



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

July 30, 2014

TO: Daniel E. Orodener, Executive Officer
Land Use Commission

FROM: Jobie M. K. Masagatani, Chairman *Jobie M. K. Masagatani*
Hawaiian Homes Commission

SUBJECT: Department of Hawaiian Home Lands
2013 Annual Report for East Kapolei
LUC Docket No. A99-728(c), Kapolei, Oahu

The following is the annual report for the calendar year ending December 31, 2013, on the Department of Hawaiian Home Lands (DHHL) activities regarding the conditions imposed by the Land Use Commission (LUC) for East Kapolei developments affecting those approximately 67.184 acres of land, identified as Tax Map Key No. (1) 9-1-016:142 and more particularly described in Exhibit "A" attached hereto ("Property").

The Department of Land and Natural Resources (DLNR) conveyed 159.365 acres of the subject lands, Tax Map Key (1) 9-1-016:por. 108 to DHHL in September 2005 ("East Kapolei I" and "East Kapolei Commercial"). The Board of Land and Natural Resources also approved the conveyance of portions of Tax Map Key (1) 9-1-017:071 and 088 ("East Kapolei II").

The Land Use Commission created a new docket number, DOCKET NO. A99-728(c), by that Order Amending Findings of Fact, Conclusions of Law and Decision and Order, entered January 14, 2013, (January 14, 2013 Decision and Order), that applies solely to this 67.184 acres ("Petition Area C"). Petition Area C was released from the conditions set forth in the Findings of Fact, Conclusions of Law, and Decision and Order dated September 8, 1999 in Docket No. A99-728. Petition Area C will retain its classification to the State Land Use Urban District. The remaining approximately 715 acres of lands within the Petition Area in Docket No. A99-728 and not part of Docket Nos. A99-728(a) or A99-728(b)

will continue to be subject to the conditions in the 1999 Decision and Order, as amended.

Project Status.

DHHL has executed an Option to Lease for a 65-year general lease with Hawaii DeBartolo, LLC, a Delaware limited liability company to develop a proposed regional commercial center to be known as Ka Makana Alii. It is envisioned to be a mixed use regional shopping center, with a variety of commercial land uses such as retail, restaurant and entertainment space, business traveler oriented hotels, office space, open space amenities, and a variety of transportation related linkages. The project will represent the largest revenue generator for DHHL which will contribute significantly to achieving financial self-sufficiency and provide greater financial support towards fulfilling its mission.

Final Environmental Assessment dated November 2011 was completed in compliance with Chapter 343, Hawaii Revised Statutes, as amended.

Condition 1: If applicable, Petitioner, its successors, and assigns shall provide affordable housing opportunities for residents of the State of Hawaii in accordance with applicable affordable housing requirements of the City and County of Honolulu. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner, its successors, and assigns, and the City and County of Honolulu.

Status: DHHL lands at East Kapolei will be developed for the purpose of providing affordable housing in accordance with the requirements of the Hawaiian Homes Commission Act (HHCA), as amended.

Condition 2: Petitioner, its successors, and assigns shall coordinate and/or participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by appropriate State and County agencies.

Status: DHHL coordinated the development of a 4.0 million gallon reservoir and water transmission main with the City and County Board of Water Supply (BWS) and these two

projects have been completed in November 2010 and January 2010 respectively. The 4.0 million gallon reservoir was accepted by BWS in February 2011. The system provides water services to the DHHL projects, including the commercial project in Petition Area C, as well as portions of the University of Hawaii West Oahu Campus (UHWOC).

Condition 3: If residential use is established in Petition Area C, Petitioner, its successors, and assigns shall comply with Hawaii Revised Statutes section 302A-1601 et seq., to the extent applicable to the Petitioner.

Status: There is no residential use planned in Petition Area C. DHHL set aside two parcels in East Kapolei II (approximately 12 acres and 18 acres) for an elementary school and middle school, respectively.

Condition 4: Petitioner, its successors, and assigns shall coordinate and/or fund and construct adequate wastewater transmission and disposal facilities, as determined by the City and County of Honolulu and State Department of Health, to include the planning design, construction, and scheduling of the proposed Kapolei Interceptor Sewer.

Status: DHHL, UHWOC, and D.R. Horton executed an Assessment Agreement to fund and construct a wastewater transmission trunk line to connect to the Kapolei Interceptor Sewer. The wastewater trunk line from the Kapolei Interceptor Sewer to the Kapolei Parkway was completed in 2007 and the trunk line within Kualaka'i Parkway fka North-south Road was completed in January 2010. The system provides wastewater services to the DHHL projects, including the commercial project in Petition Area C, as well as portions of UHWOC.

Condition 5: Petitioner, its successors, and assigns shall grant to the State of Hawaii an avigation (right of flight) and noise easement in a form prescribed by the State Department of Transportation on any portion of the Property subject to noise level exceeding 55 Ldn.

Status: By letter dated June 23, 2005, the DOT, Airports Division determined that: "The project is outside the 55 DNL noise contour line (aircraft noise) of Kalaeloa Airport." The project as noted in the DOT letter include the proposed development within Petition Area C.

Condition 6: If applicable, Petitioner, its successors, and assigns shall not construct residential components within areas exposed to noise levels of 60 Ldn or greater.

Status: There is no residential use planned in Petition Area C.

Condition 7: Petitioner, its successors, and assigns shall be responsible for implementing sound attenuation measures to bring noise levels from sporting events, vehicular and air traffic in and within the Property down to levels acceptable to the State Department of Health.

Status: DHHL will plan for sound attenuation measures to bring noise level from sporting events, vehicular and air traffic in and within the Property down to levels acceptable to the State Department of Health.

Condition 8: [reserved]

Condition 9: Petitioner, its successors, and assigns shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation and the City and County of Honolulu. Petitioner and/or the State Department of Transportation shall submit the construction plans as they relate to drainage issues for the North-South Road to the City for review and approval.

Petitioner, its successors, and assigns shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to State roadway facilities caused by the proposed Project as set forth in a Memorandum of Agreement ("MOA") agreed to and executed between the State Department of Transportation ("DOT") and Petitioner. Petitioner shall obtain acceptance of the Project's Traffic Impact Analysis Report ("TIAR") from DOT and consider written comments from City prior to the execution of the MOA. The MOA shall be executed prior to occupancy.

The MOA shall include, but not limited to, the following terms and conditions: (a) the accepted TIAR shall be incorporated in the MOA by reference; (b) Petitioner's responsibilities for funding, construction, and implementation of improvements and mitigation; (c) a schedule of agreed to improvements and a schedule of future updates and revisions to the TIAR to be accepted

by DOT; (d) development of the Project shall be consistent with the executed TIAR and MOA; and (e) any fees or in-kind contributions that are roughly proportional to any indirect or secondary impacts caused by the Proposed Project.

Status: A Memorandum of Agreement (MOA) was executed between DOT and Hawaii DeBartolo, LLC to address the terms and conditions imposed under this Condition 9 dated April 25, 2014. A copy of the MOA is attached herewith as Exhibit "B."

Condition 10: Petitioner, its successors, and assigns of Petition Area C shall fund and construct adequate civil defense measures as determined by the City and County of Honolulu and State Civil Defense agencies. The civil defense measures shall be operational prior to occupancy of any residences or business.

Status: DHHL will participate in Civil Defense measures as determined by the City and County of Honolulu and State Civil Defense agencies.

Condition 11: Should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found, Petitioner, its successors, and assigns of Petition Area C shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

Status: DHHL will stop work and notify the SHPD if previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found. Subsequent work will proceed upon proper approvals.

Condition 12: Petitioner, its successors, and assigns shall coordinate the design and construction of drainage improvements on Petition Area C required as a result of the development of Petition Area C to the satisfaction of Federal, State, and County agencies with the goal of executing an agreement on the interim and ultimate regional drainage plan as soon as possible. Petitioner, its successors, and assigns shall participate in the planning and coordination of offsite improvements with all landowners and

developers in the Kalo'i drainage basin, the intervenor, and other Federal, State and City and County agencies.

Status: DHHL will plan for and coordinate the design and construction of drainage improvements required as a result of the development of Petition Area C with surrounding landowners and developers to the satisfaction of Federal, State and County agencies.

Condition 13: Petitioner, its successors, and assigns agrees to work with the City to implement interim and long-range regional drainage solutions as follows:

- a. Petitioner shall submit a drainage master plan for the Petition Area C to the City for its review and approval prior to any subdivision approvals other than for minor matters, such as easements.
- b. Drainage solutions for Petition Area C shall be compatible with the Ewa Villages Drainage Master Plan and drainage designs for other developments in the Kaloi Gulch drainage basin.
- c. Drainage improvements for Petition Area C shall be consistent with the policies and principles in the Ewa Development Plan.
- d. Petitioner shall also take reasonable measures to minimize non-channelized flows from Petition Area C by construction of berms, detention basins, or other appropriate methods. All flows and drainage patterns that cross the southern boundary of Petition Area C shall remain as conceptually described in the Ewa Villages Drainage Master Plan. These requirements shall remain in force until long-range regional drainage improvements are in place in accordance with the approved drainage master plan for the Project.
- e. Should Petitioner sell various residential or commercial components prior to the completion of the construction of the master infrastructure, any such sale shall be conditioned upon the completion of the appropriate master infrastructure improvements for that portion of the residential or commercial component.

Status: DHHL is working with the City to implement interim and long-range regional drainage solutions as follows:

- a. The Drainage Master Plan for East Kapolei I Development, including Petition Area C, was submitted to the City in November 2006 to satisfy a requirement for Tentative Subdivision Approval. The master plan was accepted by the City on November 20, 2006. The drainage master plan for East Kapolei II was accepted by the City in August 2008.
- b. DHHL has participated in the Kaloi Gulch Regional Drainage meetings convened by the City and County Department of Planning and Permitting, and intends to develop drainage solutions for the Property which shall be compatible with the Ewa Villages Drainage Master Plan and drainage designs for other developments in the Kaloi Gulch drainage basin.
- c. DHHL intends to implement interim drainage improvements that will limit channelized runoff to 2,500 cubic feet per second (cfs) at the Properties' southern boundary.
- d. DHHL has not sold, and does not intend to sell any residential or commercial property.

Condition 14: In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall apply for City zoning approval after the State Land Use Commission reclassifies the Project site from Agriculture to the Urban District. Said zone change application shall be accompanied by a conceptual master plan with land use information sufficient to satisfy county zoning and development plan requirements.

Status: DHHL is not subject to the City zoning authority and jurisdiction. DHHL has no intention to sell or trade Petition Area C subject to Docket No. A99-728(c). Notwithstanding the foregoing, DHHL has declared its intention with the City to develop Petition Area C under the BMX-3 and BMX-4 standards.

Condition 15: In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall comply with County zoning requirements. This condition is not intended to delay the construction of public uses or infrastructure to service the Property.

Status: DHHL has no intention to sell or trade Petition Area C. DHHL intends to comply with the zoning requirements in accordance with the zoning districts that DHHL has declared for the various uses within Petition Area C.

Condition 16: In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall, prior to issuance of any building permit, subdivision or grading permit within Petition Area C, submit an Open Space and Pedestrian/Bikeway Master Plan to the City for its review and approval. Regardless of the fee ownership, Petitioner, its successors and assigns, shall consider all timely comments submitted by the City.

Status: DHHL has no intention to sell or trade Petition Area C. DHHL intends to comply with the zoning requirements in accordance with the zoning districts that DHHL has declared for the various uses within Petition Area C.

Condition 17: In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall, prior to issuance of any building permit, subdivision or grading permit with Petition Area C, submit a conceptual Urban Design Plan to the City for its review and approval. The Urban Design Plan shall depict the overall design theme and architectural character of streetscapes, residential neighborhoods and town centers. The Plan shall also include a conceptual landscape plan showing treatment of Project entries, major roadways, and common areas. Regardless of the fee ownership Petitioner, its successors and assigns shall consider all timely comments submitted by the City.

Status: As long as DHHL is the fee simple owner, DHHL is not required to obtain approval of a conceptual Urban Design Plan from the City. Notwithstanding that, DHHL, with Hawaii DeBartolo LLC, submitted the Conceptual Urban Design Plan for the proposed Ka Makana Alii to the City on May 10, 2013. Comments were received from the City on June 27, 2013.

Condition 18: Petitioner, its successors, and assigns, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting. To the extent feasible, Petitioner shall implement best management practices for onsite stormwater capture, treatment, and reuse into the Petition Area's site design and landscaping to reduce stormwater runoff and control stormwater quality and mitigate nonpoint source of pollution.

Status: DHHL will use indigenous plants and xeriscaping, and implement best management practices for onsite stormwater capture, treatment, and reuse into the

Petition Area's site design and landscaping, where feasible.

Condition 19: Petitioner, its successors, and assigns, where feasible, shall facilitate an air quality monitoring program as specified by the State Department of Health. Petitioner, its successors, and assigns shall notify all prospective buyers of property, and buyers of individual lots or homes of the potential odor, noise and dust pollution resulting from surrounding agricultural and other uses, said notification to include a reference to potential odors emanating from the Honouliuli Wastewater Treatment Plant.

Status: The Lessees of the Ka Makana Alii project will be notified of the potential odor, noise and dust pollution resulting from surrounding agricultural and other uses, said notification to include a reference to potential odors emanating from the Honouliuli Wastewater Treatment Plant.

Condition 20: If applicable, Petitioner shall fund an approved Habitat Conservation Plan to facilitate the propagation of the *abutilon mensiesii* in accordance with Department of Land and Natural Resources and US Fish and Wildlife requirements.

Status: DHHL has contributed its pro-rata share toward a contingency fund as part of the approved Habitat Conservation Plan. In addition, DHHL received its certificate of inclusion on the DOT's taking permit and has moved plants in accordance with the agreement.

Condition 21: Vertical residential and commercial components of the Project will not be developed and major site work for those areas shall not be undertaken until master drainage and infrastructure improvements for these components are completed.

Status: Construction of the required off-site infrastructure improvements (Kapolei Parkway Extension, off-site trunk sewer, 4.0 million gallon water reservoir, and water transmission line) have all been completed.

The Kapolei Parkway extension was completed in February 2008 and open to traffic in February 2010; Phase 2 of the off-site sewer trunk infrastructure was completed in January 2010; construction of the 4.0 million gallon water reservoir was completed in November 2010; the water transmission line within the North-South Road was

completed in January 2010; and the 20-foot deep detention basin to contain storm run-off from Kaloi and Hunehune Gulches on UHWO was completed in February 2012.

The engineering for the 20-foot deep detention basin to contain storm run-off from Kaloi and Hunehune Gulches on UHWO has been completed in January 2010 and construction plan submitted to the City on January 2010.

Condition 22: Petitioner or landowner shall develop Petition Area C in substantial compliance with the representations made to the Commission, as reflected in these Findings of Fact, Conclusion of Law, and Decision and Order. Failure to do so may result in reversion of the Petition Area to its former classification, or a change to a more appropriate classification.

Status: As represented to the Commission, DHHL plans to use Petition Area C as a regional shopping center, with a variety of commercial land uses such as retail, restaurant and entertainment space, business traveler oriented hotels, office space, open space amenities, and a variety of transportation related linkages.

Condition 23: Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in Petition Area C, prior to the development of Petition Area C.

Status: DHHL has executed an Option to Lease with Hawaii DeBartolo LLC to develop Petition Area C as a regional shopping center, to be known as Ka Makana Alii.

Condition 24: Petitioner shall timely provide without any prior notice, annual reports to the Commission, the State Office of Planning, and the City and County of Honolulu Department of Planning and Permitting in connection with the status of the subject Project and Petitioners progress in complying with conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Status: Noted.

Condition 25: The Commission may fully or partially release the conditions provided herein as to all or any portion of Petition Area C upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

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Area C upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Status: Noted.

Condition 26: Within 7 days of the issuance of the Commissions Decision and Order for the subject classification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.

Status: Noted.

Condition 27: Petitioner or landowners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, Hawaii Administrative Rules.

Status: The Declaration of Conditions was recorded in the State of Hawaii Bureau of Conveyances, Office of the Assistant Registrar, Land Court, as Document No. Doc T-8442325, CT 830719 dated February 11, 2013.

Condition 28: Oahu Railway & Land Company ("OR&L") Right-of-Way. Petitioner, its successors, and assigns shall work with State Department of Transportation ("DOT") and State Historic Preservation Division ("SHPD") to formulate an agreement on the number and location of accesses and improvements required for vehicular access to the Project across the OR&L tracks and right-of-way from Roosevelt Avenue. The access agreement shall be finalized prior to DOT's approval for access to Roosevelt.

Status: DHHL, with Hawaii DeBartolo, continue to discuss and consult with Hawaii Railroad Society (HRS), State Historic Preservation Division (SHPD), and State Department of Transportation (DOT) regarding impacts to the historic OR&L Right-of-Way.

March 24, 2012, HRS agreed to allow for the construction of one (1) crossing over the forty-foot DOT right-of-way, which encompasses the historic OR&L tracks.

April 20, 2012, DOT approved in principal for two (2) access points over the forty-foot DOT Right-of-Way subject to identified conditions.

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November 6, 2013, HRS provided testimony in support of the Ka Makana Alii development and anticipation of finding ways to co-exist.

December 3, 2013, DHHL notified of delegation of responsibility to DeBartolo to fund, construct and implement all transportation improvements and measures required to mitigate impacts to State roadway facilities that may be impacted by the proposed Ka Makana Alii project.

The foregoing status report has been provided as a courtesy to the Commission on the ongoing and planned activities of DHHL on lands that were made subject to certain conditions as set forth in that certain Declaration of Conditions dated February 8, 2014 in Docket No. A99-728(c). This status report shall not constitute a waiver or acquiescence of jurisdiction as between DHHL and the Commission.

Should you have any questions, please call Linda Chinn of our Land Management Division at 808.620.9451.

Attachment

c: Mr. Jesse Souki, Office of Planning
Mr. George Atta, Department of Planning and Permitting

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this "Agreement") is made this 25th day of April, 2014, by and between HAWAII DEBARTOLO, LLC ("DeBartolo"), a Delaware limited liability company having its principal place of business and post office address at 4401 W. Kennedy Boulevard, 3rd Floor, Tampa, Florida 33609 and the DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII (the "DOT"), the business address of which is 869 Punchbowl Street, Honolulu, Hawaii 96813-5097. DeBartolo and DOT are each a "Party" and together, the "Parties".

RECITALS

A. The Department of Hawaiian Home Lands, State of Hawaii ("DHHL"), is fee owner of that certain real property located at East Kapolei, Oahu, Hawaii comprising 67.184 acres and identified by Tax Map Key No. (1) 9-1-016-142 (the "Property"), as described in Exhibit A attached hereto and made a part hereof. DHHL desires to develop the Property and has agreed to lease the Property to DeBartolo for the purpose of developing a regional shopping center (the "Project") thereon.

In 1999, approximately 1,300 acres of land in the Honouliuli area, including the Property, was re-designated from the Agricultural Land Use District to the Urban Land Use District by the Land Use Commission, State of Hawaii ("LUC"), in Docket No. A99-728 as shown in Exhibit B-1. In 2012, DHHL petitioned to amend Docket No. A99-728 for the Property, as shown in Exhibit B-2, to recognize DHHL as the fee owner of the Property, to designate a new docket, to release the Property from the original conditions, and to issue a new Findings of Fact, Conclusions of Law, and Decision and Order based on the current proposed Project. The LUC designated Docket No. A99-728(c) for the Property and proposed Project. Pursuant to Decision and Order Condition No. 9 in the Findings of Fact, Conclusions of Law, and Decision and Order of Docket No. A99-728(c), dated January 14, 2013 (the "2013 LUC Decision and Order"), DHHL and its successors and assigns shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to State of Hawaii ("State") roadway facilities caused by the proposed Project as set forth in a Memorandum of Agreement.

B. As provided in the November 2011 Final Environmental Impact Statement, DeBartolo plans to develop and construct at the Project site a mixed use regional center called the Ka Makana Alii. This regional center identifies an estimated 1,400,000 square footage of leasable area, which includes shopping center, general office, hotel and recreational uses.

C. DHHL and DeBartolo propose to develop the Project in two development phases known as Phase I and Phase II. Each phase is expected to have

commercial, hotel and recreational uses. The two development phases are provided on Exhibit C.

D. The Project proposes vehicular access to Kapolei Parkway, Roosevelt Avenue and the future Kualaka'i Parkway Extension (the "Extension"). The DOT roads that provide vehicular access for the Project are Kualaka'i Parkway, Kualaka'i Parkway Extension and Roosevelt Avenue.

E. DeBartolo submitted its June 2011 Traffic Impact Analysis Report for the Project, as updated in April 2012 (collectively, the "TIAR"), to the DOT for review and acceptance. The TIAR shall be used to identify the Project's transportation impacts and provide recommendations for transportation improvements to mitigate said impacts pursuant to Condition No. 9 of the 2013 LUC Decision and Order.

F. The Parties recognize that in order to access Roosevelt Avenue, the Project's southern access points must traverse two separate parcels of land as described below and shown on Exhibit D:

- (i) The first being a parcel of land which is owned by the DOT, otherwise known as the historic Oahu Rail and Land Company ("OR&L") right of way (the "ROW"), upon which a railroad track is utilized by the Hawaiian Railway Society ("HRS") for its train operations and which runs along the southern boundary of the Property; and
- (ii) The second being a parcel of land which is owned by James Campbell Company LLC ("Campbell") and which runs along the OR&L ROW adjacent to Roosevelt Avenue (the "Campbell Parcel").

Each Party hereto therefore recognizes the improvements related to the Project's access points to Roosevelt Avenue shall require coordination between each of them, as well as with Campbell and HRS.

G. The Parties further recognize that the Extension will also traverse the OR&L ROW and the Campbell Parcel. Therefore, certain improvements for the Extension shall also require coordination between the Parties as well as with Campbell and HRS as applicable.

H. Within this Agreement, DeBartolo and the DOT desire to identify each Party's rights and obligations with respect to the anticipated local and regional transportation improvements and mitigation measures that will be completed pursuant to Condition No. 9 of the 2013 LUC Decision and Order.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated hereby, and the commitment and agreements contained herein, DeBartolo and the DOT agree as follows:

1. *Transportation Improvements.* For the purposes of this Agreement, the required local and regional improvements to the State roadway facilities use the full build-out of the Project and are conceptually identified in the TIAR and below. All of these transportation improvements require further coordination and work as set forth herein between DeBartolo and the DOT so that these improvements are completed in accordance with applicable federal and State requirements, guidelines and approvals.

A. Kualaka'i Parkway Extension The Extension shall have a similar cross-section as the existing four (4) lane Kualaka'i Parkway with a right-of-way to accommodate the future six (6) lanes. The Extension shall be designed to urban minor arterial guidelines. The Extension alignment is shown conceptually in Exhibit D.

The Extension shall include the intersection of the Kapolei and Kualaka'i Parkways shown as Intersection A in Exhibit D and the intersection of the Kualaka'i Parkway and Roosevelt Avenue shown as Intersection B in Exhibit D.

The DOT shall allow the Project one (1) vehicular access onto the Extension. The access should be at approximately mid-distance between Kapolei Parkway and Roosevelt Avenue. The access is to serve as a major vehicular access for the Project and be signalized as shown as Access C in Exhibit D. The DOT may consider secondary access from the Project onto the Extension to relieve potential congestion at the Project's major access onto the Extension as shown as Access D in Exhibit D. Any secondary access on the Extension will require the prior written approval by the DOT, which consent may be withheld in the DOT's sole discretion.

B. Roosevelt Avenue Access – The DOT shall allow the Project two (2) vehicular accesses onto Roosevelt Avenue as shown as Access A and Access B in Exhibit D. One (1) access shall be at the westerly end of the Project and one (1) access shall be at approximately mid-point of the Project along Roosevelt Avenue. Notwithstanding any provision to the contrary in this Agreement, DeBartolo agrees and acknowledges that the DOT is not herein providing DeBartolo any assurance of rights over the OR&L ROW or the Campbell Parcel to Access A or Access B.

2. *Local Transportation Improvements.* As a direct result of the transportation impacts of the Project, certain local transportation improvements are required to address said impacts and maintain the efficient and safe operations on the roadway facilities. DeBartolo shall bear any and all costs of the following local

transportation improvements, except those costs incurred by DOT associated with the review and approval of the improvements as contemplated herein below.

A. Roosevelt Avenue Access – The improvements of the vehicular accesses designated as Access A and Access B in Exhibit D and those other associated improvements as recommended in the TIAR that are acceptable to the DOT and agreed upon by the Parties shall be designed and constructed by DeBartolo to meet applicable State and federal guidelines and subject to the review and approval of the DOT. The design of these accesses shall be performed using the Project's full build-out trip generation and trip distribution forecasts in relation to the State roadway facilities. As set forth in Recital F above, the access routes to Roosevelt Avenue cross the OR&L ROW and the Campbell Parcel and, accordingly, shall require coordination with HRS and Campbell, respectively. Any infrastructure required for the crossing of the railroad tracks (e.g., signalization and safety measures) shall be provided by DeBartolo. The operations and maintenance of such driveway access and related railroad controls will be identified in a use and occupancy agreement between DeBartolo and the parties-in-interest.

B. Initial Access – In the event that a schedule for the development of the Extension either indicates that the Extension may not be or contemplates that the Extension will not be completed prior to the build-out of Phase I of the Project, DeBartolo may design, construct and operate a temporary access as intended and identified in the November 2011 Environmental Impact Statement at DeBartolo's sole cost and as described herein. This temporary access, called the "Initial Access," will be a vehicular access to the Project via the intersection of the Kualaka'i Parkway and Kapolei Parkway, at Intersection A, and will follow the alignment of the Extension to the proposed major vehicular access to the Project on the Extension at Access C. The design of the Initial Access shall consider the existing alignment and cross-section of Kualaka'i Parkway and the proposed alignment of the Extension and shall be based on the Project's full build-out trip generation and trip distribution forecasts in relation to the State roadway facilities. The design of the Initial Access, which includes the intersection of Kualaka'i Parkway and Kapolei Parkway, shall be designed in accordance with applicable federal and State requirements and guidelines, and reviewed and approved by the DOT for the purpose of the DOT's issuance of the permit(s) therefore. For reference of the Initial Access, see Exhibit E. The Initial Access shall be completed and in operation prior to a Certificate of Occupancy being issued for additional mixed use space in the Project that would cause the Project's traffic to exceed the capacity of the Project's accesses to Kapolei Parkway at Intersection A and to Roosevelt Avenue at Access A. The capacity of these accesses onto Kapolei Parkway and Roosevelt Avenue shall be accepted by the DOT prior to any Certificate of Occupancy being approved for the Project.

C. Performance of Work. Any and all work performed by DeBartolo shall be diligently pursued and completed within a reasonable time. Additionally, the work to be performed by DeBartolo shall require the DOT's prior review and written approval, which approval shall not be unreasonably withheld, delayed, or conditioned.

3. *Regional Transportation Improvements.* The regional transportation improvements are understood and agreed to be the Extension. The work for the Extension shall be provided by partnership of the Parties. The responsibilities of each Party with respect to the Extension are described below.

A. DeBartolo's Responsibilities. DeBartolo shall fund in entirety and undertake the following items on behalf of the DOT, subject to the DOT's prior review and written approval.

(i) Environmental Process – DeBartolo shall, in coordination with the DOT, conduct, or cause to be conducted all environmental investigations or inquiries, coordination, and preparation of all environmental reports necessary for the Extension in accordance with applicable State and federal requirements (“Environmental Process”). The Environmental Process shall include but may not be limited to:

1) Compliance with State environmental requirements which include, but may not be limited to, Chapter 343 and 6E, Hawaii Revised Statutes and Hawaii Administrative Rules (HAR), Title 11, Chapter 200, each as amended from time to time; and

2) Compliance with applicable federal environmental requirements, which include, but may not be limited, to the National Environmental Policy Act, Section 106 National Historic Preservation Act, Section 4(f) Department of Transportation Act, and the Safe Drinking Water Act for the Southern Oahu Basal Aquifer, each as amended from time to time.

(ii) Geotechnical Investigation – DeBartolo shall provide, or cause to be provided, and bear the cost of the geotechnical investigation required preliminary to the design of the Extension.

(iii) Design – DeBartolo shall provide, or cause to be provided, and bear the cost of the design of the Extension as such design specifically relates to the Extension. The design documents for the Extension are collectively referred to as the “Design Documents”. The Design Documents shall provide that the Extension shall be built in

accordance with applicable laws, statutes, rules, regulations, and ordinances and all applicable State and federal standards, criteria, and guidelines. In addition, the design for the Extension shall include the design work within and abutting the OR&L ROW and the Campbell Parcel, due to the Extension. The Design Documents and any other design work described herein shall be coordinated with, reviewed, and approved in writing by the DOT.

(iv) Coordination – Since the Extension will also traverse over and across the OR&L ROW and the Campbell Parcel, DeBartolo shall also coordinate the relevant portion of the environmental, geotechnical and design work with HRS and Campbell, respectively.

(v) Performance of Work – DeBartolo, in its sole and absolute discretion, may commence performance of the responsibilities described in Subsections 3.A. (i) through (iv) above at any time after the date hereof but, in any event, DeBartolo shall commence the same within a reasonable time following DeBartolo's receipt of DOT's written confirmation that the DOT has obtained, or will obtain by a specified date, the funding required to construct the Extension; and DeBartolo shall complete the performance of said responsibilities, including providing the completed Design Documents, in a timely manner.

B. DOT's Responsibilities. The DOT shall be responsible for the timely construction of the Extension, provided that the necessary funding is available, the necessary approvals are obtained, and unforeseen circumstances beyond the control of the DOT do not occur.

(i) The DOT shall timely and reasonably review the Environmental Process and the Design Documents and approve the same, which approval shall not be unreasonably withheld, conditioned, or delayed.

(ii) The DOT shall construct, or cause the construction of, the Extension pursuant to the approved Environmental Process and the Design Documents. The DOT shall commence the construction of the Extension within a timely manner after the completion and approval of the Environmental Process and the Design Documents.

(iii) The DOT shall cooperate in DeBartolo's efforts to timely complete the tasks identified in Section 3.A. above,

including without limitation, serving as the accepting agency for the Environmental Process and acting as State intermediary in dealings with the federal government.

4. *Project Phasing* – The Project development will be completed in two phases, identified as Phase I and Phase II, as shown on Exhibit C.

A. Phase I. The local transportation improvements identified herein in Paragraph 2 will be designed using the conditions of full build-out of the Project with an estimated leasable area of 1,400,000 square feet, and the Initial Access shall be completed and in operation before a Certificate of Occupancy is issued for additional mixed use space in Phase I of the Project that would cause the traffic to exceed the capacity of the Project's accesses to Kapolei Parkway and to Roosevelt Avenue. Upon completion of such improvements as approved by the DOT, the DOT is amenable to providing the City and County of Honolulu ("City"), Department of Planning and Permitting, a letter certifying that local transportation improvements as identified herein have been completed.

B. Phase II. The regional transportation improvements are expected, but shall not be required, to be completed prior to the issuance of a Certificate of Occupancy for the Phase II of the Project.

Prior to the development of Phase II, an updated TIAR shall be submitted to the DOT for the purpose of verifying that the transportation improvements completed in Phase I of the Project are operating efficiently and safely. If the DOT determines that, based on the findings of said updated TIAR, the Phase I transportation improvements are not operating at an acceptable level because of the Project development, additional transportation improvements may be required with respect to the development of Phase II; and if so, DeBartolo shall provide the additional transportation improvements when Phase II is developed at no cost to the State. If additional transportation improvements are needed, the DOT shall provide a letter to the City Department of Planning and Permitting prior to the Certificate of Occupancy for Phase II for the work identified in Sections 4.A. and 4.B. Furthermore, if the additional transportation improvements are regional transportation improvements, DeBartolo shall be entitled to the credits for the Ewa Impact Fees pursuant to the terms and conditions of Section 5.A. below and subject to Section 5.C. below.

5. *Ewa Impact Fees.*

A. Credits for Section 3.A. Contributions. Notwithstanding any provision to the contrary herein, the DOT shall use its available Credits, defined below, to offset DeBartolo's required contribution under Section 3.A. above relating to the funding of the costs of the Extension, which is a regional transportation improvement pursuant to Chapter 33A, Revised Ordinances of Honolulu (relating to the Ewa Regional Transportation Impact Fees) Chapter 33A, and it is acknowledged that DeBartolo is acting on behalf of DHHL. As used herein "Credits" shall mean those amounts that

become available as a result of the Ewa Highway Impact Fees (the "Ewa Impact Fees") that are collectible by the City pursuant to Chapter 33A. The Credits shall be applied to offset the Ewa Impact Fees assessed by the City in connection with the building permit applications for the Project submitted by DeBartolo. Prior to the use of any Credits against any Ewa Impact Fees due as a result of a permit application for improvements on or at the Project, the DOT shall formally notify DeBartolo of the potential use of Credits and shall use any such Credits only upon receipt of written verification by DeBartolo that Credits may be so used.

B. Credits for Section 2.B. Initial Access. In the event of the full build-out of the Extension, the DOT shall use its available Credits to offset such portion of DeBartolo's required contribution to the funding and costs of the full build-out that correspond to the construction costs for such portion of the Initial Access as described in Section 2.B. above that is incorporated into the Extension, inasmuch as the Initial Access is intended to be incorporated into the Extension and is therefore a regional transportation improvement pursuant to Chapter 33A and it is acknowledged that DeBartolo is acting on behalf of DHHL. The Credits described in this Section 5.B. shall be applied against the Ewa Impact Fees for which DeBartolo is responsible and shall be administered pursuant to the procedures established in this Section 5.

C. Contributions in Excess of Credits. The DOT will not be responsible for reimbursing DeBartolo in any manner whatsoever in the event that the amount of DeBartolo's required Ewa Impact Fee contributions with respect to the Extension and/or regional improvements are greater than the Credits.

6. Regional Fair Share. DeBartolo shall complete its regional transportation obligations under Section 3.A., above, in order to receive the Credits pursuant to Section 5.A. above. If, however, the effort to complete the full build out of the Extension in an average project delivery process (i.e., three years) is delayed or otherwise unsuccessful due to circumstances beyond the Parties' control and DeBartolo undertakes the design and construction of the Initial Access, then the DOT shall be fair and reasonable to allow for DeBartolo's work on the Initial Access to take priority over its work under Section 3.A.

7. Project Access Rights. DeBartolo shall, if applicable, pay the fair market value for any right to access to Kualaka'i Parkway, OR&L ROW, and Roosevelt Avenue as described above in Sections 1.A. and 1.B. Fair market value for such access shall be determined by an appraisal in accordance with 23 CFR 710.403(d).

8. Termination.

A. DeBartolo Termination. DeBartolo shall have the right, exercisable in its sole and absolute discretion, to terminate this Agreement in the event that the Project is terminated for any reason whatsoever. If DeBartolo terminates this Agreement, then it shall be responsible for its costs incurred through termination but shall have no further obligations hereunder from and after termination.

B. DOT Termination. The DOT shall have the right, exercisable in its sole and absolute discretion, to terminate its obligations and responsibilities under Section 3.B above. If the DOT terminates its responsibilities as provided herein, the remainder of this Agreement shall continue in full force and effect and shall constitute DeBartolo's obligation to implement transportation improvements and measures required to mitigate impacts to State roadway facilities caused by the Project as required by Condition 9 of the 2013 LUC Decision and Order for the work completed pursuant to and in accordance with the provisions of this Agreement. If the DOT terminates its responsibilities as provided herein, the DOT shall use its available Credits to credit DeBartolo pursuant to Sections 5 and 6 above for the work undertaken pursuant to and in accordance with the provisions of this Agreement.

C. Notice of Termination. If a Party has made the determination to terminate as set forth above, such Party shall provide thirty (30) days prior written notice to the other Party of such determination and termination pursuant to the terms of Section 9.D below.

9. *Miscellaneous.*

A. Authority. The Parties represent and warrant that their respective signatories to this Agreement have the authority to bind the Party for whom the person is signing and that this Agreement constitutes a legally binding and enforceable agreement of each Party.

B. Entire Agreement. This Agreement, including all exhibits attached hereto, embodies the entire agreement of the Parties and supersedes any other agreements and understandings with respect to the subject matter hereof that may have existed between the Parties.

C. Amendment. This Agreement may be amended only by written agreement setting forth the amendment(s) executed by each Party.

D. Notices. Except as otherwise specifically provided herein, all notices, demands, and delivery of documents given under this Agreement shall be in writing and shall be (a) delivered in person to the other Party, (b) mailed by first class mail, certified or registered, return receipt requested, postage prepaid, addressed to the other Party as provided below, (c) transmitted by telecopy transmission to the other Party at the telecopier numbers below, or (d) transmitted by electronic mail to the other Party to the electronic mail addresses below:

If to DeBartolo	Hawaii DeBartolo, LLC 7001 N. Scottsdale Road, Suite 2055 Scottsdale, Arizona 85253 Fax: (480) 483-7375 Attention: Rich Hartline Email: RHartline@debartolodevelopment.com
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With a copy to Hawaii DeBartolo, LLC
4401 W. Kennedy Boulevard, 3rd Floor
Tampa, Florida 33609
Fax: (813) 676-7696
Attention: Edward M. Kobel
Email: ekobel@debartolodevelopment.com

With a copy to Chun, Kerr, Dodd, Beaman and Wong
745 Fort Street, 9th Floor
Honolulu, Hawaii 96813
Fax: (808) 536-5869
Attention: Danton Wong, Esq.
Email: dwong@chunkerr.com

If to DOT Department of Transportation, State of Hawaii
869 Punchbowl Street, Room 509
Honolulu, Hawaii 96813
Fax: (808) 587-2168
Attention: Glenn M. Okimoto
Email: glenn.okimoto@hawaii.gov

With a copy to State of Hawaii, Department of the Attorney General
Attention: Land/Transportation Division
465 South King Street, Suite 300
Honolulu, Hawaii 96813
Fax: (808) 587-2999

Such addressees, addresses, telecopier numbers, and email addresses may be changed from time to time by the addressee by serving notice as above provided.

E. Indemnification. DeBartolo shall indemnify and hold harmless the State of Hawaii, including but not limited to the DOT, and its officials, officers, employees, and agents from and against all liability, loss, damage, cost and expense, including reasonable attorneys' fees, and all claims, suits, and demands therefore arising out of or resulting from the negligent, reckless, intentional or wrongful acts, errors or omissions of DeBartolo or its employees, officers, agents, consultants, contractors and subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

Notwithstanding any provision to the contrary in this Agreement, nothing herein shall be construed to extend the applicable statute(s) of limitation and/or repose, except as provided by statute or law. With respect to any claim barred by all applicable laws, DOT will not seek to enforce the indemnity provision as to that claim.

F. Assignment. No party shall assign any of its rights under this Agreement to any person without the prior written consent of the other party, which consent may be arbitrarily withheld; provided, however, that in DeBartolo's or any permitted assignee's sole and absolute discretion, this Agreement may be assigned without the consent of the DOT to a party that holds the leasehold interest in the Property under a lease from the DHHL and that assumes and agrees in writing to be bound by the terms and provisions of this Agreement, subject, however, to such party's obtaining any approvals required by the LUC. DeBartolo, or any permitted assignee, as applicable, shall notify the DOT in writing of such an assignment. Following such an assignment, the assignor shall have no further rights or responsibilities under this Agreement, provided, however, that notwithstanding anything to the contrary contained herein any such assignor shall in no event be relieved of any liabilities arising prior to such assignment while such assignor was a Party to this Agreement. The consent of the DOT to any one assignment shall not constitute a waiver of the DOT's right to approve subsequent assignments, nor shall consent of the DOT to any one assignment relieve or release any party previously liable from any obligation under this Agreement. The DOT's consent shall be evidenced only in writing. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

G. Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein and with the objective of implementing the intent of the Parties as determined by the Agreement as a whole.

H. Headings. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.

I. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding the Parties hereto.

J. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties to this Agreement, shall be governed by the laws of the State of Hawaii.

[Signatures on the following page.]

IN WITNESS WHEREOF, DeBartolo and DOT, by their duly authorized representatives, have caused this Agreement to be executed as of the day and year first above written.

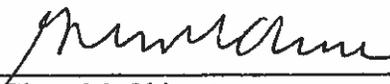
HAWAII DEBARTOLO, LLC
a Delaware limited liability company

By DeBartolo Development, LLC
a Delaware limited liability company
Its Managing Member

By _____
Name _____
Its _____

“DeBartolo”

DEPARTMENT OF TRANSPORTATION,
STATE OF HAWAII

By 
Glenn M. Okimoto
Its Director

“DOT”

APPROVED AS TO FORM:

By 
Name Marjorie Lau

IN WITNESS WHEREOF, DeBartolo and DOT, by their duly authorized representatives, have caused this Agreement to be executed as of the day and year first above written.

HAWAII DEBARTOLO, LLC
a Delaware limited liability company

By DeBartolo Development, LLC
a Delaware limited liability company
Its Managing Member

By _____
Name EDWARDS H. KOBEL
Its MANAGER

"DeBartolo"

DEPARTMENT OF TRANSPORTATION,
STATE OF HAWAII

By _____
Glenn M. Okimoto
Its Director

"DOT"

APPROVED AS TO FORM:

By _____
Name _____

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

THE FOREGOING INSTRUMENT was acknowledged before me this 21st day of APRIL, 2014, a Notary Public in and for the aforesaid County and State, by Edward M. Kobel, as President and Manager of DeBartolo Development, LLC, Manager of Hawaii DeBartolo, LLC, a Delaware limited liability company, on behalf of the limited liability companies and is personally known to me, or who produced a — driver's license as identification.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

(Stamp or Emboss Notary Seal)



Carolyn A. Rapuzzi
Notary Public, State of FLORIDA
Print
name: CAROLYN A. RAPUZZI
Commission
No.: 967147

STATE OF HAWAII)

) SS.

_____ COUNTY OF HAWAII)

On this _____ day of _____, 2014,
before me personally appeared _____, to me personally known, who,
being by me duly sworn or affirmed, did say that he/she is the _____ of
_____, the
_____ named in the foregoing instrument, and that he/she is authorized to
sign said instrument on behalf of the _____, and acknowledges that
he/she executed said instrument as the free act and deed of the _____.

Notary Public, _____

My commission expires: _____