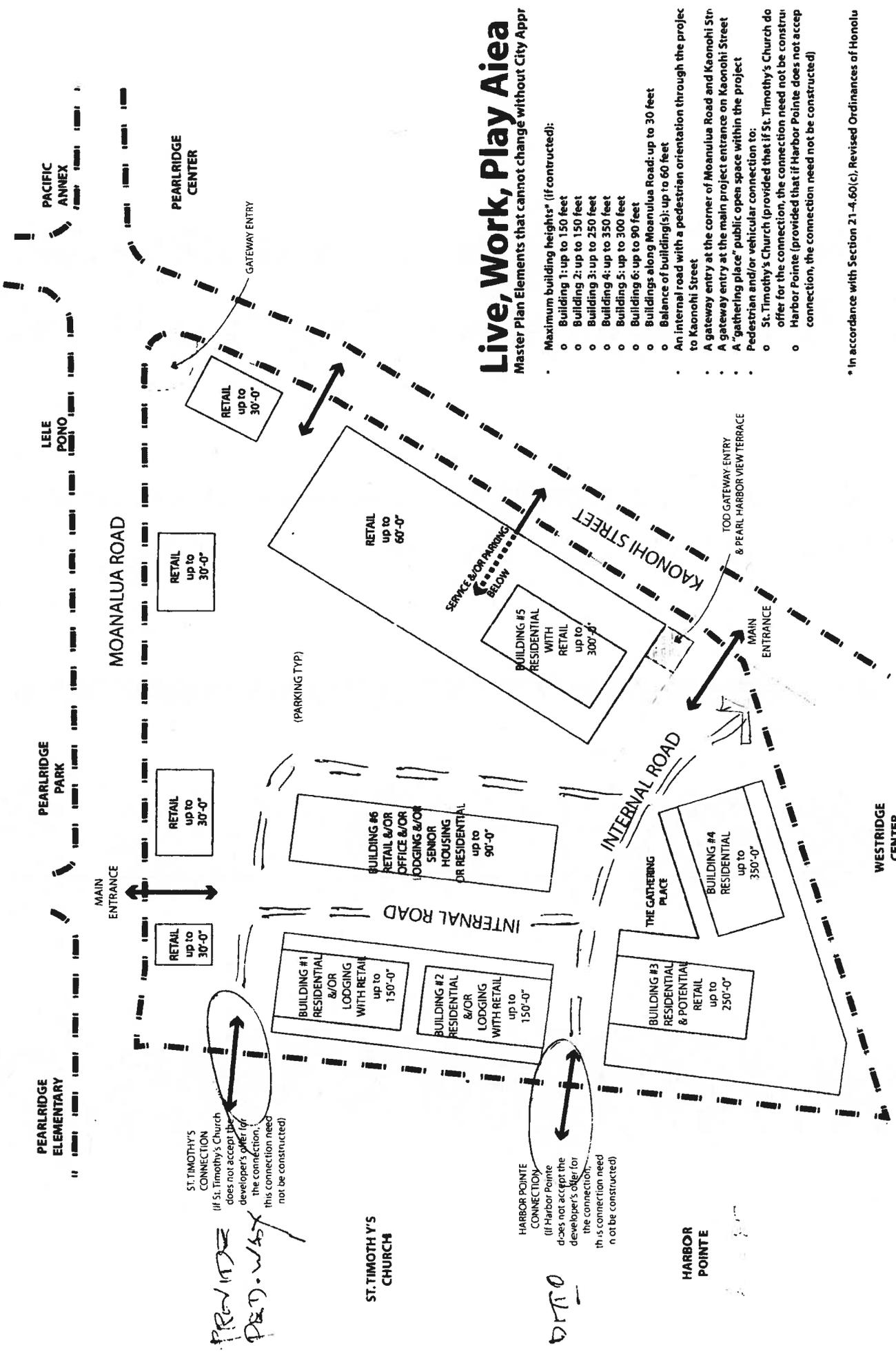
HART would have no objection to not constructing vehicular connects to St. Timothy's Church and Harbor Pointe since such movements would likely result in on-site (LWPA) congestion and short-cutting to Kaonohi Street.

On the other hand, pedestrian connections should be made available, in the spirit of Transit-Oriented Development, to lessen the walking distance to the planned Pearlridge Transit Station (station name unofficial) at Kaonohi Street and Kamehameha Highway and to encourage greater use of public transportation.

Should you have any questions on the matter, please contact Bruce Nagao of my staff at Local 88351.

Daniel A. Grabauskas
Executive Director and CEO

Attachment



Live, Work, Play Aiea

Master Plan Elements that cannot change without City Approval

- Maximum building heights* (if constructed):
 - Building 1: up to 150 feet
 - Building 2: up to 150 feet
 - Building 3: up to 250 feet
 - Building 4: up to 350 feet
 - Building 5: up to 300 feet
 - Building 6: up to 90 feet
 - Buildings along Moanalua Road: up to 30 feet
 - Balance of building(s): up to 60 feet
- An internal road with a pedestrian orientation through the project to Kaonohi Street
- A gateway entry at the corner of Moanalua Road and Kaonohi Street
- A gateway entry at the main project entrance on Kaonohi Street
- A "gathering place" public open space within the project
- Pedestrian and/or vehicular connection to:
 - St. Timothy's Church (provided that if St. Timothy's Church does not accept the connection, the connection need not be constructed)
 - Harbor Pointe (provided that if Harbor Pointe does not accept the connection, the connection need not be constructed)

* In accordance with Section 21-4.60(c), Revised Ordinances of Honolulu

HONOLULU FIRE DEPARTMENT
CITY AND COUNTY OF HONOLULU

638 South Street
Honolulu, Hawaii 96813-5007
Phone: 808-723-7139 Fax: 808-723-7111 Internet: www.honolulu.gov/hfd

KIRK CALDWELL
MAYOR



*13 NOV 20 P2:32

MANUEL P. NEVES
FIRE CHIEF

LIONEL CAMARA JR.
DEPUTY FIRE CHIEF

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

November 20, 2013

TO: GEORGE ATTA, FAICP, LEED AP, CEI, DIRECTOR
DEPARTMENT OF PLANNING AND PERMITTING

FROM: ROLLAND J. HARVEST, ASSISTANT CHIEF

SUBJECT: APPLICATION FOR DEVELOPMENT AGREEMENT
LIVE, WORK, PLAY AIEA
TAX MAP KEYS: 9-8-013: 013 AND 015

In response to your memorandum of October 31, 2013, regarding the above-mentioned subject, the Honolulu Fire Department (HFD) requires that the following be complied with:

1. Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150 feet (46 m) from fire department access roads as measured by an approved route around the exterior of the building or facility. (National Fire Protection Association [NFPA] 1; Uniform Fire Code [UFC]TM, 2006 Edition, Section 18.2.3.2.2.)

A fire department access road shall extend to within 50 ft (15 m) of at least one exterior door that can be opened from the outside and that provides access to the interior of the building. (NFPA1; UFCTM, 2006 Edition, Section 18.2.3.2.1.)

2. A water supply approved by the county, capable of supplying the required fire flow for fire protection, shall be provided to all premises upon which facilities or buildings, or portions thereof, are hereafter constructed, or moved into or within the county. When any portion of the facility or building is in excess of 150 feet (45 720 mm) from a water supply on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be

George Atta, FAICP, LEED AP, CEI, Director
Page 2
November 20, 2013

provided when required by the AHJ [Authority Having Jurisdiction].
(NFPA 1; UFC™, 2006 Edition, Section 18.3.1, as amended.)

3. Submit civil drawings to the HFD for review and approval.

Should you have questions, please contact Battalion Chief Socrates Bratakos of our Fire Prevention Bureau at 723-7151 or sbratakos@honolulu.gov.


ROLLAND J. HARVEST
Assistant Chief

RJH/SY:jl

DEPARTMENT COMMENTS:

PROJECT FILE NUMBER 2013/GEN-12

The Honolulu Police Department (HPD) has concerns regarding the Development Agreement for the Live, Work, Play 'Aiea project. The proposed project will increase the number of people, businesses, and vehicular traffic in the area, and this will result in an increase in calls for police services.

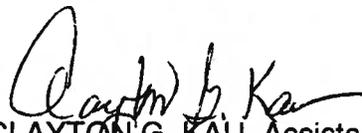
The HPD would like to be involved in future planning and/or implementation of the project in order to reassess the project's impact on police operations.

If there are any questions, please contact Major Clayton Saito of District 3 (Pearl City) at 723-8803 or via e-mail at csaito1@honolulu.gov.

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU, HI

13 NOV 18 A8:55

RECEIVED



CLAYTON G. KAU, Assistant Chief

Signature/Title Support Services Bureau

November 13, 2013
Date



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

RECEIVED

'13 DEC 18 P1:20

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

OFFICE OF SCHOOL FACILITIES AND SUPPORT SERVICES

December 17, 2013

Mr. George I. Atta, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

**SUBJECT: Application for Development Agreement: Live, Work, Play Aiea,
Tax Map Keys: 9-8-013:013 and 015**

The Department of Education (DOE) has reviewed the application for the Development Agreement (DA) for the Live, Work, Play Aiea project. The DOE understands that this DA is being processed in conjunction with the project's zoning application, which is pending with your office as DPP File No. 2013/Z-3.

The DOE has met with the applicant, CP Kam Properties LLC (Developer) on several occasions over the last two years. For more than a year, the DOE has requested that the Developer enter into an Education Contribution Agreement (ECA) with the DOE where, due to the residential component of this project, the development's educational contribution would be established and memorialized, as required by State law.

Until an October 22, 2013 meeting with the Developer's consultant, the DOE was never informed that a DA was being negotiated between the Developer and the City and County of Honolulu (City). We were therefore unaware, until that time that the DA was being considered as the only vehicle to ensure compliance with the State's school impact fee law. This comment letter is the first opportunity the DOE has been offered to provide input to the City. The DOE has determined that the DA is insufficient and also inconsistent with the DOE's understanding of the State statute and its standard operating protocols.

As of December 10, 2013, the Developer continues to resist the execution of an ECA. The DOE was told that the basis for the Developer's position was the City's opinion that the DA sufficiently protects the DOE's school impact fee interest and is consistent with State statute, Hawaii Revised Statutes Chapter (HRS) 302A-1601 to 1612. The DOE disagrees with this position.

HRS §302A-1606 states in relevant part that:

"Prior to approval of any change of zoning, subdivision, or any other approval for a: (A) Residential development with fifty or more units; or (B) Condominium property regime development of fifty or more units, the department shall notify the approving agency of its determination on whether it will require the development to dedicate land, pay a fee in lieu thereof, or a combination of both for the provision of new school facilities."

Mr. George I. Atta
December 17, 2013
Page 2

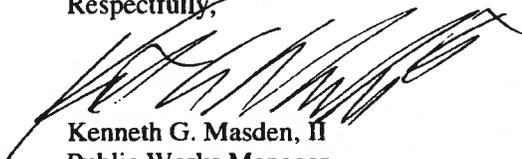
It is the DOE's practice to memorialize this decision in an ECA prior to notifying the approving agency of this determination.

Since the DOE is not a party to the DA we believe it would be nonbinding on our behalf and would thus not be sufficient to support the full and timely enforcement of the school impact fee payment. On large scale developments, such as this, we require the ECA to be in place prior to any changes of zoning, subdivision, or any other approval for residential development with fifty or more units. Beyond establishing the DOE's position on land vs. monetary contributions, this practice serves to avert any legal delays or entanglements at the time of building permit application. For these reasons the DA would not satisfy the DOE requirement for a fully executed ECA.

The DOE met once again with the Developer on December 10, 2013 to further express and clarify our position, stating that the ECA runs with the land and does not obligate the prime developer should the property be sold before any residential permits are sought. The ECA will provide certainty for potential residential developers that the decision on the impact contribution of land vs monetary fee has been established and agreed to. After more than an hour long discussion about the DA, and whether or not it would satisfy the educational contribution requirements of the DOE, it became clear that a resolution between the Developer and the DOE could not be reached before the signing of this letter. At the conclusion of this meeting, the Developer agreed to consult with legal counsel to reconsider their options relating to school impacts, with no commitment to meet again.

If you have any questions, please call Roy Ikeda of the Facilities Development Branch at 377-8301.

Respectfully,



Kenneth G. Masden, II
Public Works Manager
Department of Education

KGM:jmb

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

RECEIVED



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

'13 NOV 18 P2:12

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

13-210
2013/Gen-12

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

November 13, 2013

TO: George I. Atta, FAICP, Director
Department of Planning and Permitting
ATTENTION: Randy Hara

FROM: Laura McIntyre, Manager 
Department of Health, Environmental Planning Office

SUBJECT: Application for Development Agreement for Live, Work, Play Aiea
Tax Map Keys: 9-8-013: 013 and 015

The Department of Health (DOH), Environmental Planning Office (EPO), acknowledges receipt of your letter dated October 31, 2013. Thank you for allowing us to review and comment on the subject document. EPO recommends that you review the standard comments at:

<http://health.hawaii.gov/epo/home/landuse-planning-review-program/>.

You are required to adhere to all standard comments specifically applicable to this application.

EPO suggests the applicant examine the many sources available on strategies to support the sustainable design of communities, including the:

State of Hawaii, Office of Planning: www.planning.hawaii.gov and the new 2013 ORMP;

U.H., School of Ocean and Earth Science and Technology: www.soest.hawaii.edu;

U.S. Environmental Protection Agency's sustainability programs: www.epa.gov/sustainability; and

U.S. Green Building Council's LEED program: www.usgbc.org/leed.

The DOH encourages everyone to apply these sustainability strategies and principles early in the planning and review of projects. We also request that for future projects you consider conducting a Health Impact Assessment (HIA). More information is available at:

www.cdc.gov/healthylives/hia.htm. We request you share all of this information with others to increase community awareness on sustainable, innovative, inspirational, and healthy community design.

If you have any questions, please contact me at (808) 586-4337.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

LUD-1 9 8 013 013 & 015-ID1505
Live Work Play-Dev Agmmt App

November 20, 2013

Mr. George I. Atta, Director
Department of Planning & Permitting
City & County of Honolulu
650 South King Street 7th Floor
Honolulu, Hawaii 96813

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU, HI

'13 NOV 22 P 1 30

RECEIVED

Dear Mr. Atta:

Subject: Application for Development Agreement at
"Live Work Play Aiea" at 98-850 Moanalua Road, Aiea, Hawaii 96701
TMK (1) 9-8-013: 013 and 015

Thank you for allowing us the opportunity to review the above subject project which requests comments on the Application for Development Agreement or "Live Work Play Aiea."

We have no comments to provide as domestic wastewater for the subject project will be conveyed to the City and County of Honolulu's Honouliuli Wastewater Treatment Plant for treatment and disposal.

Should you have any questions, please contact our Planning & Design Section at phone 586-4294.

Sincerely,

SINA PRUDER, P.E., ACTING CHIEF
Wastewater Branch

LM/MST:lmj

c: DOH-Environmental Planning Office (13-210), Ms. Laura McIntyre

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AHIA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 20, 2013

City and County of Honolulu
Department of Planning and Permitting
Attention: George I. Atta, Director
Mr. Randy Hara
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

via email: rhara@honolulu.gov

Dear Mr. Atta and Mr. Hara,

SUBJECT: Application for Development Agreement; Live, Work, Play Aiea; Tax
Map Keys: 9-8-013:013 and 015

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR) Land Division distributed or made available a copy of your report pertaining to the subject matter to DLNR Divisions for their review and comments.

At this time, enclosed are comments from (1) Land Division – Oahu District; (2) Commission on Water Resource Management; and (3) Engineering Division. No other comments were received as of our suspense date. Should you have any questions, please feel free to call Supervising Land Agent Steve Molmen at 587-0439. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji
Land Administrator

Enclosure(s)



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 12, 2013

MEMORANDUM

TO: *[Handwritten initials]*

DLNR Agencies:

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division
- Div. of Forestry & Wildlife
- Div. of State Parks
- Commission on Water Resource Management
- Office of Conservation & Coastal Lands
- Land Division – Oahu District
- Historic Preservation

FROM: Russell Y. Tsuji, Land Administrator
 SUBJECT: Application for Development Agreement; Live, Work, Play Aiea
 LOCATION: 98-850 Moanalua Road, Aiea, Oahu; Tax Map Keys: 9-8-013:013 and 015
 APPLICANT: CP Kam Properties LLC

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by December 19, 2013.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Supervising Land Agent Steve Molmen at (808) 587-0439. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: *Barny Cheung*
 Print Name: Barny Cheung
 Date: 11/15/2013

cc: Central Files

NEEL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AHA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 12, 2013

MEMORANDUM

RECEIVED
LAND DIVISION
2013 NOV 22 PM 12:24
2013 NOV 13 PM 2:29
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

From:
TO:

- DLNR Agencies:**
- Div. of Aquatic Resources
 - Div. of Boating & Ocean Recreation
 - Engineering Division
 - Div. of Forestry & Wildlife
 - Div. of State Parks
 - Commission on Water Resource Management
 - Office of Conservation & Coastal Lands
 - Land Division - Oahu District
 - Historic Preservation

To

FROM: Russell Y. Tsuji, Land Administrator
SUBJECT: Application for Development Agreement; Live, Work, Play Aiea
LOCATION: 98-850 Moanalua Road, Aiea, Oahu; Tax Map Keys: 9-8-013:013 and 015
APPLICANT: CP Kam Properties LLC

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by December 19, 2013.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Supervising Land Agent Steve Molmen at (808) 587-0439. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: W. Roy Hardy
 Print Name: W Roy Hardy
 Date: 11/17/13

cc: Central Files



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 12, 2013

MEMORANDUM

TO: FR:

DLNR Agencies:

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division
- Div. of Forestry & Wildlife
- Div. of State Parks
- Commission on Water Resource Management
- Office of Conservation & Coastal Lands
- Land Division – Oahu District
- Historic Preservation

2013 NOV 18 PM 2:51
 DEPT. OF LAND & NATURAL RESOURCES
 STATE OF HAWAII
 RECEIVED
 LAND DIVISION
 13 NOV 13 PM 01:25 ENGINEERING

TO:

FROM: Russell Y. Tsuji, Land Administrator
 SUBJECT: Application for Development Agreement; Live, Work, Play Aiea
 LOCATION: 98-850 Moanalua Road, Aiea, Oahu; Tax Map Keys: 9-8-013:013 and 015
 APPLICANT: CP Kam Properties LLC

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by December 19, 2013.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Supervising Land Agent Steve Molmen at (808) 587-0439. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed:
 Print Name: Copy S. Chang, Chief Engineer
 Date: 11/18/13

cc: Central Files

**DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION**

**LD/SteveMolmen
RE:AieaLiveWorkPlayDevAgreement**

COMMENTS

- () We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zone ____.
- (X) **Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zone D. The National Flood Insurance Program does not have any regulations for developments within Zone D.**
- () Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is ____.
- () Please note that the project must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.

Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:

- () Mr. Mario Siu Li at (808) 768-8098 or Ms. Ardis Shaw-Kim at (808) 768-8296 of the City and County of Honolulu, Department of Planning and Permitting.
 - () Mr. Frank DeMarco at (808) 961-8042 of the County of Hawaii, Department of Public Works.
 - () Ms. Carolyn Cortez at (808) 270-7813 of the County of Maui, Department of Planning.
 - () Mr. Stanford Iwamoto at (808) 241-4884 of the County of Kauai, Department of Public Works.
-
- () The applicant should include water demands and infrastructure required to meet project needs. Please note that projects within State lands requiring water service from the Honolulu Board of Water Supply system will be required to pay a resource development charge, in addition to Water Facilities Charges for transmission and daily storage.
 - () The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update.
 - () Additional Comments: _____

 - () Other: _____

Should you have any questions, please call Ms. Suzie S. Agraan of the Planning Branch at 587-0258.

Signed: 
CARY S. CHANG, CHIEF ENGINEER

Date: 11/10/13

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:
DIR 1630
HWY-PS 2.6154

December 13, 2013

Mr. George I. Atta, FAICP
Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

DEPT. OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU, HI

'13 DEC 17 P 1:24

RTT: 1630

Dear Mr. Atta:

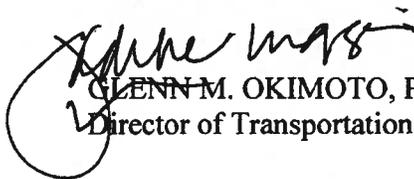
Subject: Application for Development Agreement
Live, Work, Play Aiea Project
Oahu, Aiea, TMK: (1) 9-8-013: 013, 015

Thank you for the opportunity to review the application for a Development Agreement (DA) for the Live, Work, Play Aiea project to secure certain land use regulations for a period of ten years in exchange for which the applicant (CP Kam Properties, LLC) will commit to various public infrastructure and other public benefits that would be beyond the normal scope of the zone change process.

The Department of Transportation (DOT) requests that the DA include a provision that indicates that the applicant shall continue to coordinate and reach an agreement with DOT to provide public transportation improvements along Kamehameha Highway in satisfaction of the project's pro-rated share of regional transportation improvements to mitigate the project's transportation impacts to the State highways, all at no cost to the State.

If you have any questions, please contact Gary Ashikawa, Systems Planning Engineer, Highways Division, Planning Branch at 587-6336. File review 2013-065B.

Very truly yours,


GLENN M. OKIMOTO, Ph.D.
Director of Transportation

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

December 9, 2013

GLENN M. OKIMOTO
DIRECTOR

RECEIVED

'13 DEC 18 P 1:19

DEPT. OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

Deputy Directors
AUDREY HIDANO
FORD N. FUCHIGAMI
RANDY GRUNE
KAYNE URASAKI
IN REPLY REFER TO.

DIR 1007

HWY-PS 2.6122

Mr. Tom Schnell
PBR Hawaii & Associates, Inc.
1001 Bishop Street, Suite 650
Honolulu, Hawaii 96813

Dear Mr. Schnell:

Subject: Consultants Response to the Department of Transportation's letter STP 8.1158, to the Department of Planning and Permitting, City and County of Honolulu, dated April 3, 2013, Zone Change Application 2013/Z-3, Live, Work, Play Aiea Development, Aiea, Oahu, TMK: (1) 9-8-013: 013, 015

Thank you for responding to our subject letter STP 8.1158 regarding Live, Work, Play Aiea, a mixed use development consisting of commercial, office and residential elements located on the former Kam Drive-In site. The nearest State facility in proximity to the project is Kamehameha Highway, State Route 99, located at the south terminus of Kaonohi Street.

The Department of Transportation (DOT) acknowledges that the required transportation mitigation improvements along Kamehameha Highway, including the Pali Momi Street, Kaonohi Street and Hekaha Street intersections, to improve traffic operations from level of service "F" to "E" as discussed in the report by Austin, Tsutsumi & Associates, Inc. (ATA) dated July 10, 2013, may not be feasible for the development to mitigate. Therefore, DOT requests that the Proposed Roadway Improvements in Figure 1 of the ATA report be subdivided and evaluated as smaller projects that each provides beneficial, independent utility and determine which projects are feasible.

Our comment regarding consideration of pedestrians using Kamehameha Highway requires further discussion and recommendations that pedestrian infrastructure improvements be provided at the intersection of Kamehameha Highway and Kaonohi Street to the Honolulu High-Capacity Transit Corridor Project.

If there are any questions, please contact Gary Ashikawa, Systems Planning Engineer, Highways Division, Planning Branch at 587-6336. Reference File Number: 2013-065A.

Very truly yours,


GLENN M. OKIMOTO, Ph.D.
Director of Transportation

c: George Atta, Director, DPP
Austin, Tsutsumi & Associates, Inc.



A'ohē hana nui ka alu'ia
"No Task Is Too Big When Done Together By All"

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

735 Bishop Street, Suite 412 * Honolulu, Hawaii 96813
(808) 524-2249 - FAX (808) 524-6893

KIMA G. BLUNDEG
Executive Director

January 20, 2014

EXECUTIVE BOARD

REGINALD CASTANARES
President
Plumbers & Pipefitters Local 675

Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

DAMIEN T.K. KIM
Vice President
International Brotherhood of
Electrical Workers Local 1188

Re: Developer's Agreement- Live, Work, Play 'Aiea

MARC YAMANE
Secretary Treasurer
Elevator Constructors Local 126

Aloha Mr. George Atta ;

RYDEN VALMOJA
Sergeant At Arms
District Council 60
Painters & Allied Trades Local 1791
Carpenters, Joiners, & Soft Tile
Local 1826
Drywall, Tapers & Finishers
Local 1944
Glaziers, Architectural Metal &
Glassworkers Local 1889

The Hawaii Building and Construction Trades Council, AFL-CIO (HBCTC) is comprised of various construction trade unions statewide, and who's membership of Hawaii's working men and women in the construction industry total an estimated 15,000.

DOUGLAS PULP
Trustee
International Assoc. of Heat & Frost
Insulators & Allied Workers Local 132

Recent studies (Stanford University-2011) indicate a consistently shrinking middle/working class. Projects like Live, Work, Play 'Aiea is critical to the health and well-being of our local skilled workforce and could serve as a major contributor to the health and well-being of our local economy.

JOSEPH O'DONNELL
Trustee
Iron Workers Local 626

We understand and appreciate the intent of the Developer's Agreement currently being considered and the 'significant' value it would bring to the Applicant. As such, we would like to offer the following input for your consideration.

GARY AYCOCK
Boilermakers, Ironship Builders
Local 204

The Indicated purpose of the Developer's Agreement is to give the Applicant and any future Assignee/Developer(s) certain protections and guarantees against unforeseen changes as it relates to restrictive state laws, ordinances, rules, resolutions or policies.

ROHAN KOZUMA
Hawaii Transmitters & Allied
Workers Local 888

In exchange for these benefits, the Applicant makes certain guarantee's to the City and the Community to ensure timely commitments for on-site and off-site infrastructure and other improvements, affordable housing, design standards and other public benefits to support and preserve public health, safety and welfare and to provide assurances that the project will be completed in a timely manner and the public interest will be protected.

VAUGHN CHONG
Roofers, Waterproofers & Allied
Workers United Union of Roofers
Local 221

We note Exhibit E of the proposed Developers Agreement lists the following as "Public Benefits" to the City and to the Community; 1) Affordable Housing, 2) Various Pedestrian and Vehicular Connections and Points of Ingress/Egress, 3) Site Design and Building Architecture, 4) Transportation, 5) Water, 6) Education, 7) Streetscape Improvements, 8) Subsidized Bus/Transit Passes, 9) Park & Bus Transit Facility, 10) A Meeting Room, and 11) Contributions to Non-Profit Organizations.

We believe, however, the Developer's Agreement in its current form is lacking a key component to any Community Benefits Package and that is specifically; Provisions to ensure that a 'Local' and highly-skilled workforce be employed on all phases of the Project as it relates to construction, as well as preference being given to residents of the area for permanent jobs going forward.

The Developer's Agreement resembles a significant amount of work in the construction industry yet there is no mention and/or assurance that the work either contracted or performed by the Applicant or by any of its future Assigns/Developer's will be afforded to a locally hired and highly skilled work force.

As we understand it today, the intent of the Applicant is to develop Phase I only and the fate of the remaining phases are yet to be determined. Such unknowns present our members and our industry with a tremendous amount of uncertainty and potential loss of local job opportunities.

Further, with other projects coming on line and the construction industry appearing to be on a path of overall improvement, such uncertainty and lack of provisions makes it that much more difficult to estimate, plan and train for future labor needs.

Provisions to ensure use of a local and highly-skilled workforce would assist in such planning and would undoubtedly provide exponential social and economic benefit to the community.

We strongly encourage and hereby humbly request that the Administration as well as the City Council include such local and highly-skilled workforce provisions into the Developer's Agreement and further, stand able and willing to work with your Department in framing such language.

Malama Pono,



Kika G. Bukoski

A'ohe hana nui ka alu'ia
"No Task Is Too Big When Done Together By All"

Cc; Honorable Mayor Kirk Caldwell
 The Honolulu City Council

Hawai'i Construction Alliance

RECEIVED

2014 JAN 21 AM 7:39

P.O. Box 178441
Honolulu, HI 96817
(808) 348-8885

DEPT. OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

January 20, 2014

Ka'iulani K. Sodaro, Chair
and Members
Planning Commission
City and County of Honolulu
Department of Planning & Permitting
650 South King Street
Honolulu, Hawai'i 96813

RE: Strong support for Development Agreement Application for Live, Work, Play 'Aiea

Dear Chair Sodaro and Members:

The Hawai'i Construction Alliance would like to express its strong support for the Development Agreement Application for the Live, Work, Play 'Aiea project.

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Hawai'i Masons Union, Local 1 and Local 630; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local 3. Together, the four member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the four basic crafts of Hawai'i's construction industry.

We find that the Live, Work, Play 'Aiea project has been shaped by years of careful planning, visioning, and discussion. The proposed Development Agreement will help to provide assurances to both the City and developer that the project will move forward in an expeditious way to deliver on its numerous community benefits, which include:

- 1,500 new residences priced to meet the needs of local first-time homebuyers, seniors wishing to downsize, or those who want to move out of multi-generational household situations;
- New retail and office spaces, including a new grocery store, to keep more jobs within the 'Aiea and Pearlridge areas;
- The potential for a kama'āina hotel on site to accommodate the growing market of travelers who seek reasonable or extended-stay accommodations outside the Waikiki area; and
- The creation of an estimated 983 jobs during the construction process and 951 permanent jobs upon completion;

Taken together, the residences, retail activities, kama'āina hotel, and public spaces on the Live, Work, Play 'Aiea site represent the building blocks of a thoughtfully planned community.

Mahalo for the opportunity to provide these comments in support of the Live, Work, Play 'Aiea Development Agreement Application. We respectfully request your favorable consideration.

Sincerely,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org

**The Pacific Resource
PARTNERSHIP**



January 21, 2014

George Atta, FAICP, Director
City and County of Honolulu
Department of Planning & Permitting
650 South King Street, 7th Floor
Honolulu, HI 96813

Subject: SUPPORT FOR LIVE, WORK, PLAY 'AIEA

Dear Director Atta:

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP supports the CP Kam Properties LLC Development Agreement Application which is being processed in conjunction with the project's rezoning application from B-2 Community Business District with a height limit of 60 feet to the BMX-3 Community Business Mixed Use District with a height limit of 350 feet.

The development agreement will specify the standards and conditions that will lead development of the property. The agreement assures the developer that the project will be subject to the rules and regulations in effect at the time of approval. The Agreement also spells out the developer's contribution toward funding specific infrastructure improvements and ensures that the project will not have unacceptable impacts on neighboring properties or community infrastructure.

The sustainable, smart growth, transit-ready, mixed-use community is the type of catalytic project the city needs in the urban core, and it will benefit the city and the community in significant ways.

For the reasons mentioned above, we strongly support this application and respectfully request your favorable consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy McMillan". The signature is fluid and cursive, with a large, stylized initial "C" and "M".

Cindy McMillan
Director, Advocacy and Communications

1/17/2014

Reference project file # 2013/GEN-12

To whom it may concern:

I am adamantly against this project. I have attended many of the meetings and feel the public really and truly has no say so at all. Most of the residents from the surrounding neighborhood have voiced valid, legitimate concerns stating the disaster of this growth. If you have spent any time at all in this area driving or maybe even trying to walk, the traffic and congestion is a nightmare. Kaonohi St. has already been widened and a median fence installed to prevent jaywalking, especially to/from the swap meet. How much more traffic can this area tolerate?! How many more stores can this area deal with? Pearlridge, Westridge, Pearl Kai, the list goes on and on.

With this much growth planned and hundreds of new condos, not to mention retail stores, where will the water come from? We seem to already be strapped for water as we are an island.

As a pre-construction homeowner at Lele Pono, we were promised at the time of the sale, in the mid 70's, that our view would NEVER BE COMPROMISED! Well, 3-30 story high rise towers will in fact jeopardize that view. Along with my property value. I would not, as a private citizen, be allowed to even apply for a zoning change. How is it that this development company can come along and change the rules. 60 feet is the height limit. 60 feet! Not 350 feet.

This entire project will be a nightmare. Traffic, noise, congestion, water shortages, breezes being blocked for one of the shorter condos that will be on the side of this project. The list of negatives goes on and on.

The development application says they will construct certain streetscape improvements along Kaonohi St. to Kamshameha Hwy. These streets are at their maximum capacity as it is. How much more can be done to them?

I have read through the Development Agreement and am still totally against this project.

Thank you for your time.

Karl D. Adams
Mary Lou Zingalis-Adams



808-262-1356

1395 Onioni St.
Kailua, HI 96734

DEPARTMENT OF
AND COUNTY OF HONOLULU

14 JAN 17 AM 5:56

RECEIVED

11/17/13

Reference project file # 2013/GEN-12

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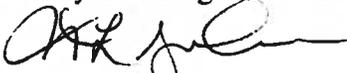
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Thank you for your time.

Karl D. Adams
Mary Lou Zingalie-Adams



808-262-1356

1395 Onioni St.
Kailua, HI 96734

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU, HI

13 NOV 19 12:59

RECEIVED

From: gjayar4@aol.com [mailto:gjayar4@aol.com]
Sent: Monday, December 09, 2013 9:39 PM
To: info@honoluluudpp.org
Subject: 2013/gen-12

In response to project "Live, Work, Play Aiea"-

I currently reside at Lelepono Complex. The traffic now is just too congested!! To even think of having 1500 more cars and 3000 more people (minimum), would already to this problem. In addition, pedestrian traffic would cause more safety concerns to surrounding residences, Pearlridge mall and PEARL RIDGE ELEMENTARY SCHOOL. Within the last 2 months there has been 3 accidents including ONE resulting in a fatality. This area is so saturated with condos and townhouses, having an additional 3000 people in this area will increase the risk of more accidents and deaths, not to add tension and stress.

Along with the project, the aesthetics of this area will be affected with less green and more pollution.

How eco-friendly is that?

Although housing is needed, why the Kam DriveInn parcel? Currently, many residents and vendors use the area as Farmers Market. Other times the area is used to host events as well as parking for the UH

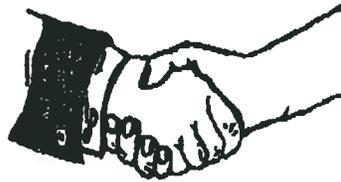
football games. I would settle for a dog park with a mini mall?

Finally, this project would decrease the property value of Lelepono! An oversupply of new housing would undervalue my property. My panoramic view would be compromised, decreasing the value of my unit.

Plz advise me of the hearings to be held. I am against the building of this project.

thank you,
glenn jandoc 7787310

HAWAII OPERATING ENGINEERS INDUSTRY STABILIZATION FUND



Affiliated AFL-CIO
OPEIU - 3 - AFL-CIO (9)

*Uniting our strengths and working together
for a better tomorrow.*

January 17, 2014

Ms. Ka'ulani K. Sodaro, Chair
And Members of the Honolulu Planning Commission
7th Floor, Frank F. Fasi Municipal Building
650 South King Street
Honolulu, Hawaii 96813

RE: Support of Development Agreement for Live, Work, Play Aiea
DPP File No. 2013/GEN-12

My name is John Monis, Executive Director, of the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF), a labor management fund representing 4000 unionized members in the heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

I would like to testify in support of the Development Agreement Application submitted by CP Kam Properties LLC for the Live, Work, Play Aiea rezoning application DPP File No. 2013/Z-3. The application rezones approximately 13.99 acres of land from B-2 Community Business District to BMX-3 Community Business Mixed Use District in Aiea.

Live Work Play Aiea project will be one of the first projects to move forward that incorporates Smart Growth principles and redevelops land for both residential and commercial use located within a half-mile of the City's rail transit station. The success of this project will provide an excellent example of the type of development that is much needed and supported along the transit corridor.

HOEISF supports the Development Agreement application for Live, Work, Play Aiea. Thank you for consideration of this matter.

Sincerely,

John R. Monis
Executive Director
Hawaii Operating Engineers
Industry Stabilization Fund

JM:kr



RECEIVED

To:

'13 DEC 16 P 1:00

December 12, 2013

City and County of Honolulu

Department of Planning and Permitting

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU, HI

Reference Project File Number 2013/GEN-12

I am writing you to say I am very opposed to the plan to change the Zoning code and the attempt to push through the five building Project at 98-850 Moanalua Road, Aiea.

This area 2,200 feet wide, between H1 and Kamehameha Highway may be the most congested area of all Hawaii due to traffic and the bottle neck there. The traffic on Monalul Road is at a standstill starting at 3 PM. To add 1,500 more apartments and I guess 2,250 more cars onto Monalul Road is going to make a bad situation a disaster.

Just in the past 2 months there have been 4 major accidents on Monalul Road within 400 feet or at the Monalula Road and Kaonohi Street corner that I know of due to congestion. At one accident a lady was run over and killed standing on the corner waiting to cross the street, at another a person was critically wounded standing at the bus stop when two cars collided, one of the cars then knocked the man over a railing and down 20 feet into a parking lot. The idea of having more school children cross at this dangerous intersection is a sin. If I was on the Planning Board or the City Counsel and a child is killed at this intersection and I approved this plan I know I would never be able to sleep good again.

I hope you as a group will take a closer look at this and make the safe and correct decision.

Thank You,



Donald & Gunilla Samuel

98-099 Uao Place, Apt 2602

Aiea, HI 96701

Jan 21, 2014

To: City and County of Honolulu

Fax: 808 768 6041

Subject: Rezoning / Development of the Kam Swap Meet Area on Kaonohi Street, Aiea HI

To Whom It May Concern,

I would like to voice my concerns about the rezoning / development of the area where the Kam Swap Meet is currently located.

The proposed zoning change will impact not only the already heavy traffic and congestion, but pedestrian safety as well. Recently, there have been several fatal traffic accidents in the nearby area which should bring attention to what improvements must be done to make the area safer.

I live in the Lele Pono condo complex which already has a high level of noise from normal traffic and emergency vehicle traffic, plus pedestrian noise. The new development will definitely create more unwanted noise in the area. I also foresee negative changes to the beautiful current view that we have of Pearl Harbor, the Waianae mountains, and beyond.

Considering all of the above, I strongly oppose the rezoning and development that is being proposed for the current Kam Swap Meet area on Kaonohi Street. It would be great if the developers could find another location for their new project.

Thank you for your support.

Sincerely,

Yolanda Salondaka

Ph: 808 285 3574

Yuriko J. Sugimura

From: Yuriko J. Sugimura
Sent: Tuesday, January 21, 2014 8:24 AM
To: 'Yuriko J. Sugimura'
Subject: RE: Development Agreement - Live, Work Play Aiea

This testimony is submitted on behalf of the Aiea Neighborhood Board No. 20 and the Aiea Community Association. I am the First Vice-Chair of the Aiea Neighborhood Board and a Director for the Aiea Community Association.

Affordable Housing

- When will the community find out what percentage of units in each of the 5 residential buildings will be affordable.
- Exhibit E provides that 1/2 of the required affordable housing can be built off-site if the land is within one-half mile of the Pearlridge Transit Station. When will that decision be made and where will those units be built.
- Does the developer plan to aggregate the project's affordable units off-site.

Subsidized Bus/Transit Passes

- Since it appears that the only retail tenant that may be leasing 40,000 square feet would be the market, does this mean that only the market's employees are the ones who will get the bus/transit passes.
- If the market leases less than 40,000 square feet and it and other retail tenants in the aggregate are involved in providing this benefit to their employees, please clarify why termination of the benefit may be tied to the expiration of the initial term of the lease(s) since typically small retail spaces do not initial lease terms of 15-20 years – the typical lease term would be 3-5 years.
- Since the 10-year development agreement begins from the date of execution and the benefit to the employees begin within 1 year of the issuance of the (temporary) certificate of occupancy, how long will the benefits last.

Community Meeting Room

- Since the 10-year development agreement begins from the date of execution and this benefit may be constructed in Phase 4, does this mean that the community will enjoy this benefit for less than 10 years.
- If the developer does not extend the time for this benefit, how long can the community expect to have this benefit.
- What is the definition of "community groups" for purposes of this benefit, e.g., registered non-profits, IRS Section 501 organizations.

Jane Sugimura
98-340 Koauka Loop, #112
Aiea, Hawaii 96701

RECEIVED

December 13, 2013

'13 DEC 16 P2:38

Mr. Atta,

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU, HI

In regards to File Number 2013/GEN-12, please do not allow rezoning.

The area's traffic is already congested. What good will happen by allowing 1,500 more cars on the neighborhood roads? Instead of more cars, the area could use pedestrian overpasses at busy intersections.

Recently, there were two horrific accidents near the Moanalua Road/Kaonohi Street intersection. Allowing rezoning will only be adding fuel to the fire. How will the developer's plans to make improvements on Kaonohi Street ease the flow of traffic? There is no more room to widen or add more lanes to Kaonohi Street to accommodate the extra cars. The same is true for Moanalua Road. Also, have you ever been stuck in the traffic during the holidays? What usually takes 10 minutes turns into 20+ minutes.

In addition, does the area have sufficient infrastructure to support the added population? What would happen if the sewage system cannot handle the added load? Will the City & County be responsible for damages to homes if the sewage backs up due to overload?

Please do the right thing and disapprove the rezoning. Mahalo.

Maxine Takashiba
Maxine Takashiba

14 JAN 17 P 2:12
DEPT. OF PLANNING
AND PERMITS
CITY & COUNTY OF HAWAII

WRITTEN TESTIMONY

In regards to Project Live, Work, Play Aiea please do not approve rezoning.

Moanalua Road and Kaonohi Street are the busiest streets in the area. There have already been too many accidents which have resulted in death and bodily harm. We certainly do not need any more of the same. Approving rezoning will bring additional cars to the area, which could threaten public safety and well being. Although CP Kam Properties LLC has indicated that they would make improvements to alleviate traffic, there is insufficient space to widen Kaonohi Street and Moanalua Road.

In addition, does the area have sufficient infrastructure to support the added population? What would happen if the sewage system cannot handle the added load? Will the City & County be responsible for damages to homes if the sewage backs up due to overload?

Please do the right thing and disapprove the rezoning. Mahalo.



Maxine Takashiba

98-099 Uao Place, #2004

Aiea, HI 96701-5005

Masae2010@hotmail.com

(808) 487-0941

DRAFT

RESOLUTION



RESOLUTION

ACCEPTING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU AND CP KAM PROPERTIES, LLC FOR THE LIVE, WORK, PLAY AIEA PROJECT AND AUTHORIZING THE CITY AND COUNTY OF HONOLULU TO ENTER INTO THE SAME.

WHEREAS, CP Kam Properties, LLC (the "Applicant") proposes to develop a mixed use project which will combine residential, commercial, and gathering areas/open spaces on about 13.99 acres of land located at 98-850 Moanalua Road, Oahu, identified as Tax Map Keys 9-8-013: 013 and 015, which is owned by the Applicant, to be known as Live, Work, Play Aiea (the "Project"); and

WHEREAS, the Project requires a zone change application from B-2 Community Business District with a 60-foot height limit to BMX-3 Community Business Mixed Use District with a 350-foot height limit, which is being processed concurrently at City Council as Bill 68 (2013);

WHEREAS, Applicant has also requested a Development Agreement, attached hereto as Exhibit "A", and submitted an application on October 11, 2013 for the same pursuant to Chapter 33, Revised Ordinances of Honolulu (ROH);

WHEREAS, within 30 days of receipt of the application, pursuant to ROH Section 33-1.7(a), the Department of Planning and Permitting (DPP) published notice of the substance of the Development Agreement on November 8, 2013, in a newspaper of general circulation in the City and County of Honolulu and forwarded copies of the application to all affected agencies and neighborhood boards;

WHEREAS, pursuant to ROH Section 33-1.7(a), the notice provided that any affected agency, affected neighborhood board, or interested person could comment on the application within 45 days of the date of the public notice;

WHEREAS, pursuant to ROH Section 33-1.7(b), on January 21, 2014, the Department of Planning and Permitting (DPP) held a public hearing, to afford all interested parties an opportunity to testify on the Development Agreement, which was attended by DPP staff, representatives of the Applicant, and members of the public. Both written and oral testimony was provided and the public hearing was closed; and

WHEREAS, pursuant to ROH Section 33-1.7(b), on January 31, 2014, within 10 days after the close of the public hearing, the DPP, having duly considered all evidence and the review guidelines established in Chapter 33, ROH, completed its report and transmitted its findings and recommendation of approval to the City Council; and



RESOLUTION

WHEREAS, the City Council, having received the findings and recommendation of the DPP on _____, held a public hearing on _____, to consider said application for a Development Agreement; and

WHEREAS, on _____, the City Council, having duly considered all of the evidence and reports and testimony offered at said public hearing; now therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it approves the Development Agreement subject to certain revisions, attached hereto as Exhibit B, and finds that the provisions of the Development Agreement are consistent with:

- (1) The General Plan of the City and County of Honolulu;
- (2) Any applicable development plans; and
- (3) The applicable zoning district designation.

BE IT FURTHER RESOLVED by the City Council that it authorizes the City to enter into the Development Agreement, substantially in the form attached hereto as Exhibit "A", incorporating the certain revisions, attached hereto as Exhibit "B".

BE IT FURTHER RESOLVED that this Resolution shall be void unless the Development Agreement is executed by all parties within 30 days after the effective date of the rezoning ordinance, which is being processed concurrently at City Council as Bill 68 (2013);

BE IT FURTHER RESOLVED that the City shall not execute the Development Agreement until Bill 68 (2013) relating to the zone change has been enacted and become effective; and



RESOLUTION

BE IT FINALLY RESOLVED that the clerk is hereby directed to transmit certified copies of this resolution to the Director, Department of Planning and Permitting, and President, CP Kam Properties, LLC, 120 N. Robertson Boulevard, Los Angeles, California, 90048.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

EXHIBIT A

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made this ____ day of _____, 2013 (the "Effective Date") by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii ("City"), and CP KAM PROPERTIES, LLC, a California limited liability company ("Developer"), pursuant to the authority of Hawaii Revised Statutes ("HRS") Chapter 46, Part VII and Revised Ordinances of Honolulu ("ROH") Chapter 33.

RECITALS:

A. HRS §46-123 authorizes the City to enact an ordinance authorizing the executive branch of the City to enter into a development agreement with any person having a legal or equitable interest in real property, for the development of such property in accordance with HRS Chapter 46, Part VII.

B. ROH Chapter 33 authorizes the executive branch of the City to enter into development agreements and further establishes procedures and requirements for the consideration of development agreements and for the administration of development agreements.

C. Developer is the owner in fee simple of the real property identified on Exhibit A attached hereto (the "Property").

D. Developer or its affiliate plans to develop the Property into a compact, walkable, urban village that integrates homes, stores, restaurants, offices, and public plazas. The intent is to provide a vibrant community where residents can live, work, and play. Developer's mixed-use project, as reflected on the Master Plan which may be modified in accordance with this Agreement, includes residential towers with retail components below some of the towers; additional retail buildings; a building for office, lodging, and/or senior or market housing with retail; and privately maintained ground level open space which is open to the public (as further defined herein, the "Project"). The Project is intended by the Developer to provide and encourage easy connections to neighboring properties and is enhanced by proximity to nearby employment centers and convenient access to multiple forms of transportation including major roads, bus lines, and the planned Pearl Ridge Rail Transit Station, less than a quarter mile away near the intersection of Kaonohi Street and Kamehameha Highway. The Project is further intended by the Developer as an urban "in-fill" smart growth development, complementary to the surrounding land uses.

E. The provisions of this Agreement are consistent with and implement major components of: (1) the City's General Plan; (2) the Primary Urban Center Development Plan; and (3) the Aiea-Pearl City Livable Communities Plan.

F. Developer desires this Agreement with the City to assure that Developer will be able to pursue its Project within the Term (as defined herein), subject to the terms and conditions set forth in this Agreement, including, without limitation, the City's review of the Project under the Existing Land Use Regulations (as defined herein) in accordance with Section II.C.(1).

G. In exchange for certain vested rights, as set forth in Section II.B herein, the Developer has committed to the development of public infrastructure and other improvements and benefits, some of which are in excess of what Developer could otherwise be legally required to provide, as set forth in Section III herein (collectively, the “Public Benefits”).

H. The City has determined that the Project is a development for which a development agreement is appropriate. The development agreement will vest certain rights in the Developer, as set forth in Section II.B herein while assuring the development of the Public Benefits, some of which could not otherwise be obtained, and achieves the purposes for which ROH Chapter 33 was enacted by the City.

I. City and Developer have entered into this Agreement pursuant to HRS Chapter 46, Part VII, and ROH Chapter 33. City and Developer agree that use of this Agreement will reduce the uncertainty in the Project’s planning and development approval process which, in turn, will encourage the efficient utilization of resources and minimize the economic cost to the public; allow for the orderly planning of public facilities and services; and otherwise achieve the purposes and objectives for which HRS Chapter 46, Part VII, and ROH Chapter 33 were enacted.

J. On _____, 2013, the City Council, following a duly noticed public hearing, adopted Resolution No. _____ approving this Agreement and authorizing the execution of this Agreement (“Enacting Resolution”).

K. Pursuant to the Enacting Resolution, the City Council found that this Agreement is consistent with the City’s General Plan, any applicable development plans, and the applicable zoning district designation or designations.

NOW, THEREFORE, pursuant to the authority contained in HRS §46-123 and ROH Chapter 33, and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Developer mutually agree as follows:

I. GENERAL PROVISIONS

A. **City and State Laws on Development Agreements**. This Agreement is subject to applicable laws pertaining to development agreements, specifically HRS Chapter 46, Part VII and ROH Chapter 33 as in effect on the date hereof.

B. **Definitions**. The following terms used in this Agreement, unless the context otherwise requires, shall have the following meanings:

(1) “Agreement” shall mean this Development Agreement, including all Exhibits attached hereto, and, if this Agreement has been partially assigned and assumed as provided in Section IX, then as the context may require, the portion thereof so assigned and assumed.

(2) “City” shall have the meaning assigned in the first paragraph of this Agreement.

(3) “City Council” shall mean the City Council for the City.

- (4) “Cure Period” shall have the meaning given in Section V.A herein.
- (5) “DA Required Provisions” shall have the meaning given in Exhibit E attached hereto.
- (6) “Default Notice” shall have the meaning given in Section V.A. herein.
- (7) “Developer” shall mean CP Kam Properties, LLC, and if this Agreement has been assigned and assumed in whole or in part as provided in Section IX, then as the context may require, the Person who has so assumed this Agreement or a portion thereof.
- (8) “Development” shall mean the improvement of the Property for the purposes of completing and effecting the structures, improvements and facilities comprising the Project, including without limitation, grading, the construction of infrastructure and public facilities related to the Project whether located within or outside the Property, the construction of structures and buildings and the installation of landscaping. “Development” also includes the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement, landscaping or facility after the construction and completion thereof.
- (9) “Department” or “DPP” shall mean the City’s Department of Planning and Permitting.
- (10) “Director” shall mean the Director of the DPP or his or her designated representative.
- (11) “Discretionary Permit” shall mean any permit issuable pursuant to the Existing Land Use Regulations, and shall include, but not be limited to, any permit issuable by the City Council, including special management area use permits; any permit issuable by the Department, including but not limited to conditional use permits, site plan review permits, and subdivision approvals; and any other permit or approval that may be issued or granted as a matter of discretion by any City agency. “Discretionary Permit” does not include grading permits, construction permits, or any permit issuable under the City’s building, plumbing, fire or electrical codes, or any permit not issued pursuant to the Existing Land Use Regulations.
- (12) “Effective Date” shall have the meaning assigned in the first paragraph of this Agreement.
- (13) “Existing Land Use Regulations” shall mean the City laws, ordinances, resolutions, rules, regulations and policies as set forth in Exhibit B attached hereto and in effect on the Effective Date, and the ordinances, resolutions, rules, regulations and policies that implement, interpret or clarify the same. “Existing Land Use Regulations” shall not include any other Chapter of the Revised Ordinances of Honolulu 1990 (ROH), including, but not limited to, regulations such as the building code, plumbing code, electrical code, tax, improvement district, maintenance district, tax increment financing district and community facilities district laws, and the ordinances, resolutions, rules, regulations and policies that implement, interpret or clarify the same.
- (14) “Event of Default” shall have the meaning given in Section V.A herein.

(15) “Future Development Approvals” shall mean any and all Discretionary Permits for the Project that have not yet been granted as of the Effective Date; as of the Effective Date, the only Discretionary Permit that has been granted is the zone change pursuant to Zoning Change Application # 2013Z-3.

(16) “Indemnified Parties” shall have the meaning given in Section VIII herein.

(17) “Master Plan” shall mean the plan set forth in Exhibit C attached hereto, as the same may be revised in accordance with this Agreement.

(18) “Mortgagee” shall mean the holder of any mortgage or the beneficiary of any deed of trust, including an affiliate of Developer, covering all or part of the Property, including the purchaser of all or any portion of the Property at a judicial or non-judicial foreclosure sale and any person or entity who acquires title to all or any part of the Property by deed-in-lieu of foreclosure, and any of their respective heirs, successors, and assigns, provided that such mortgage holder or beneficiary has delivered written notice to the City stating its desire to receive notices of default hereunder pursuant to Section VII.A.(1) herein.

(19) “Ongoing Obligations” shall have the meaning given in Section IV.B.

(20) “Parties” shall mean the City and Developer collectively and “Party” shall mean the City and Developer individually.

(21) “Person” shall mean an individual, partnership, corporation, limited liability company, trust, unincorporated association, joint stock company, governmental entity or other entity or association.

(22) “Phase” shall have the meaning given in Exhibit “E”.

(23) “Project” shall mean development of the Property consistent with the Master Plan, as further defined or modified pursuant to the provisions of this Agreement, and includes but is not limited to all on-site and off-site improvements.

(24) “Property” shall have the meaning assigned in Recital C, provided that if this Agreement has been partially assigned and assumed as provided in Section IX, then as the context may require, it shall mean that portion of the real property described in Exhibit A that is owned by the applicable Developer.

(25) “Public Benefits” shall mean the development of public infrastructure and other improvements and the provision of other benefits, some of which are in excess of what Developer could otherwise be legally required to provide, as set forth in Section III herein and Exhibit E attached hereto.

(26) “Subsequent Land Use Regulation” shall mean any City law, ordinance, resolution, rule, regulation, or policy which alters, amends, revises or otherwise conflicts with Existing Land Use Regulations, including any such law, ordinance, resolution, rule, regulation or policy which is an alternative to an Existing Land Use Regulation or imposes new restrictions, reviews, permits, conditions, exactions or impact fees for the development of the Project, and

including but not limited to any initiative, referendum, moratorium or similar limitation imposed by the City or the electorate, adopted and effective after the Effective Date.

(27) “Term” shall have the meaning assigned in Section I.C herein.

C. **Term**. The term of this Agreement (the “Term”) shall commence on the Effective Date and shall expire upon the ten (10) year anniversary of the Effective Date unless this Agreement is terminated or extended pursuant to Section VI herein.

Notwithstanding the foregoing, the Parties by mutual agreement may extend the Term of this Agreement for a period or periods not to exceed two years per extension, pursuant to Section VI.A herein, if the extension is granted pursuant to ROH Section 33-1.5(a)(6).

D. **Enforcement**. Until its expiration or sooner termination pursuant to its terms, this Agreement, as it may be amended from time to time, shall be enforceable by any Party, or its successors in interest or assigns, notwithstanding any change in any applicable law which alters or amends HRS Chapter 46, Part VII or ROH Chapter 33.

II. DEVELOPMENT AND VESTED RIGHTS

A. **Development of the Project.**

(1) Developer intends for the Development to conform to the Master Plan as set forth on Exhibit C. The Developer may revise, amend, and change elements of the Master Plan, provided, however, that any such revision must be in compliance with the Existing Land Use Regulations and other laws, ordinances, resolutions, rules, regulations and policies that may apply or such other Subsequent Land Use Regulation or portion thereof as Developer may elect, subject to the provisions of subsection B.(4) of this Section II. Without limitation, as provided in such subsection B.(4) prior written consent from the City is required if the Developer wishes to revise, amend or change those Master Plan elements identified on Exhibit C as requiring City approval.

(2) Developer intends for the Development to proceed in accordance with the timeline set forth on Exhibit D attached hereto. Any express timeframes set forth in Exhibit D for the commencement and completion of phases of the Project may be extended at the discretion of the Director at the request of the Developer upon good cause shown, and “good cause” for purposes of this Section shall mean a request based on the Developer’s subjective business judgment. Deadline extensions, however, may not be made past the expiration of this Agreement, as it may be extended, as set forth in Section I.C. The City will not require the provision of further public benefits as a condition to any such deadline extension. Any Phase of the Project may be commenced or completed earlier than shown in Exhibit D and Developer may elect to forego development of one or more Phases in accordance with its sole and subjective business judgment taking into account market conditions and demand and economic considerations.

B. **Subsequent Land Use Regulations and Compliance With Law Generally.** The Developer has the vested right to develop the Project subject to the terms and conditions of this

Agreement and the Existing Land Use Regulations. Any Subsequent Land Use Regulation shall be void as applied to the Property, provided that:

(1) This Section shall not prevent the City from requiring Developer or the Developer's successors and permitted assigns to comply with City laws, ordinances, resolutions, rules, regulations and policies of general applicability and not specific to Developer or the Property enacted subsequent to the Effective Date, if:

(a) such laws, ordinances, resolutions, rules, regulations and policies could have been lawfully applied to the Property at the Effective Date and the City finds it necessary to impose the requirement because a failure to do so would place the residents of the Project or the immediate community, or both, in a condition perilous to the residents' health or safety, or both; or

(b) such laws, ordinances, resolutions, rules, regulations and policies are specifically mandated and required by State or Federal laws and regulations.

(2) Developer further acknowledges that, as of the Effective Date, the City has not reviewed the Project for compliance with Existing Land Use Regulations or any other City laws, ordinances, resolutions, rules, regulations, and policies and that the City makes no warranties or representations with respect to the Project's or Master Plan's compliance with any of the foregoing.

(3) Subject to the provisions of Section IX, Developer shall be solely responsible for the Project's compliance with City laws, ordinances, resolutions, rules, regulations, and policies, and any non-compliance or violation will be addressed by the City, including, but not limited to fines and administrative and civil proceedings, in accordance with the Existing Land Use Regulations (except as set forth in Section II.B.(4) below) or other non-land use City law, ordinance, resolution, rule, regulation, or policy, as appropriate.

(4) The Developer may develop the Project in accordance with a Subsequent Land Use Regulation or portion thereof with prior written notice to the Director. Such notice shall identify the Subsequent Land Use Regulation or portion thereof on which the Developer intends to rely, acknowledge that non-compliance or violation of such Subsequent Land Use Regulation or the applicable portion thereof upon which the Developer has elected to rely will be addressed by the City in accordance with such Subsequent Land Use Regulation, and confirm that the Master Plan elements identified on Exhibit C as requiring City approval for amendment or change will not be amended or changed by virtue of the Developer's reliance on a Subsequent Land Use Regulation or portion thereof unless such City approval is first obtained.

C. Future Development Approvals.

(1) With regard to any applications to the City by Developer for any and all Future Development Approvals, the City shall process such applications and grant such Future Development Approvals in accordance with the Existing Land Use Regulations.

(2) Developer acknowledges that the Existing Land Use Regulations contemplate the issuance of further Discretionary Permits by the City. Nothing in this Agreement shall be

construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of City and any of its officers or officials in complying with or applying Existing Land Use Regulations in its review of the Project.

(3) Subject to the terms of this Agreement, the City shall have the right to impose conditions in connection with Future Development Approvals not inconsistent with the Existing Land Use Regulations; provided, however, that such conditions shall not impose additional dedication requirements, exactions or public improvement or benefit obligations, or require payment of fees in lieu of such dedication requirements, exactions, or public improvement or benefit obligations, in excess of those identified in Section III herein and Exhibit E, attached hereto.

(4) The City shall accept and process application(s) for any and all Future Development Approvals within such time frames as specified within the Existing Land Use Regulations; provided, however, that if the Existing Land Use Regulations do not contain a specific time frame for processing such application(s), the application(s) shall be processed within a reasonable amount of time from the date of receipt of a complete application(s) by the City; and provided further that if, for any reason, the application(s) as submitted by Developer is/are not complete, the City shall promptly request from Developer any information or materials necessary to complete the application(s).

D. **Permitted Fees.** In connection with the Existing Land Use Regulations, the City shall only charge and impose those fees, including, without limitation, any fees relating to the Development or the privilege of developing the Property in accordance with this Agreement and as are set forth in the Existing Land Use Regulations. All other fees, not derived from Existing Land Use Regulations, shall be charged and imposed by the City based on then applicable City non-land use laws, ordinances, resolutions, rules, regulations, and policies.

E. **Permitted Uses.** The City agrees that except as set forth in Section II.A(1) herein Developer may use the Property or any portion thereof during the term of this Agreement for any use which: (1) legally exists on the Property as of the Effective Date; or (2) is otherwise permitted under the Existing Land Use Regulations; or (3) subject to Developer's rights and obligations under Section II.B.(4) above, as permitted by Subsequent Land Use Regulation.

F. **Permitted Density and Size.** The maximum density and size of the buildings on the Property shall be: (1) as provided in the Existing Land Use Regulations; or (2) subject to Developer's rights and obligations under Section II.B.(4) above, as permitted by Subsequent Land Use Regulation; provided that in any event no more than 1,500 homes may be constructed.

III. PUBLIC BENEFITS

The Developer shall, subject to the terms and conditions of this Agreement, complete or provide the Public Benefits as and when required in connection with the development of the applicable Phase and in accordance with the timing within the applicable Phase as set forth in Exhibit E. The City agrees that it will cooperate in good faith with the Developer in fulfilling the Developer's obligations but the Developer shall be solely responsible, unless otherwise stated herein, for all costs, fees and expenses related to the completion or provision of the Public

Benefits, including, but not limited to all design, engineering, and construction costs, fees and expenses.

IV. ANNUAL REPORTING

A. **Report.** On an annual basis, the Developer shall submit a written status report to the City documenting its satisfaction of, and/or describing its progress towards completing or providing, the Public Benefits. The written status report shall address each Public Benefit and the current status with respect to its completion or provision.

B. **Annually.** The written status report shall be submitted to the City annually on or before the anniversary of the Effective Date and shall continue to be submitted annually until such time as this Agreement has expired or is sooner terminated; provided that, after this Agreement has expired or has been terminated, the Developer shall continue to report annually the status of compliance with the obligations under the headings “Subsidized bus/transit passes” and “Contribution to non-profit organizations” in Exhibit E attached hereto (the “Ongoing Obligations”), until such time as the Ongoing Obligations no longer apply; provided further that the reporting for the Ongoing Obligations may be imposed on the master association if provided in the CCRs as a DA Required Provision (all as defined in Exhibit E).

V. AGREEMENT COMPLIANCE; REMEDIES

A. **Periodic Review.** On or before the yearly anniversary of the Effective Date, or at any time that the Department has reason to believe this Agreement is being or has been violated, the Department shall review this Agreement and the Project to determine Developer’s compliance with the terms and conditions of this Agreement. If the Department determines that Developer has committed a material breach of the terms or conditions of this Agreement, including, but not limited to, a failure to complete or provide Public Benefits as set forth in the provisions of Section III hereof (an “Event of Default”), the following procedure shall be followed:

(1) Within fifteen (15) days after the Department determines that an Event of Default has occurred, the Department shall provide written notice to the Developer (the “Default Notice”), which Default Notice shall: (a) set forth the specific breach found and the evidence supporting the finding, and (b) provide a reasonable period of time, as determined by the City, within which the Developer may cure the Event of Default (the “Cure Period”). The Cure Period shall be expressed as a specific number of days, but in no event less than one hundred twenty (120) days, after: (i) the Developer’s receipt of the Default Notice if the Developer does not make a timely election to rebut the determination as provided in Section V.A.(2), or (ii) a final, non-appealable determination or settlement of the contested case hearing if the Developer does make a timely election to rebut the determination.

(2) Developer may request a hearing before the Director or the Director’s designee to rebut the determination of the Department. If a hearing is requested by Developer, the Department shall hold a hearing on the matter in accordance with the procedures set forth in HRS Chapter 91 relating to contested case hearings.

(3) Alternatively, if the Department determines that an amendment to this Agreement would meet its concerns with respect to the Event of Default, the Department shall provide Developer with a reasonable period of time to consent to such an amendment.

B. City Council Notification of Action.

(1) The Department shall notify the City Council if: (a) the Developer fails to cure the Event of Default within the Cure Period, or (b) the Developer consents to an amendment to this Agreement, as set forth in Section V.A.(3) herein.

(2) Upon receipt of the notification described above, the City Council:

(a) May, if the Developer failed to cure the Event of Default within the Cure Period, terminate this Agreement pursuant to and in accordance with Section VI.B or take no action.

(b) May, if the Developer consents to an amendment as set forth in Section V.A.(3) hereof, terminate this Agreement pursuant to and in accordance with Section VI.B or amend this Agreement or take no action.

C. Default of Developer/Building Permits. If the Department determines that an Event of Default has occurred, as set forth above, and has given Developer the Default Notice, the City may, in its sole discretion, refuse to accept building permit applications, refuse to issue building permits, or refuse to issue temporary or final certificates of occupancy for any structures located within the Property until the earlier to occur of: (1) Developer successfully rebutting the Department's finding that an Event of Default has occurred as set forth in Section V.A.(2) hereof, (2) Developer curing the breach prior to a termination of this Agreement, or (3) the Parties amending this Agreement as set forth in Section V.B.(2)(b) hereof.

D. Effect of Partial Assignment. Notwithstanding any provision in this Section V or Section VI to the contrary, if this Agreement has been partially assigned and assumed as provided in Section IX, the consequences of any Event of Default by a Developer holding title to only a portion of the Property (whether an amendment to or termination of this Agreement or refusal of the City to accept applications for or issue building permits or to issue certificates of occupancy) shall apply only to the Developer in default and to this Agreement only insofar as it applies to the portion of the Property owned by the defaulting Developer, and this Agreement shall remain in full force and effect and unmodified as to the other non-defaulting Developers and portions of the Property held by such non-defaulting Developers.

**VI. EXPIRATION, TERMINATION, AMENDMENT,
AND MINOR MODIFICATIONS OF AGREEMENT**

A. Amendment or Termination. This Agreement may be amended or terminated, in whole or in part, by mutual consent of the Parties to this Agreement, or their successors in interest; provided any such amendment or termination shall be approved by resolution of the City Council and provided that, if this Agreement has been partially assigned and assumed as provided in Section IX, this Agreement may be amended or terminated, insofar as such amendment or

termination applies to only to a portion of this Agreement, without the consent of the Developers whose interests in this Agreement are not affected. Additionally, the City Council will hold a public hearing for any proposed termination and any proposed amendment which the City Council determines would substantially alter this Agreement.

B. **Unilateral Termination Upon Event of Default.** This Agreement (or the applicable portion thereof as provided in Section V.D. herein), may be terminated in the sole discretion of the City Council upon receipt of a notice from the Department that the Developer has failed to cure an Event of Default within the Cure Period or that the Developer has consented to an amendment to this Agreement with respect to an Event of Default as set forth in Section V.B. hereof; provided such termination shall be approved by resolution of the City Council and a public hearing shall be held by the City Council prior to such termination.

C. **Expiration or Sooner Termination.** Following the expiration of the Term including any extension thereof, or if sooner terminated in whole or in part (and if in part, then subject to the provisions of Sections V.D and VI.A): (1) this Agreement shall have no force and effect and all terms and conditions of this Agreement, including the Existing Land Use Regulations, shall no longer be vested hereby with respect to the Property, (2) the Property shall be subject to all City laws, ordinances, resolutions, rules, regulations, and policies applicable to the Property and then in effect, and (3) City shall no longer be limited by this Agreement in making any changes or modifications to City laws, ordinances, resolutions, rules, regulations, and policies applicable to the Property. Notwithstanding the foregoing, the Developer's indemnification obligations, as set forth in Section VIII herein, the Developer's reporting obligations with respect to Ongoing Obligations as provided in Section IV.B. herein, and the City's ability to refuse to accept building permit applications, refuse to issue building permits, or refuse to issue temporary or final certificates of occupancy, as set forth in Section V.C herein but subject to the provisions of Section V.D. herein, shall survive the expiration or sooner termination of this Agreement.

D. **Effect of Expiration or Sooner Termination.**

(1) **Completed Improvements.** If this Agreement expires or is terminated following any Event of Default or for any other reason, such expiration or termination shall not cause any building or improvement within the Property which has been constructed pursuant to a building permit issued by the City and has been issued a temporary or final certificate of occupancy as of the date of expiration or termination of this Agreement, to be considered retroactively subject to or constructed in violation of any Subsequent Land Use Regulation notwithstanding that such Subsequent Land Use Regulation may have been in existence prior to the issuance of the building permit for such building or improvement.

(2) **Incomplete Improvements.** Provided no Default Notice has been issued, the expiration or consensual termination of this Agreement shall not prevent Developer from completing construction of, or obtaining a certificate of occupancy for, any building or other improvement authorized pursuant to a building permit previously issued by the City if such building is under construction or completed at the time of expiration or consensual termination of this Agreement, it being understood that Developer must also provide the applicable Public Benefits required in connection with the construction of such building or improvement in accordance with this Agreement. If a Default Notice has been issued, then the provisions of

Article V (including any applicable Cure Period) shall continue to apply to the Event of Default beyond the expiration or consensual termination of this Agreement. If Developer either cures the Event of Default within such Cure Period or successfully rebuts the determination of an Event of Default, then Developer may complete construction of, and obtain a certificate of occupancy for, any building or other improvement authorized pursuant to a building permit previously issued by the City if such building was under construction or completed at the time of expiration or consensual termination of this Agreement. If a required Public Benefit is not completed or provided as required herein, the City may take any actions as allowed by this Agreement. This section is subject to the provisions of Section V.D. herein.

E. **Minor Modifications.** Clarifications or modifications to this Agreement may be appropriate with respect to minor and non-substantive details of the Master Plan, the Project or the Public Benefits. If and when, from time to time during the term of this Agreement, the City and Developer agree that such clarifications or modifications of this Agreement, including any Exhibits, are necessary or appropriate and they are of a minor and non-substantive nature, the parties shall effectuate such clarifications through operating memoranda approved in writing by the City and Developer which, after execution, shall be attached hereto and become a part of this Agreement, and the same may be further clarified from time to time as necessary with future written approval by the City and Developer. Operating memoranda are not intended to constitute an amendment to this Agreement. The Director is hereby authorized to execute any operating memoranda hereunder without further action by City Council.

VII. MORTGAGEE PROTECTION AND ESTOPPEL CERTIFICATES

A. **Encumbrances and Mortgage Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any mortgage. Developer represents and warrants that, as of the Effective Date, there are no liens placed upon the Property, or any portion thereof.

This Agreement shall not prevent or limit Developer, at Developer's sole discretion, or Developer's successors-in-interest of all or any portion of the Property, from encumbering the Property or any portion thereof or any improvement thereon in any manner whatsoever by any mortgage, deed of trust or other security device securing financing with respect to the Property. The City acknowledges that the lender(s) providing such financing may require certain clarifications or amendments and agrees, provided such clarification or amendment is consistent with the intent and purposes of this Agreement, upon request, from time to time, to meet with Developer and representatives of such lender(s) to negotiate in good faith any such request for clarification or amendment. Any Mortgagee shall be entitled to the following rights and privileges:

(1) A Mortgagee who has submitted to the City a written request to receive copies of notices to the Developer, such request having been made in the manner specified herein for giving notices, shall be entitled to receive a copy of each notice given to the Developer by the City under this Agreement, including but not limited to, any notice of default by Developer in the performance of Developer's obligations under this Agreement, such copy of the notice to be provided to Mortgagee concurrently with the giving of such notice to the Developer.

(2) The Mortgagee shall have the right, but not the obligation, to cure an Event of Default during the cure period allowed Developer under this Agreement.

(3) Any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of foreclosure, shall take the Property or portion thereof subject to the terms of this Agreement; provided, however, that in no event shall such Mortgagee be held liable for any default or monetary obligation of Developer that arises prior to acquisition of title to the Property by such Mortgagee, unless such Mortgagee desires to continue development of the Property consistent with this Agreement and the Existing Land Use Regulations, in which case the Mortgagee shall assume the obligations of the Developer pursuant to an assignment and assumption agreement substantially in the form of Exhibit F attached hereto.

B. **Estoppel Certificates.** City agrees, from time to time, within twenty (20) business days after request of Developer, to execute and deliver to Developer, or Developer's designee, an estoppel certificate requested and drafted by Developer, stating that this Agreement is in full force and effect, that Developer is not in default hereunder (or specifying in detail the nature of Developer's default), the expiration date of this Agreement and such other matters pertaining to this Agreement as may be reasonably requested by Developer, provided that the foregoing are true and accurate statements of fact.

VIII. INDEMNIFICATION

A. **Indemnification.** Except as otherwise set forth below in Sections VIII.B. and C., Developer and its successors-in-interest and assigns, hereby agree to defend (with counsel selected by the Developer but reasonably acceptable to the City), indemnify, and hold harmless the City and its elected and appointed officials and employees (including contract employees) (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") from any reasonable costs (including, without limitation, all reasonable costs, expenses, attorneys' fees and expert witness fees), liability, loss or damage they may suffer as a result of or in connection with any litigation, claim, action, legal proceeding or demand brought by third parties unrelated and unaffiliated with any Indemnified Party against any of the Indemnified Parties (collectively a "Legal Proceeding") directly resulting or arising from, the following: (i) this Agreement; (ii) the statutes, ordinances, and laws that enable the City to enter into this Agreement but only if included in a Legal Proceeding specifically identifying and challenging this Agreement and only for so long as this Agreement continues to be challenged in such Legal Proceeding (the Developer having no obligation to defend, indemnify or hold harmless the Indemnified Parties for any amounts that are incurred by the Indemnified Parties from and after the date such Legal Proceeding ceases to specifically include a challenge to this Agreement) (a "Statutory Challenge"); and (iii) the actions taken by the Indemnified Parties in authorizing this Agreement (each cost, liability, loss or damage as described in this Section VIII.A., a "Claim").

B. **No Indemnification for Willful Misconduct.** Nothing in this indemnification provision shall be construed to mean that Developer shall defend, indemnify, and hold harmless any Indemnified Party for any Indemnified Party's willful misconduct.

C. **Costs Not Included.** This indemnity does not include any amounts attributable to the time or efforts of employees of the City or any of the other Indemnified Parties in defending the Claim, nor to the fees and costs of any counsel that may be directly engaged by the City or any of the other Indemnified Parties to represent their respective interests.

D. **Notice of Claim.** The City shall promptly notify Developer of any such indemnified Claim, and the City shall, and shall cause the other Indemnified Parties to, cooperate in the defense of the Claim.

E. **Claims Involving Multiple Development Agreements.** If and only for so long as any Legal Proceeding specifically identifies and challenges this Agreement and one or more other development agreements relating to projects that are unrelated to the Project, the Developer's share of the indemnified amounts under this Agreement shall be a fair and equitable amount of the applicable Claim taking into account such matters as the relative values of the projects challenged (the projects with larger values bearing a proportionately larger amount of the Claim) and the extent to which the Legal Proceeding involves challenges particular to one development agreement but not the other development agreements. Promptly after notice to the Developer by the Indemnified Parties of an indemnified Claim that specifies multiple development agreements or projects, the developers will seek to establish a procedure whereby: (1) the Developer has the right to control the defense of the Indemnified Parties, (2) the share of all indemnified amounts payable by Developer under this Agreement are paid directly by the Developer to the Persons to whom such amount is payable, and (3) the other developer(s) of the other projects agree to pay their respective shares of the remaining amount that is not included within the indemnified amounts under this Agreement. This Subsection VIII.E is inapplicable to projects that are being developed by developers who are related or affiliated with the Developer or its successors-in-interest and assigns. Failure by the developers to reach an agreement with regard to such procedure shall not affect the validity, effectiveness and enforceability of this Agreement.

F. **Litigation Strategy.** Developer shall have the sole right to determine the litigation strategy in its defense of Claims resulting, or arising from, this Agreement (as opposed to Claims resulting, or arising from, a Statutory Challenge); Developer shall keep the City timely informed of Developer's litigation strategy; and the City shall cooperate in effectuating such litigation strategy. The Parties will cooperate in determining and effectuating the litigation strategy for Claims resulting, or arising from, a Statutory Challenge.

G. **Right to Cancel Agreement.** At any time during the pendency of a Claim, the Developer shall have the right to cancel this Agreement, subject only to approval by the City Council in accordance with ROH Section 33-1.9. The City shall promptly initiate such action as is necessary to schedule any public hearing by the City Council required for it to consider and take action on Developer's request for cancellation of this Agreement. The Developer shall have no obligation to defend the Indemnified Parties from and after the date of the Developer's written request for cancellation of this Agreement and Developer shall only have the obligation to indemnify and hold harmless the Indemnified Parties for liabilities under this Section VIII that accrued prior to the date of Developer's written request for cancellation of this Agreement.

IX. ASSIGNMENT

A. Assignment of Property and Agreement.

(1) Developer shall have the right to sell, ground lease, transfer, or assign all or any portion of the Property which it may own and to assign the rights under this Agreement to any other person or entity at any time during the term of this Agreement. Any such sale, ground lease, transfer, or assignment shall be made in writing and, further, subject to Section VII.A.(3), any sale, transfer or assignment, shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement as applicable to the portion of the Property so transferred (including the obligation to provide any Public Benefit located on or allocated to the portion of the Property or Project so transferred as set forth in Exhibit F) pursuant to an assignment and assumption agreement substantially in the form of Exhibit F attached hereto which clearly identifies the rights, duties and obligations so assigned and assumed. Furthermore, no sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Property. Any written assignment and assumption agreement shall be recorded in the Bureau of Conveyances of the State of Hawaii.

B. Release Upon Assignment. Upon the delegation of all duties and obligations and the sale, transfer, or assignment of all or any portion of the Property, the transferring Developer shall be released from its obligations under this Agreement with respect to the Property or portion thereof so transferred arising subsequent to the effective date of such transfer if the transferee has agreed in writing to be subject to all of the provisions applicable to the portion of the Property so transferred pursuant to an assignment and assumption agreement substantially in the form of Exhibit F attached hereto.

Upon any such transfer of any portion of the Property and the express assumption of the transferring Developer's obligations under this Agreement by such transferee, the City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. Any such transferee shall be entitled to the benefits of this Agreement, and shall be subject to the obligations of this Agreement, applicable to the portion of the Property transferred. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way any other Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. Any amendment to this Agreement between the City and a transferee shall only affect the portion of the Property owned by such transferee.

X. MISCELLANEOUS

A. Waiver. The failure of any Party to this Agreement to insist upon strict performance of any of the covenants or conditions herein, or to exercise any option herein conferred, or the waiver of a breach, shall not be deemed a waiver of such Party's right to demand strict compliance by such other Party in the future, nor shall it be deemed a relinquishment or waiver for the future of any rights, covenants, conditions or options under this Agreement.

- B. **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 any provision thereof against any Party as drafter.
- C. **No Partnership.** Nothing contained in this Agreement is intended, nor shall be construed to establish an agency relationship, a partnership or a joint venture between the Parties.
- D. **Project Is A Private Undertaking.** It is agreed between the Parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions and in the delivery of Public Benefits as set forth herein.
- E. **Applicable Law.** This Agreement shall be governed by the laws of the State of Hawaii both as to interpretation and performance.
- F. **Force Majeure.** If either Party shall be delayed or hindered in or prevented from the performance of any duties, obligations or conditions provided for and required under this Agreement by reason of strikes or other disturbances, lockouts, labor troubles, riots, insurrection, war or civil disturbance, fire or earthquake, tidal wave, acts of God, the elements, government legislation, regulation or controls, or economic controls, making it impossible to complete any duties, obligations, or conditions provided for and required under this Agreement, then performance of such duty, obligation, or condition shall be excused for the period of the delay and the period for the performance of any such duty, obligation, or condition shall be extended for a period equivalent to the period of such delay; provided that Developer or the City shall notify the other in writing of any force majeure event upon which Developer or the City intends to rely upon for an extension of the period for the performance of any such duty, obligation, or condition, and shall also notify the other in writing of the date on which any such force majeure event ended.
- G. **Computation of Periods.** All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays; provided, however, that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.
- H. **Severability.** If any provision 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 any provisions thereof to other Persons or circumstances shall not be thereby affected.
- I. **Entire Agreement.** This Agreement embodies the entire agreement of the Parties and supersedes any other agreements or understandings with respect to the subject matter hereof that may ever have existed between the Parties.
- J. **Section and Paragraph Headings.** Section and paragraph headings are inserted only for convenience and reference and in no way define, limit, extend or describe the scope of intent of this Agreement, or any provisions thereof.

K. **Administrative Act.** The approval of this Agreement shall, under HRS §46-131, be deemed an administrative act of the City.

L. **Binding Effect.** Except as provided to the contrary herein, the terms and conditions of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to and assigns of the Parties, and the covenants contained herein shall run with the land.

M. **Entities Obligated.** Except as provided to the contrary herein, individual lot and condominium purchasers or builders, Mortgagees or beneficiaries shall not have the obligation or duty under this Agreement to perform the obligations of Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance.

N. **Partial Release.** Any terms and restrictions of this Agreement which are satisfied as of the annual review shall be released upon request of Developer and delivery of a proposed release to the Department, which release may, if applicable, provide for the Department's acknowledgement that all Public Benefits have been provided, except for the Ongoing Obligations. Provided the Department is in agreement that such terms and restrictions are satisfied, it shall execute the release which shall be in recordable form that Developer may record in the Bureau of Conveyances of the State of Hawaii.

O. **Compliance Certificate.** If, during the annual review conducted pursuant to Section V.A. hereof, the Department finds compliance by Developer with the terms of this Agreement, upon request of Developer and delivery of a proposed certificate of compliance, the Department shall issue a certificate of compliance in recordable form that Developer may record in the Bureau of Conveyances of the State of Hawaii.

P. **Administration of this Agreement.** The Department shall be responsible for the overall administration of this Agreement.

Q. **Recordation.** The City shall file or record copies of this Agreement and any amendment hereto in the Bureau of Conveyances of the State of Hawaii, within twenty (20) days after the execution of this Agreement, or twenty (20) days after any amendment hereto.

R. **Incorporation of Exhibits.** Each of the Exhibits attached hereto is incorporated herein by this reference and made a part hereof for all purposes.

S. **Notices.** Unless otherwise provided herein, any notice to either Party given under this Agreement shall be in writing and given by delivering the same to such Party in person, or by sending the same by registered, certified or express mail, return receipt requested, first class postage prepaid, to the Party's address indicated below, or as otherwise provided through written notice to the other Party:

If to City:

The City and County of Honolulu
Department of Planning and Permitting
Attn: Director
650 South King Street

Honolulu, Hawaii 96813

With a copy to:

Office of the Corporation Counsel
Attn: Corporation Counsel
530 South King Street, Room 110
Honolulu, HI 96813

If to Developer:

CP Kam Properties, LLC
120 North Robertson Blvd.
Los Angeles, CA 90048-3115
Attn: John Manavian

And a copy to:

CP Kam Properties, LLC
120 North Robertson Blvd.
Los Angeles, CA 90048-3115
Attn: General Counsel

And to:

Deborah Macer Chun, Esq.
745 Fort Street, Suite 900
Topa Financial Center, Fort Street Tower
Honolulu, HI 96813

IN WITNESS WHEREOF, the Parties have each executed this Agreement on the date first written above.

“City”

City and County of Honolulu

By: _____
KIRK CALDWELL
Mayor

Approved as to Form and Legality

By: _____
Deputy Corporation Counsel
City and County of Honolulu

“Developer”

CP Kam Properties, LLC, a Delaware limited liability company

By: California Drive-In Theatres, Inc.,
a California corporation
Its: Manager

By: _____
Name:
Title:

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

On this the ___ day of _____, 2013, before me personally
appeared **KIRK CALDWELL** personally known to me **-OR-** proved to me on the
basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person(s)
executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the
capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Development Agreement

_____ Doc. Date: _____

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

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

On this the ___ day of _____, 2013, before me personally
appeared _____ personally known to me -OR- proved to
Name of Signer
me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and deed of such person(s), and if
applicable in the capacities shown, having been duly authorized to execute such instrument in such
capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)	
Document Identification or Description: <u>Development Agreement</u>	
_____ Doc. Date: _____	
No. of Pages: _____	Jurisdiction: _____ Circuit (in which notarial act is performed)
Signature of Notary _____	Date of Certificate _____
Printed Name of Notary _____	(Official Stamp or Seal)

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

On this the ___ day of _____, 2013, before me personally
appeared _____ personally known to me -OR- proved to
Name of Signer
me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and deed of such person(s), and if
applicable in the capacities shown, having been duly authorized to execute such instrument in such
capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)	
Document Identification or Description: <u>Development Agreement</u>	
_____ Doc. Date: _____	
No. of Pages: _____	Jurisdiction: _____ Circuit (in which notarial act is performed)
Signature of Notary _____	Date of Certificate _____
Printed Name of Notary _____	(Official Stamp or Seal)

EXHIBIT A

PROPERTY DESCRIPTION

PARCEL I

ALL OF THAT PARCEL OF LAND (BEING PORTION(S) OF THE LAND(S) DESCRIBED IN AN COVERED BY ROYAL PATENT NUMBER 1963, LAND COMMISSION AWARD NUMBER 5524, APANA 6 TO L. KONIA) SITUATE, LYING AND BEING AT KALAUAO, DISTRICT OF EWA, CITY AND COUNTY OF HONOLULU, STATE OF HAWAII, AS DELINEATED ON BISHOP ESTATE MAPS 2354 AND 6149C, AND THUS BOUNDED AND DESCRIBED:

BEGINNING AT THE SOUTHEAST CORNER OF THIS PARCEL OF LAND ON THE NORTHWEST SIDE OF KAONOHI STREET, THE COORDINATES OF WHICH REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "SALT LAKE" BEING 7,868.61 FEET NORTH AND 12,271.88 FEET WEST, AND RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

- | | | | | | |
|----|------|-----|-----|--------|--|
| 1. | 95° | 56' | 00" | 619.42 | FEET ALONG REMAINDER OF R.P. 1963, L.C. AW. 5524, APANA 6 TO L. KONIA; |
| 2. | 210° | 10' | 00" | 929.00 | FEET ALONG THE LAND OF WAIMALU; |
| 3. | 293° | 08' | 00" | 842.98 | FEET ALONG THE SOUTH SIDE OF MOANALUA ROAD; |
| | | | | | THENCE ALONG THE SOUTHWEST SIDE OF MOANALUA ROAD, ON A CURVE TO THE RIGHT WITH A RADIUS OF 40.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING; |
| 4. | 349° | 07' | 30" | 66.32 | FEET; |
| 5. | 45° | 07' | 00" | 90.24 | FEET ALONG THE NORTHWEST SIDE OF KAONOHI STREET; |
| | | | | | THENCE ALONG THE NORTHWEST SIDE OF KAONOHI STREET, ON A CURVE TO THE RIGHT WITH A RADIUS OF 1,000.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING: |
| 6. | 50° | 39' | 00" | 192.85 | FEET; |
| 7. | 56° | 11' | 00" | 512.00 | FEET ALONG THE NORTHWEST SIDE OF KAONOHI STREET TO THE POINT OF |

BEGINNING AND CONTAINING AN AREA OF
13.980 ACRES, MORE OR LESS.

BEING THE LAND CONVEYED BY THE TRUSTEES OF THE ESTATE OF BERNICE
PAUAHI BISHOP TO THE ENTITIES AS NOTED BELOW:

1. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII ("BUREAU") AS DOCUMENT NO. 2007-115303 IN FAVOR OF PEARL CITY CONSOLIDATED, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 33.92% INTEREST, AS GRANTEE.
2. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU AS DOCUMENT NO. 2007-115304 IN FAVOR OF PEARL CITY – CP PROPERTIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 34.04% INTEREST, AS GRANTEE.
3. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU AS DOCUMENT NO. 2007-115305 IN FAVOR OF PEARL CITY – DOME, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 4.33% INTEREST, AS GRANTEE.
4. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU AS DOCUMENT NO. 2007-115306 IN FAVOR OF BORDWEST, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 25.00% INTEREST, AS GRANTEE.
5. TRUSTEE'S LIMITED WARRANTY DEED RECORDED JUNE 27, 2007, IN THE BUREAU AS DOCUMENT NO. 2007-115307 IN FAVOR OF PEARL CITY KDI INVESTORS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 2.71% INTEREST, AS GRANTEE.

NOTE:

AFFIDAVIT RECORDED APRIL 12, 2010 IN THE BUREAU AS DOCUMENT NO. 2010-0478183 DISCLOSES THE FOLLOWING:

THE MERGER OF "BORDWEST, LLC", A CALIFORNIA LIMITED LIABILITY COMPANY, WITH AND INTO "CP KAM PROPERTIES, LLC", A DELAWARE LIMITED LIABILITY COMPANY.

THE MERGER OF "PEARL CITY KDI INVESTORS, LLC", A DELAWARE LIMITED LIABILITY COMPANY, WITH AND INTO "CP KAM PROPERTIES, LLC", A DELAWARE LIMITED LIABILITY COMPANY.

THE MERGER OF "PEARL CITY - DOME, LLC", A DELAWARE LIMITED LIABILITY COMPANY, WITH AND INTO "CP KAM PROPERTIES, LLC", A DELAWARE LIMITED LIABILITY COMPANY.

Exhibit "A"

EXHIBIT B

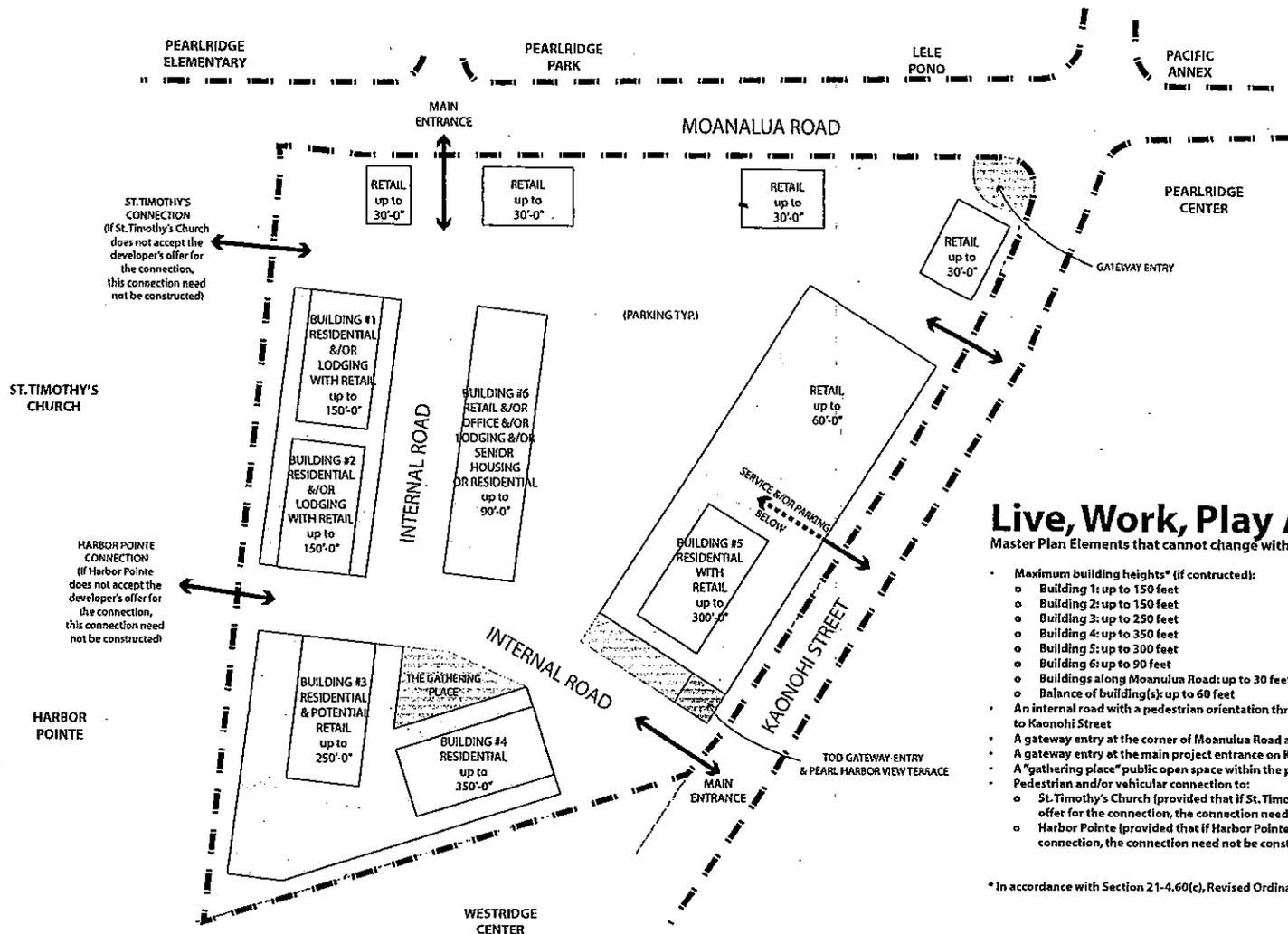
EXISTING LAND USE REGULATIONS

The following, and all laws, ordinances, resolutions, rules, regulations and policies pertaining thereto:

- Revised Ordinances of Honolulu 1990 (ROH), Chapter 21 Land Use Ordinance
- The official Special Management Area as established pursuant to ROH Chapter 25, and shown on the Special Management Area maps in effect on the Effective Date.
- The Shoreline Setback line as established pursuant to ROH Section 23-1.4(a) and in effect on the Effective Date.
- ROH, Chapter 22, Article 7, Parks and Playgrounds.
- Resolution 09-241 of the City Council of the City and County of Honolulu and the affordable housing rules adopted by the Department of Planning and Permitting (which is made applicable to the Project as a Public Benefit pursuant and subject to the terms and conditions of Exhibit E).

EXHIBIT C
MASTER PLAN

Exhibit "C"



Live, Work, Play Aiea

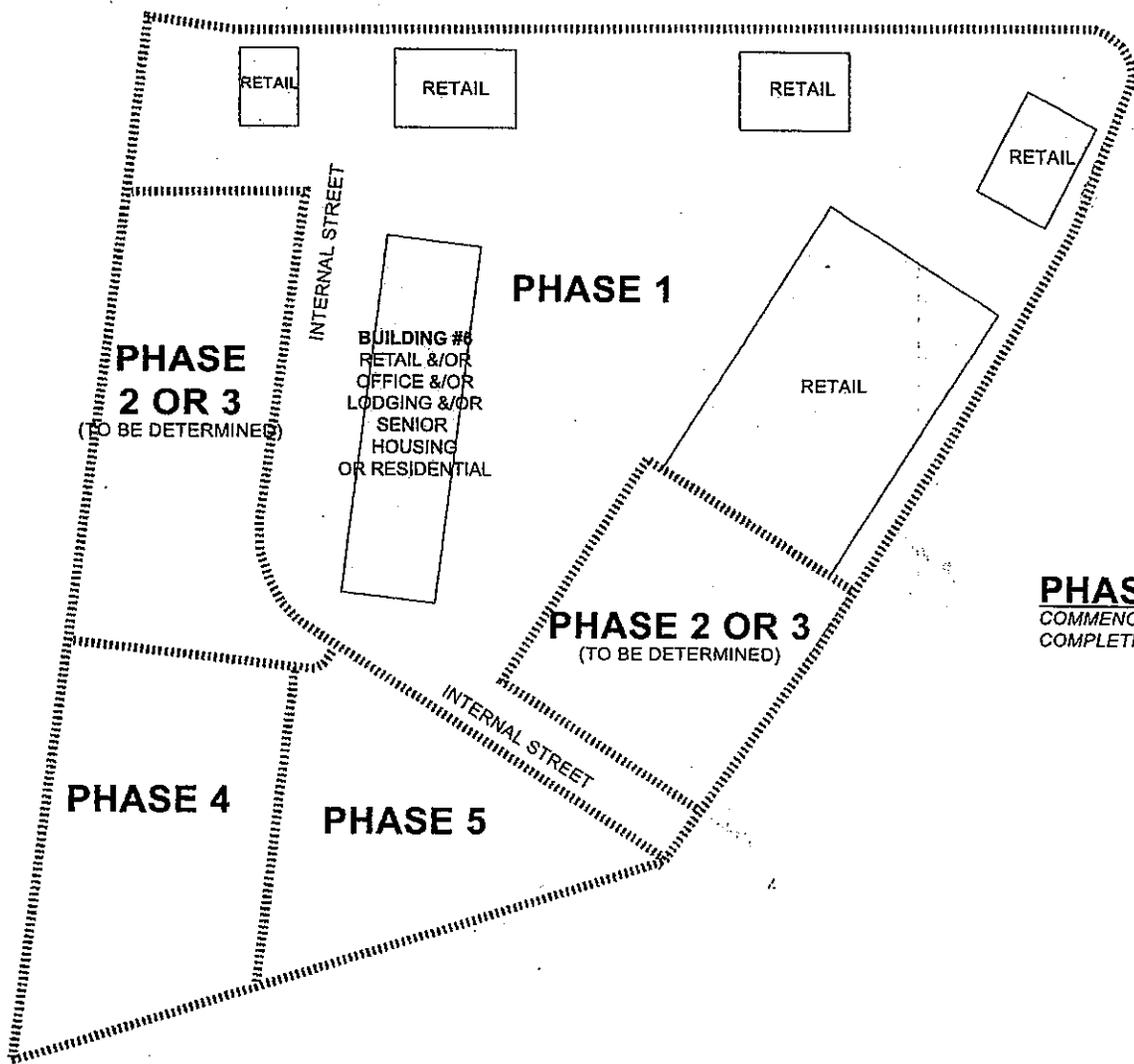
Master Plan Elements that cannot change without City Approval

- Maximum building heights* (if constructed):
 - o Building 1: up to 150 feet
 - o Building 2: up to 150 feet
 - o Building 3: up to 250 feet
 - o Building 4: up to 350 feet
 - o Building 5: up to 300 feet
 - o Building 6: up to 90 feet
 - o Buildings along Moanalua Road: up to 30 feet
 - o Balance of building(s): up to 60 feet
- An internal road with a pedestrian orientation through the project connecting Moanalua Road to Kaonohi Street
- A gateway entry at the corner of Moanalua Road and Kaonohi Street
- A gateway entry at the main project entrance on Kaonohi Street
- A "gathering place" public open space within the project
- Pedestrian and/or vehicular connection to:
 - o St. Timothy's Church (provided that if St. Timothy's Church does not accept the developer's offer for the connection, the connection need not be constructed)
 - o Harbor Pointe (provided that if Harbor Pointe does not accept the developer's offer for the connection, the connection need not be constructed)

* In accordance with Section 21-4.60(c), Revised Ordinances of Honolulu.

EXHIBIT D

PHASING PLAN AND TIMELINE



LIVE, WORK, PLAY
 'AIEA
 HONOLULU, HAWAII

ROBERTSON
 PROPERTIES GROUP

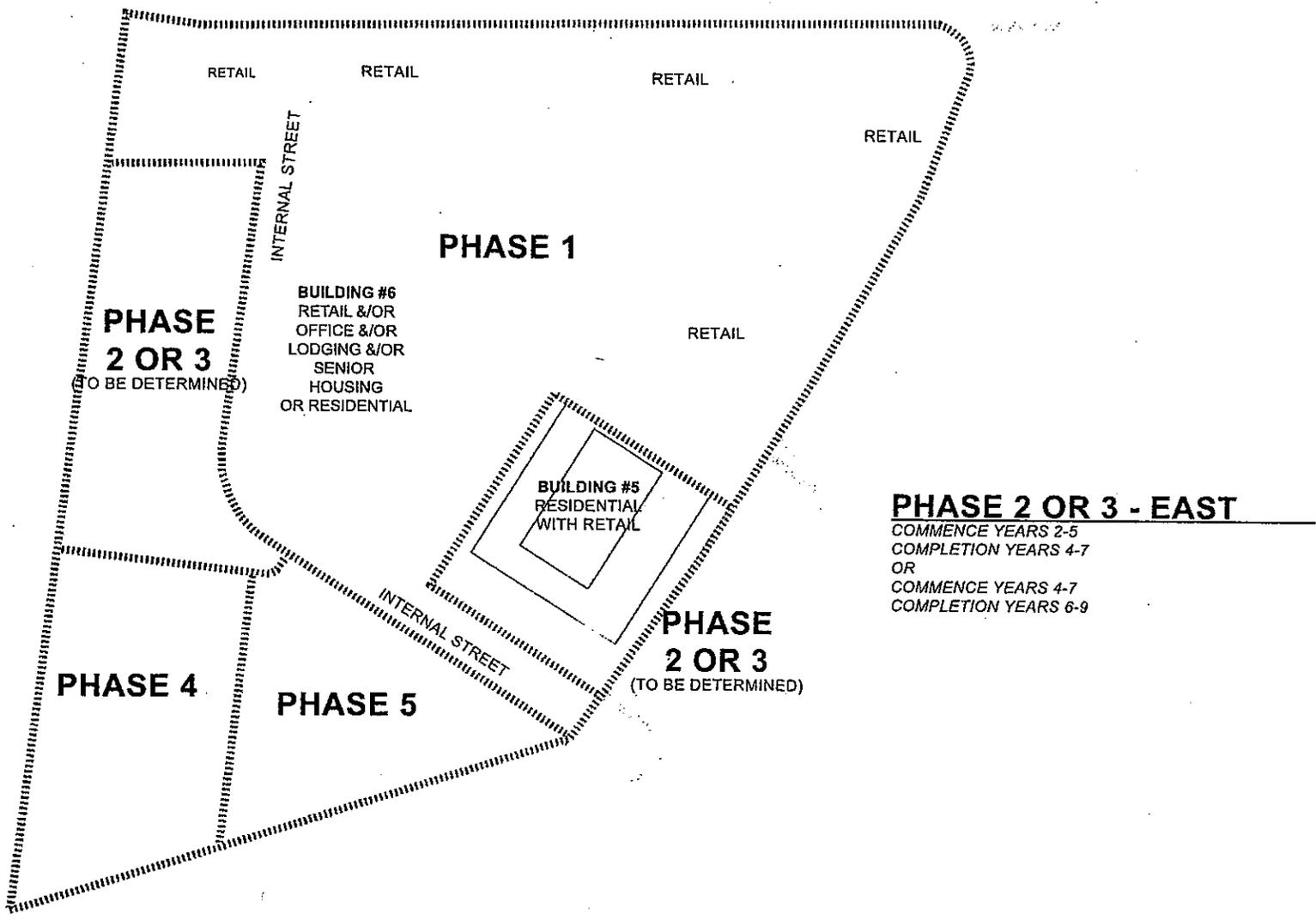
DATE 06/17/2013
 PROJECT 2022-7214
 SCALE

SHEET #:

PHASE 1



PHASE 1
 COMMENCE YEARS 1-3
 COMPLETION YEARS 3-5



LIVE, WORK, PLAY
‘AIEA
HONOLULU, HAWAII

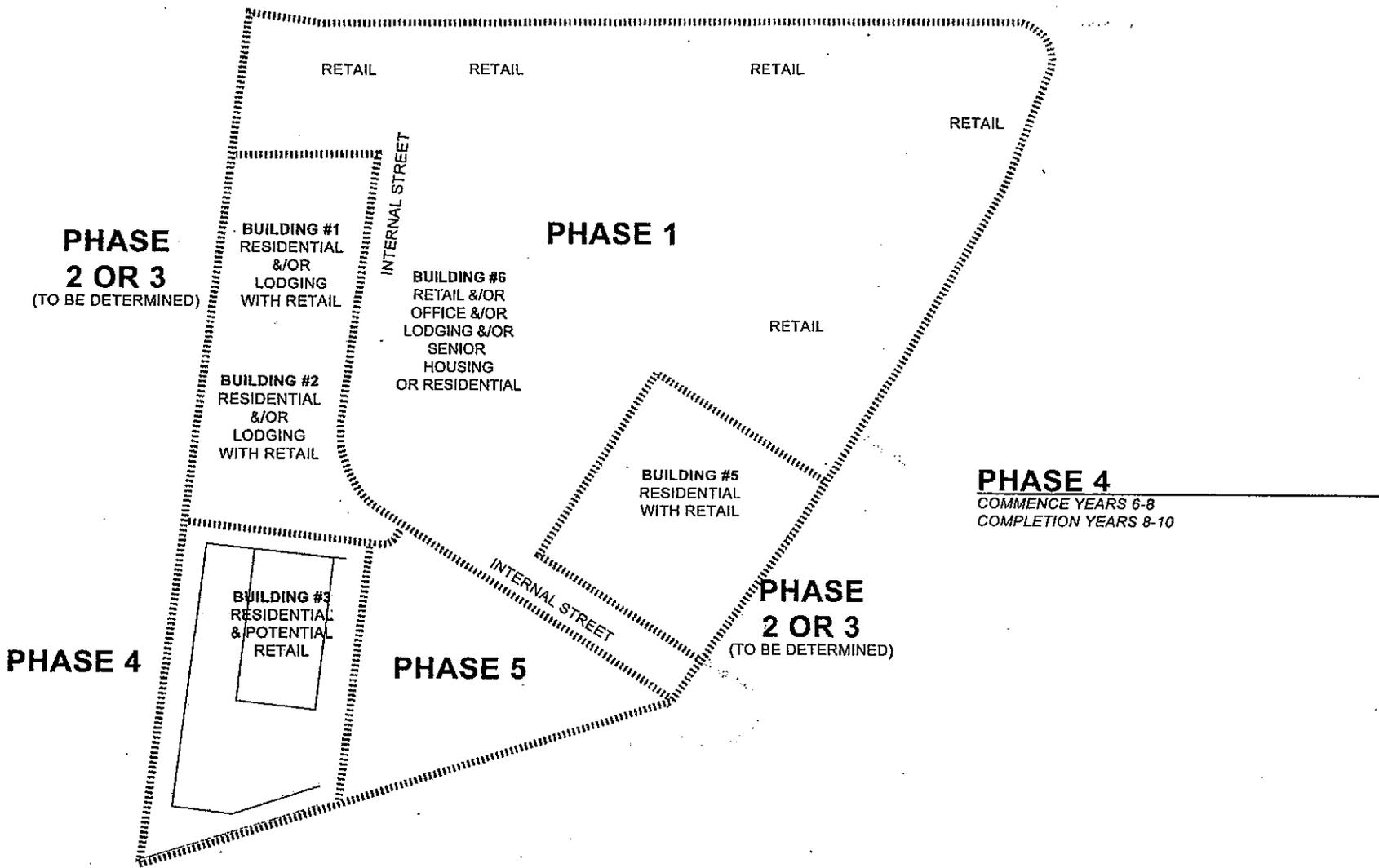
ROBERTSON
PROPERTIES GROUP

DATE 08/17/2013
PROJECT # 7529-7529A
SCALE

SHEET #.

**PHASE 2 OR 3
EAST**





LIVE, WORK, PLAY
 'AIEA
 HONOLULU, HAWAII

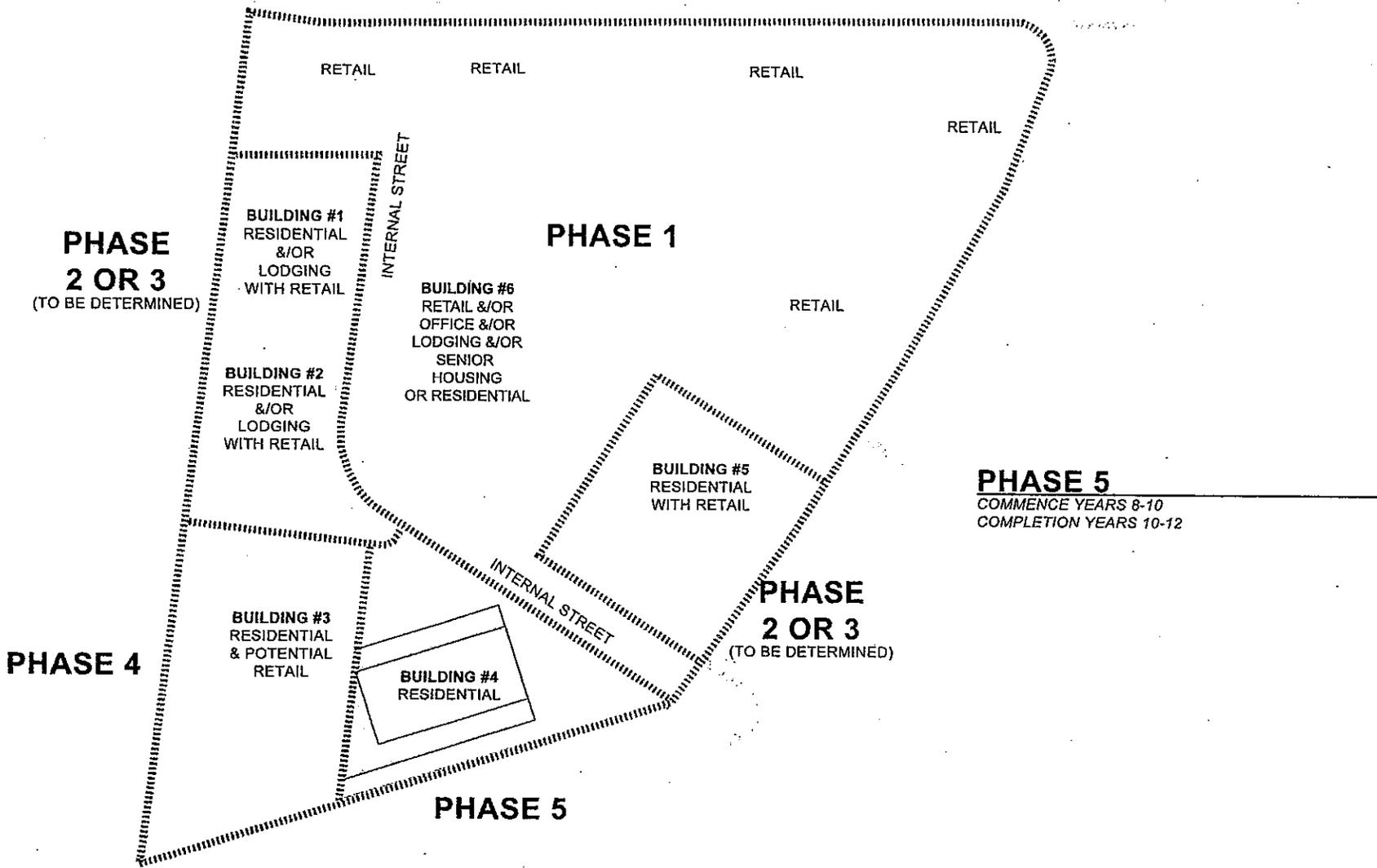
ROBERTSON
 PROPERTIES GROUP

DATE: 06/17/2019
 PROJ: A01
 SCALE:

SHEET #:

PHASE 4





LIVE, WORK, PLAY
‘AIEA
HONOLULU, HAWAII

ROBERTSON
PROPERTIES GROUP

DATE 06/17/2013
PROJECT # 7029-701
SHEET #

SHEET #:

PHASE 5



EXHIBIT E

PUBLIC BENEFITS AND TIMING

Exhibit "E"

Exhibit E - Public Benefits
(9/19/2013)

(Capitalized terms shall have the meaning assigned herein or in the Development Agreement ("**Development Agreement**") to which it is attached)

Topic	Public Benefit	Timing
Affordable Housing	<p>Execute an affordable housing agreement in form and content reasonably acceptable to the DPP and in conformance with Resolution 09-241 of the City Council of the City and County of Honolulu and the affordable housing rules adopted by the DPP on February 12, 2010 as modified or supplemented by this Section and as if all references to a unilateral agreement were to the DA (the "Existing AH Rules") or any alternative (such as separate affordable housing rules applicable to or available in TOD districts only, even if the developer does not otherwise elect to make the Project subject to other transit oriented development district rules or zoning) or any amendment to or substitution for any of them if the developer elects the application of such alternative, amendment or substitution as provided in the Development Agreement . Each affordable housing agreement shall provide that one-half of the required affordable housing units for such Phase be located within the Project; the remaining balance of the required units may be provided off-site on other lands if the lands are within one-half mile of the Pearlridge Transit Station. The affordable housing requirement may be satisfied by payment of in-lieu fees for no more than five percent (5%) of the affordable housing requirement. To the extent the affordable housing units constructed and/or the affordable housing units constructed within the Project for previous Phases is in excess of that required for such prior Phases, such excess units or excess of units constructed within the Project may be applied toward satisfaction of the affordable housing requirements for subsequent Phases. For purposes of determining the factors applicable for various unit types under section 2-6 of the Existing AH Rules, the Project shall be treated as if it is a transit oriented development, as defined in the Existing AH Rules.</p>	<p>An affordable housing agreement will be executed for each residential building prior to the issuance of any building permit for such residential building.</p> <p>Each affordable housing agreement will stipulate timing of actual delivery of the affordable housing units for the building to which it pertains.</p>

Topic	Public Benefit	Timing
	As used in this Exhibit E, a "Phase" means a construction phase (i.e., Phase 1 through and including Phase 5) as specified in Exhibit D of the Development Agreement.	
Master Plan	<p>1. The Master Plan as set forth in Exhibit C of the Development Agreement addresses the following:</p> <p>a. Pedestrian and vehicular connection to:</p> <p>i. St. Timothy's Church (provided that, if the church does not accept the developer's offer for the connection as evidenced by documentation reasonably acceptable to the DPP, the connection need not be constructed);</p> <p>ii. Harbor Pointe (provided that, if Harbor Pointe does not accept the developer's offer for the connection as evidenced by documentation reasonably acceptable to the DPP, the connection need not be constructed);</p> <p>b. Pedestrian and vehicular ingress/egress:</p> <p>i. across from Pearlridge Center driveway (includes</p>	<p>Unless compliance is waived by DPP or as otherwise provided in the left column, each of the Master Plan elements described in the left column must be constructed in the Phase specified for it below prior to the issuance of a (temporary) certificate of occupancy for any building in that Phase or, as to Phase I, prior to the issuance of a (temporary) certificate of occupancy for any building in that Phase other than up to four (4) pad buildings, each of which are not more than 9,000 square feet if one story and not more than 16,000 square feet if two stories, along Moanalua Road or Kaonohi Street (the "Pad Buildings").</p> <p>The following specifies the applicable Phase(s) for each element described in the left column:</p> <p>1. a.i. Phase 1</p> <p>1.a.ii. Phase 2 or Phase 3 West</p> <p>1.b.i. Phase 2 or Phase 3 East</p>

Topic	Public Benefit	Timing
	<p>TOD gateway entrance at Kaonohi Street);</p> <ul style="list-style-type: none"> ii. across from Pearl Ridge Elementary School; and iii. near Moanalua Road/Kaonohi Street. <p>c. An internal road through the Project connecting Moanalua Road to Kaonohi Street.</p> <p>d. An aggregate of 20,000 square feet of public open space within the Project for gathering purposes. One of these open spaces shall be a public area of 10,000 square feet minimum.</p> <p>2. Covenants, conditions and restrictions meeting the requirements set forth below (“CCRs”) shall be recorded to encumber the Phase 1 land and an amendment to the CCRs (the “CCR Amendments”) shall be recorded to annex and encumber the land comprising each subsequent Phase, which CCRs and CCR Amendments shall include provisions reasonably acceptable to the DPP requiring that each of the Master Plan elements described above as being applicable to the particular Phase must, after construction, be retained unless and until the DPP otherwise consents, (the foregoing required provisions and each other required provision as hereinafter designated in this Exhibit E being referred to as the “DA Required Provisions”).</p> <p>The CCRs shall include provisions reasonably acceptable to the DPP with respect to all DA Required Provisions: (1) naming the City as a third party beneficiary of the DA Required Provisions; (2) providing that the City may enforce the DA Required Provisions; and (3) providing that, as to DA Required Provisions and the provisions required by this paragraph, the CCRs and CCR</p>	<p>1.b.ii. Phase 1</p> <p>1.b.iii. Phase 1</p> <p>1.c. Phase 1</p> <p>1.d. Each Phase is to provide a portion of the aggregate public open space as shown on the Master Plan; however, the 10,000 square foot public area will be provided in Phase 5.</p> <p>2. The CCRs shall be recorded prior to issuance of the first (temporary) certificate of occupancy for any building in Phase 1 other than the Pad Buildings, and the CCR Amendment for each Phase shall be recorded prior to issuance of the first (temporary) certificate of occupancy for any building in such other Phase.</p>

Topic	Public Benefit	Timing
	Amendments may not be amended without the prior written consent of the DPP.	
Site Design and Building Architecture	<p>1. Site Design</p> <p>a. To emphasize and enhance the pedestrian experience along Moanalua Road and Kaonohi Street (onsite and within the public right-of-way), the Project shall provide:</p> <ul style="list-style-type: none"> i. Properly designed walkways and sidewalks that encourage pedestrian crossing at intersections and discourage jaywalking. ii. Human-scaled elements at the ground level, that offer interest along the streets. Features may include recesses, shading devices, seating, landscaping and artwork (See 3. Building Architecture). iii. Architecture along both Moanalua Road and Kaonohi Street will utilize concepts of 360 degree architecture such that even if the main entrances are from the interior of the site there is visual and landscape connection to the street. To the extent economically viable and practical, for Moanalua Road, visual connection includes but is not limited to window or outdoor seating areas that are visible from the street such that pedestrians have a line of sight to some of the activities associated with the retail commercial buildings. Landscape connection means an integration of the landscape along the street to the landscape around the buildings. Such integration may include continuity of plantings, similarities of species or landscape palette or pathways and stairs where economically viable and practical. 	For each Phase, prior to building permit approval, plans are to be submitted to DPP in a pre-application design submittal for review and confirmation by DPP that the required design concepts have been incorporated in the plans.

Topic	Public Benefit	Timing
	<ul style="list-style-type: none"> iv. Along Kaonohi Street the architecture should be designed such that, even though the plan is to approach the establishment internally from the parking lot, to the extent practical and economically viable, consideration should be given to a potential for possible future access from the street. b. Create an active urban village with walkable streets, and convenient access to transit and neighborhood uses and services. c. Create a livable, vibrant sense of place with a variety of uses, where residents and visitors can enjoy shopping, dining, visiting with friends and neighbors, and just sitting and people watching. <ul style="list-style-type: none"> i. Design public areas to accommodate a variety of community uses. ii. Create an attractive, functional, and active pedestrian promenade on the primary internal road incorporating articulated storefronts with canopies or awnings, landscaping, and street furniture. iii. Throughout the Project, provide pedestrian-oriented elements focusing on gathering areas, street furniture, landscaping, and articulated façades at the ground level. iv. Integrate indoor/outdoor spaces for retail stores and restaurants through building massing, articulation, and outdoor seating and other areas sheltered by canopies and shade trees. d. Provide adequate parking facilities for a variety of 	

Topic	Public Benefit	Timing
	<p>transportation modes, including bicycles and motor bikes.</p> <p>2. Entry Gateways</p> <p>a. Create attractive and welcoming gateways at key points around the site.</p> <p>b. Provide public gathering areas that engage pedestrians with attractive features, lighting, landscaping and hardscape.</p> <p>3. Building Architecture</p> <p>a. Architectural design will reflect a contemporary urban village character without a homogeneous architectural theme.</p> <p>b. Provide four sided architecture that establishes a building "front" or entry from internal parking areas, but also incorporates fenestration and architectural details to present an inviting and pedestrian-friendly appearance on all building elevations. Blank walls and "back of house" exposures to public views shall be avoided.</p> <p>c. Create visual interest on building façades with three-dimensional detailing and incorporating elements to provide visual interest, such as balconies, awnings, projections, trellises, and arcades and other details.</p> <p>d. Provide residential buildings at various heights per the Master Plan, and with articulated building façades. Provide visual interest at the pedestrian-level and scale through architectural features.</p>	

Topic	Public Benefit	Timing
	<p>4. Landscape</p> <ul style="list-style-type: none"> a. Use landscaping to enhance the Project gateways. b. Soften the impact and scale of building masses and parking garages through vertical plantings. c. To greatest extent feasible, utilize xeriscaping principles and plant materials. <p>5. Outdoor Lighting</p> <ul style="list-style-type: none"> a. Use fully shielded exterior fixtures to minimize glare to adjoining properties and night sky. b. In surface parking areas, fixtures should be scaled to the pedestrian with maximum height of 20 feet. <p>6. The CCRs are to include, as DA Required Provisions, the requirements set forth above.</p>	<p>6. The CCRs shall be recorded prior to issuance of the first (temporary) certificate of occupancy for any building in Phase 1 other than the Pad Buildings, and the CCR Amendment for each Phase shall be recorded prior to issuance of the first (temporary) certificate of occupancy for any building in such other Phase.</p>

Topic	Public Benefit	Timing
Transportation	<p>1. Submit a Transportation Schedule, establishing the anticipated timeframes for commencement and completion of the following:</p> <ul style="list-style-type: none"> a. The major phasing components of this development-- i.e., the traffic and streetscape improvements, basic buildings, and public works; b. The construction management plan ("CMP") for each Phase, which is typically submitted for review and approval prior to the issuance of demolition/building permits for major construction work requiring access by heavy trucks or large number of construction related vehicles to the site or if there will be major work on the surrounding streets, such as street widening or traffic signal installation; c. The traffic management plan ("TMP") for each Phase, which is generally submitted for review and approval prior to the issuance of the (temporary) certificate of occupancy for any major structure within the Phase, such as a residential tower or commercial building; and d. Other than prior to commencement of Phase 1, an update and/or validation ("Updated TIAR") to the findings of the initial traffic impact analysis report dated December 12, 2011 and prepared by Austin, Tsutsumi & Associates, Inc. ("Initial TIAR"). A new traffic impact analysis report ("New TIAR") may be required if there is a significant change to the scope or timing of the major work items for a Phase as set forth in the Initial TIAR. The City may require further work consistent with the recommendations of the Updated TIAR or (if applicable) the New TIAR for a Phase if such further work is necessary to support related traffic impacts directly attributable to the Project, as 	<p>1. The Transportation Schedule must be consistent with the timeframes set forth in Exhibit D of the Development Agreement and submitted prior to issuance of the grading permit or final subdivision approval for the Project, whichever occurs first.</p>

Topic	Public Benefit	Timing
	<p>determined by the Updated TIAR.</p> <p>2. Construction/installation of the following traffic improvements as provided in the Initial TIAR, the Updated TIAR or (if applicable) the New TIAR (these improvements may be modified to incorporate complete street elements as the Parties may agree):</p> <ul style="list-style-type: none"> a. Widen Moanalua Road and create a second eastbound left-turn lane at the intersection of Moanalua Road and Kaonohi Street. b. Widen Kaonohi Street and create an additional southbound lane. c. Remove median along the northbound approach of Kaonohi Street. d. Signalize and provide crosswalks at the intersection at Moanalua Road and the Project entrance, opposite of the driveway to Pearl Ridge Elementary School. Intersection improvements will include left turn storage lanes on Moanalua Road for left turns into Pearl Ridge Elementary School and into the Project entrance. e. Signalize and provide crosswalks at the intersection at Kaonohi Street and the Project entrance, opposite of the Pearlridge Center driveway. Intersection improvements will include left turn storage lanes on Kaonohi Street for left turns into Pearlridge Center and into the Project entrance and a separate right turn lane into the Project entrance with no taper transition in the through lanes. f. Uphill (mauka bound) bike lane and downhill (makai bound) sharrows on Kaonohi Street. 	<p>2. Construction plans for each of the improvements in the left column must be submitted for the Phase such improvement is needed, as outlined in the Initial TIAR, the Updated TIAR or (if applicable) New TIAR, and DPP approval of these plans must be obtained prior to construction plan review.</p> <p>These improvements must be constructed prior to issuance of (temporary) certificate(s) of occupancy for the buildings in the applicable Phase pursuant to the Transportation Schedule from paragraph 1 of this Topic.</p>

Topic	Public Benefit	Timing
	<p data-bbox="491 264 1192 423">g. Such further improvements as determined by an Updated TIAR or (if applicable) New TIAR, provided that the Developer will not be required to wholly or partially demolish any building constructed or under construction on the Project.</p> <p data-bbox="443 459 961 492">3. The CMP shall address the following:</p> <p data-bbox="491 527 1209 618">a. Identification of the type, frequency and routing of heavy trucks and construction related vehicles to and from the Project site.</p> <p data-bbox="491 654 1226 940">b. Identification of vehicular activity related to the construction work and limitation of this activity to periods outside of the peak periods of traffic, minimization of impacts by utilizing alternate routes for heavy trucks, provisions for either on-site or off-site staging areas for construction related workers and vehicles to limit the use of on-street parking around the Project site and other mitigation measures related to traffic and potential neighborhood impacts.</p> <p data-bbox="491 976 1209 1066">c. Identification of periods when there will be heavy traffic, such as holidays and parades, and adjustment of the construction schedule accordingly.</p> <p data-bbox="491 1102 1209 1161">d. Preliminary or conceptual traffic control plans for work on public streets.</p> <p data-bbox="491 1196 1209 1385">e. Documentation of the condition of roadways prior to the start of construction activities and provision of remedial measures as necessary, such as restriping, road resurfacing and/or reconstruction if the condition of the roadways has deteriorated as a result of the related construction activities.</p>	<p data-bbox="1262 467 1923 781">3. The CMP must be submitted for each Phase on the earlier of the date listed on the Transportation Schedule for the applicable Phase or prior to the issuance of demolition/building permits for major construction work requiring access by heavy trucks or a large number of construction related vehicles to the site for such Phase or if there will be major work on the surrounding streets for such Phase, such as street widening or traffic signal installation.</p>

Topic	Public Benefit	Timing
	<p>4. The TMP shall address the following:</p> <ul style="list-style-type: none"> a. Traffic demand management ("TDM") strategies to minimize the amount of vehicular trips being generated by this development and to incorporate TOD components. The TDM strategies could include opening the commercial activities during the early stages of the development in an effort to increase internal capture within the site and encouraging transit, bicycle and pedestrian incentives, such as bus passes, more bicycle racks and shower facilities in commercial buildings. b. A "Safe Routes to School National Partnership" program or other similar programs established by the developer of the Phase or by the master association or sub-association pursuant to the CCRs (if a residential component is included in Phase 1) and/or the CCR Amendments, as a DA Required Provision . c. A post TMP three months after the end of construction of each Phase to validate the relative effectiveness of the various TDM strategies identified in the initial TMP for the Phase. A transportation coordinator may be hired or retained by the developer for the Phase or by the master association or sub-association to assure the TDM strategies, as proposed by the developer, are being followed, and. d. Evaluation of the feasibility of constructing a grade separated pedestrian connection between the Project site and the Pearl Ridge Shopping Center as a traffic management strategy. If the Initial TIAR, Updated TIAR or (if applicable) New TIAR does not recommend a grade separated pedestrian connection or if the 	<p>4. The TMP must be submitted for each Phase by the earlier of the date listed on the Transportation Schedule for such Phase or prior to the issuance of the (temporary) certificate of occupancy for any major structure within such Phase, such as a residential tower or commercial building.</p> <p>4.c.The requirement for a transportation coordinator shall be a DA Required Provision to be included in the CCR Amendment for the last Phase.</p>

Topic	Public Benefit	Timing
	<p>evaluation of the connection demonstrates that it is not feasible or that it is impractical based on the expense to construct it, then the construction of the grade separated pedestrian connection will not be required.</p> <p>5. The updates and/or validation to the findings for the applicable Phase contained in the Initial TIAR ("Post-Construction Update") shall address the following:</p> <ul style="list-style-type: none"> a. Analysis of the adequacy of the lengths of left- and right-turn auxiliary lanes along all the major roadways adjacent to the Project, performance of traffic signal warrants based on projected traffic volumes, and provisions for the installation of the signals or alternative measures, if recommended by the Post-Construction Update. b. Installation of traffic signals along two intersections as shown on Exhibit C around this development until full build-out of the Project. c. If there is a need to extend the lengths of any auxiliary lanes or provide additional laneage resulting from trip generation rates being higher than initially projected or if the internal capture rates are lower than projected, the Developer shall be required to provide the necessary improvements to maintain the level-of-service outlined in the Initial TIAR, if recommended in the Post-Construction Update. Left turns at the first internal intersection from Moanalua Road may need to be restricted if traffic is queuing into the new signalized intersection. If additional traffic mitigation measures or modifications are necessary to support related traffic impacts directly attributable to this Project, as determined by the Post-Construction Update, the Developer shall be required to implement these 	<p>5. The Post-Construction Update must be submitted three months after the completion of construction of each Phase and as set forth on the Transportation Schedule and prior to the issuance of the (temporary) certificate of occupancy for the last building of the Phase.</p>

Topic	Public Benefit	Timing
	<p>measures; provided that the Developer will not be required to wholly or partially demolish any building constructed or under construction on the Project.</p> <p>6. Prior to the submittal of construction plans for each Phase requiring traffic work, submit detailed drawings, showing vehicle and bicycle lane widths, size of pedestrian islands, auxiliary turn lane lengths, intersection design for all the planned roadway improvements around the site for review and approval by the DPP. All right-turn movements at major driveways at the top of the Internal Road and the bottom of the Internal Road off Kaonohi Street shall have a separate deceleration lane. Pedestrian islands at the intersection of Moanalua Road and Kaonohi Street, and possibly at the driveway intersection on Kaonohi Street and the Internal Road, should be provided at new signalized intersections to reduce the distance pedestrians need to walk across an intersection and to reduce the potential conflict between right turning traffic with pedestrians. Pedestrian crosswalks should be provided at all legs of a signalized intersection, unless the Initial TIAR or the Updated TIAR determines that such a pedestrian crossing may cause traffic operational problems.</p> <p>If the Updated TIAR or (if applicable) the New TIAR for any Phase recommends an un-signalized crossing across Kaonohi Street at the un-signalized Kaonohi Street/Pearlridge Center driveway below Macy's, the developer of such Phase shall provide additional information on the measures to be implemented to increase pedestrian safety of such un-signalized crossing.</p> <p>7. Driveway grades shall not exceed 5 percent for a minimum distance recommended by the Initial TIAR or, if applicable, the Updated TIAR or (if applicable) the New TIAR, from the property line. Entry gates and ticket dispensers should be</p>	<p>6. Detailed drawings must be submitted prior to approval of the building permits for Phase 1, and construction of the off-site improvements must be completed prior to issuance of the (temporary) certificate of occupancy for the first Phase 1 building other than the Pad Buildings.</p> <p>7. Prior to the issuance of a (temporary) certificate of occupancy for the first building in Phase 1 other than the Pad Buildings.</p>

Topic	Public Benefit	Timing
	<p>recessed as far into the driveway as necessary to avoid any queuing onto public streets as recommended by the Initial TIAR or, if applicable, the Updated TIAR or (if applicable) the New TIAR.</p>	
Water	<ol style="list-style-type: none"> 1. When submitting construction plans or building permit application plans for major construction work within a Phase to the Board of Water Supply ("BWS") for review and approval or to obtain approval from the BWS to confirm compliance with the BWS requirements, the plans or applications must include: <ol style="list-style-type: none"> a. Landscape irrigation system for the Phase with a separate water service lateral for connection to the Kalauao nonpotable water system when nonpotable water service becomes available in this area. b. Incorporation of water conservation measures, including utilization of nonpotable water for irrigation using rain catchment and chiller/air handler condensate, drought tolerant plants, and the use of Water Sense labeled ultra-low-flow water fixtures and toilets. 2. When submitting construction plans or building permit application plans for the residential buildings within a Phase to the BWS for review and approval, include necessary water system improvements for high-rise buildings. Additionally, as requested by BWS, include the installation of water hammer arrestors or expansion tanks 	<ol style="list-style-type: none"> 1. For each Phase prior to the issuance of a building permit for the construction of a major improvement within such Phase. 2. For each Phase prior to the issuance of a building permit for the construction of a residential building within such Phase.

Topic	Public Benefit	Timing
	to reduce pressure spikes and potential main breaks in the City's water system.	
Education	The developer of a Phase with a residential building and the State Department of Education (DOE) shall agree to the terms of the developer's compliance with the school impact fees for such Phase. The developer shall provide written confirmation from the DOE of these terms.	The agreement for a Phase with a residential building (which may also include other residential Phases) shall be executed prior to the issuance of a building permit for such residential Phase. In the alternative, the applicable school impact fee can be paid at the time of issuance of each building permit for residential use.
Streetscape improvements along Kaonohi Street to Kamehameha Hwy	Provide streetscape improvements within the existing City right-of-way and existing curb line, which may provide for improved sidewalks, street trees, crosswalks, a dedicated bike lane mauka bound and sharrows makai bound, along Kaonohi Street, from the boundary of the Project site to the boundary of Kamehameha Highway (State right-of-way) and in any event within the City right-of-way.	Phase 1 -- Construction plans must be submitted prior to issuance of the grading permit or final subdivision approval, whichever comes first. Furthermore, each of these streetscape improvements must be constructed in accordance with the building permit construction plans prior to the issuance of a (temporary) certificate of occupancy for the first building in Phase 1 other than the Pad Buildings.
Subsidized bus/transit passes	Major anchor retail tenants (over 40,000 square feet) shall offer to provide bus/transit passes to thirty (30) of their employees. Notwithstanding the foregoing, if no retail tenant is over 40,000 square feet, then one or more tenants shall offer to provide, in the aggregate, bus/transit passes to thirty (30) of their employees (e.g., one tenant may provide 20 bus/transit passes and another tenant may provide 10 bus/transit passes [or any combination thereof] to satisfy this Public Benefit requirement). The CCRs shall include this requirement as well as a requirement to provide to the DPP an annual report on the status and number of bus passes issued as DA Required Provisions. Until such time as the annual report is made pursuant to the CCRs, the Developer's annual report to the DPP shall include the status and number of bus passes issued.	To be offered to employees within one year of the issuance of the (temporary) certificate of occupancy for the applicable retail tenant space, and to end whenever a comparable city transit ridership incentive program is adopted or, if earlier, upon expiration of the initial term (15-20 years) of the lease. Retail tenant space leases will obligate such major anchor retail tenants to provide bus/transit passes consistent with this Public Benefit. Prior to issuance of the (temporary) certificate of occupancy for the building in which the retail space is located, Developer shall provide evidence to the DPP that each such lease includes the required provision.

Topic	Public Benefit	Timing
Park & Bus Transit Facility	Provide \$50,000 to the City to fund a conceptual study for the proposed park and bus transit facility makai of the rail transit station. The study will examine opportunities to provide an open space connection to Pearl Harbor and Pearl Harbor Historic Trail.	To be paid during Phase 1 concurrently with the developer's submittal of the TMP for Phase 1.
Meeting Room	Provision of a meeting room with a minimum capacity of 40 people on the Project site for community groups including a men's and a women's handicap restroom in close proximity to the meeting room, which restrooms will also be available to those using a public open space. The meeting room is to be made available to the public, subject to payment of a nominal fee to cover utilities, maintenance, clean-up and similar costs in connection with the use, payment of a security deposit, and reasonable rules and regulations. The CCR Amendment applicable to the Phase within which the meeting room and restroom facility will be located shall include this requirement as a DA Required Provision.	At the Developer's election, within Phase 4 or any earlier Phase. The Developer's election shall be made at the latest prior to the issuance of the (temporary) certificate of occupancy for the last building within Phase 3 East and set forth in a CCR Amendment for the selected Phase.
Contribution to non-profit organizations	Creation of an on-going charitable contribution program for one or more non-profit organizations for the purpose of providing services for the benefit of the Aiea-Pearl City community funded by the master association through the CCRs with annual contributions not less than \$25,000 per year for 20 years.	The first annual contribution of \$25,000 will be made within six months after the date of issuance of the site grading permit for Phase I, and each of the ensuing 19 annual contributions shall be due on each anniversary of the date of such first contribution. The obligation of owners of any portion of the Project to contribute to the charitable contribution program shall be contained in CC&Rs and the CCR Amendments as a DA Required Provision.

Exhibit "E"

EXHIBIT F
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

LAND COURT SYSTEM	REGULAR SYSTEM
TYPE OF DOCUMENT: _____ (TOTAL PAGES: _____)	
[PARTIAL] ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT	
PARTIES TO DOCUMENT:	
ASSIGNOR: _____	
ASSIGNEE: _____	
TAX MAP KEY FOR PROPERTY: _____	

[PARTIAL] ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

This [Partial] Assignment and Assumption of Development Agreement is made effective as of the _____ day of _____, 20__ (“Effective Date”), by and between _____, a _____, (“Assignor”), and _____, a _____, whose address is _____ (“Assignee”).

RECITALS:

[Describe the transaction (sale, assignment, etc.) by which the Assignee is concurrently acquiring an interest in all or a portion of the property which is subject to the Development Agreement and other relevant facts such as prior assignments].

NOW THEREFORE, in consideration of the covenants and agreements of the Assignee set forth herein and to be faithfully kept and performed by the Assignee and for other valuable consideration, receipt whereof is hereby acknowledged, Assignor hereby assigns to Assignee all of the rights, duties and obligations of Assignor under the Development Agreement dated _____, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____ [describe any prior amendments of the Development Agreement] (“Development Agreement”), [FOR PARTIAL ASSIGNMENT ONLY: but only insofar as such rights, duties and obligations pertain to the real property described in Exhibit A attached

EXHIBIT F
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

hereto (“**Property**”)], subject, however, to the terms, covenants and conditions contained in the Development Agreement.

Assignee, in consideration of the premises, does hereby covenant and agree to and with the Assignor and to and with the City and County of Honolulu, a municipal corporation of the State of Hawaii (“**City**”) that that Assignee will faithfully observe and perform all of the duties and obligations under the Development Agreement to be performed by the “Developer” thereunder [FOR PARTIAL ASSIGNMENT ONLY: but only insofar as such duties and obligations pertain to the Property and specifically including the obligation to provide any Public Benefit (as defined in the Development Agreement) located on or allocated to the Property as set forth in Exhibit E to the Development Agreement]. [Describe specifics as to rights, duties and/or obligations assigned and assumed with respect to a partial assignment.]

The City acknowledges and agrees that, pursuant to Section IX.B. of the Development Agreement, Assignor is hereby released from Assignor’s duties and obligations under the Development Agreement [FOR PARTIAL ASSIGNMENT ONLY: to the extent pertaining to the Property as specified above and] arising subsequent to the Effective Date.

EXHIBIT F
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

IN WITNESS WHEREOF, the parties have each executed this document on the date first written above.

“Assignor”

“Assignee”

Approved as to Form and Legality

By: _____
Deputy Corporation Counsel
City and County of Honolulu

“City”

City and County of Honolulu

By: _____

[Attach notary pages]

EXHIBIT B

EXHIBIT B

Recommended revisions to Development Agreement, "Public Benefits" (Exhibit E):

1. Page 1 of 16 – Affordable Housing. Delete sentence from Public Benefits section which states:

"...[The affordable housing requirement may be satisfied by payment of in-lieu fees for no more than five percent (5%) of the affordable housing requirement.]..."

2. Page 15 of 16 - Streetscape improvements along Kaonohi Street to Kamehameha Highway. Revise the language as follows:

"Provide streetscape improvements within the existing City right-of-way and existing curb line, which [may] shall provide for improved sidewalks, [street trees,] crosswalks, a dedicated bike lane mauka bound and sharrows makai bound, along Kaonohi Street, from the boundary of the Project site to the boundary of Kamehameha Highway (State right-of-way) and in any event within the City right-of-way. Improvements may also include street trees where feasible."

3. New topic relating to updates to the Aiea Neighborhood Board No. 20. The Applicant shall be required to update the Board, on an annual basis, on the development of the project. This update shall occur until the termination of the DA.