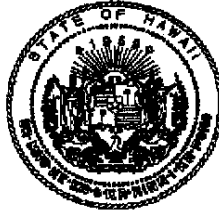


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BUREAU OF CONVEYANCES
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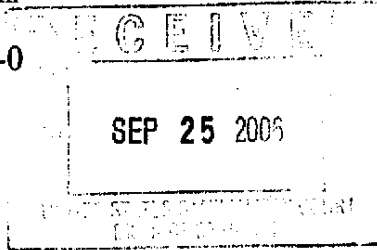
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FAM NO. 2577642

Order Re: Sale of Real Property Free and Clear of Liens; Exhibits A to F

REINWALD O'CONNOR & PLAYDON LLP
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Attorney for the Successor Chapter 7 Trustee
JAMES B. NICHOLSON

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HALEKUA DEVELOPMENT
CORPORATION,
a Hawaii corporation,

Debtor.

Case No. 03-01279
(Chapter 7)

Hearing:

Date: August 28, 2006

Time: 9:30 a.m.

Judge: Honorable Robert J. Faris

**ORDER RE: SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS;
EXHIBITS A to F**

On May 26, 2006, James B. Nicholson, the successor Chapter 7 Trustee ("Trustee") appointed over Halekua Development Corporation ("Debtor" or "HDC") and the Debtor's estate ("Estate") in the above-entitled Chapter 7 case ("Case"), filed his Motion to Approve Sale of Real Property Free and Clear of All Liens and Encumbrances; Approve Bidding Instructions and Schedule Auction

CERTIFIED as a true copy of the document on file at the
United States Bankruptcy Court, District of Hawaii.
Michael B. Dowling, Clerk of Court

By: *M. Dowling*
Deputy Clerk
Date: MAR - 5 2007 No of pages: 11

Date (the "Motion"). On August 21, 2006, the Trustee filed with the Court his Supplement to Status Report and Lodging of Ancillary Agreements and Status Report.

The hearing on the Motion was held on August 28, 2006 before the Honorable Robert J. Faris, Judge of the United States Bankruptcy Court for the District of Hawaii. Jerrold K. Guben appeared for the successor Chapter 7 Trustee, James B. Nicholson; Walter C. Davison appeared for Kunia Residential Partners ("KRP") and Castle & Cooke Kunia, Inc.; Chuck C. Choi appeared for Stanford Carr Development, LLC ("SCD") and RKS Management, LLC; Reuben Wong and Jeffrey C. Krause appeared for HRT, Ltd.; Jonathan Steiner appeared for CMR Mortgage Fund, LLC; and Steven Guttman appeared for HDC.

Attached to this Order are the following documents (collectively, the "Sale Documents"):

- (1) Instructions for Bidding to Acquire Interest of the Estate ("Bidding Instructions"); Exhibit A;
- (2) Settlement Agreement; Exhibit B;
- (3) Connection Agreement; Exhibit C;
- (4) Infrastructural Agreement; Exhibit D;
- (5) Performance Bond; Exhibit E; and
- (6) Purchase and Sale Agreement ("or PSA"); Exhibit F.

Based on the Trustee's recommendation and the documents submitted to the Court, there were four (4) qualified bidders, (1) KRP and Castle & Cooke Kunia, Inc.; (2) HRT, Ltd. (3) SCD and (4) HDC.

The Trustee's counsel advised that the Bidding Instructions would be modified to allow for confirmation of the second highest bid as a "back-up" bid (the "Modified Bidding Instructions").

The hearing was then recessed, and the auction was conducted in the courtroom outside the presence of the Court.

The hearing on the Motion was then reconvened. The Trustee reported the results of the auction and requested that the sale of the Property to HDC be confirmed and that the bid of SCD be confirmed as the back-up bid.

Based on the Motion, the Sale Documents, the documents submitted to the Court, the representations made at the hearings, the recommendations of the Trustee, being advised in the premises and for good cause appearing therefor,

1. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C §§ 157 and 1334(b).

2. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to 11 U.S.C. §§ 363(f) and 363(h), the sale of Lot 2 of the Royal Kunia Apartment Subdivision, containing approximately 161.360 acres, bearing Tax Map designation (1) 9-4-2-71 (the "161 Acre Parcel"), and related property

defined in the PSA as the "Property" (collectively, the "Property") to HDC for FIFTY MILLION TWO HUNDRED THOUSAND DOLLARS AND NO/100 (\$50,200,000.00) (the "Purchase Price"), pursuant and subject to the terms of the PSA (and attachments) and the Modified Bidding Instructions, is hereby confirmed.

3. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion is granted, all objections thereto are hereby overruled and the Sale Documents are approved.

4. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Purchase Price must be paid, pursuant to the PSA, twenty (20) calendar days after the entry of this Order or, if the Closing is extended at HDC's option pursuant to the PSA and the Bidding Instructions, then upon the earlier of (i) ten (10) business days after the State of Hawaii Land Use Commission gives its consent to the transfer of the Property (as that term is defined in the PSA) to HDC, if such a consent is necessary, or (ii) by February 28, 2007. Pursuant to the PSA, HDC shall also be responsible for payment of the City and County of Honolulu real property taxes due on the Property as of the Closing Date (as that term is defined in the PSA) in an amount to be determined as of the Closing Date.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that HDC may extend the Closing Date, at its option, in monthly installments as provided for in the PSA and the Modified Bidding Instructions, to a date beyond 20 calendar days after the entry of this Order, by HDC's payment of the monthly

secured debt service in the amount of \$132,061.59 per month (or a prorated amount if the extension is for less than 30 days) (individually an "Extension Fee" and collectively the "Extension Fees"), which Extension Fee shall first be payable not less than five days before the scheduled Closing Date, as provided for in the PSA.

6. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if HDC shall fail to perform or otherwise default on its obligations under the PSA and the Modified Bidding Instructions, the Trustee shall promptly deliver notice of termination of the PSA (the "Termination Notice") to HDC, and promptly notify the Court and other interested parties of such termination.

7. IT IS FURTHER ORDERED ADJUDGED AND DECREED that SCD will be designated as the "back-up" bidder at a purchase price of FIFTY MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$50,100,000.00). Promptly after delivering Termination Notice, the Trustee shall notify SCD that the Trustee is prepared to proceed with the back up bid from SCD ("Trustee's Notice to Proceed"), and SCD shall have five (5) days from the date of the Trustee's Notice to Proceed to execute and deliver to the Trustee the PSA (with attachments) and to deposit the sum of \$1,000,000.00 with the Trustee in cash or by credit against its secured claim. The form of the PSA shall be modified to provide that the Closing Date shall be scheduled for twenty (20) days after the date of execution of the PSA, and SCD shall have the right to extend the Closing for one month at a

time for a period of up to 180 days from said Closing Date, by providing written notice to the Trustee and depositing with Escrow Agent the money Extension Fee in amount of \$132,061.59 (or a prorated amount if the extension is for less than 30 days) not later than five (5) days before the then scheduled Closing.

8. IT IS FURTHER ORDERED ADJUDGED AND DECREED that upon consummation of the sale to either HDC or SCD, the Settlement Agreement by and between the Trustee and HRT, Ltd. shall be deemed effective and the Trustee shall be authorized to consummate the Settlement Agreement and fully perform all obligations thereunder.

9. IT IS FURTHER ORDERED ADJUDGED AND DECREED AS FOLLOWS:

A. The Trustee is authorized to perform his obligations and to take all necessary and appropriate actions to consummate the PSA, and all of the terms and conditions thereof.

B. The Trustee is authorized to execute and deliver and empowered to perform under, consummate and implement the PSA, and the other Sale Documents, together with all additional instruments and documents that may be reasonable and necessary or desirable to implement the PSA, and to take all further actions as may be requested by the purchaser for the purposes of assigning, transferring, granting, conveying and conferring the Property to the purchaser.

C. Pursuant to 11 U.S.C. §§ 363(b) and 363(f), the Property shall be transferred to HDC, and upon consummation of the PSA, shall be free and clear of all mortgages, liens, pledges, charges, unrecorded easements, interests, rights of first refusal, restrictions, claims, judgments, demands, defects, or any other adverse claims, interests or liabilities of any kind or nature whatsoever (whether known or unknown, accrued, absolute, contingent or otherwise) existing as of the Closing Date (collectively, the "Interests") except those interests, rights, and permits granted by the State of Hawaii Land Use Commission and the City and County of Honolulu and except as specifically provided in the PSA. RSE

D. Except as specifically provided by the PSA, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental tax and regulatory authorities, lenders, trade and other creditors, holding Interests of any kind or nature whatsoever against or in the Property, are forever barred and estopped from asserting against the Property such persons' or entities' existing Interests, because the Property is being sold free and clear of all Interests, except any lien securing any claim for real property taxes; provided, however, that nothing contained in this Order discharges HDC's claims or unsecured claims, bars any creditor of HDC from seeking to obtain a lien against the Property in the future (if HDC is the purchaser).

E. On or before the Closing Date, each of the Debtor's secured creditors is authorized and directed to execute such documents and to take all other

actions as may be necessary to release its Interests in the Property, if any, as such Interests may have been recorded or otherwise exist and said Interests, if any, shall attach to the net proceeds of sale of the Property in the order of their priority, with the same validity, force and effect which they now have as against the Property, and the secured creditors with liquidated claims shall be paid the full amount of the respective secured claims, as provided in the Bidding Instructions, upon the closing of the escrow to be opened in this matter.

F. This Order (a) shall be effective as a determination that, as of the Closing Date, all Interests of any kind or nature whatsoever existing as to the Property prior to the Closing Date shall attach to the net proceeds of sale of the Property as provided for in sub-paragraph E above and the conveyances described herein shall have been effective, and (b) shall be binding upon and shall govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrar of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and other persons or entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments or may be required to report or insure any title or state of title in or to any of the Property.

G. Except as specifically provided in the PSA, the sale, transfer, assignment and delivery of the Property shall not be subject to any Interests and

any Interests of any kind or nature whatsoever shall remain with, and continue to be obligations only of the Debtor's Estate. All persons holding Interests against or in the Property of any kind or nature whatsoever shall be, and hereby are, forever barred and estopped from asserting, prosecuting, or otherwise pursuing such Interests of any kind or nature whatsoever against the Property with respect to any Interests of any kind or nature whatsoever such person or entity had, has, or may have against the Property. Following the Closing Date, no holder of any Interests shall interfere with the purchaser's title to or use and enjoyment of the Property based on or related to such Interests.

H. This Court retains jurisdiction to enforce and implement the terms and provisions of the PSA and other Sale Documents, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Property to the purchaser, free and clear of liens, encumbrances and Interests as provided herein, (b) resolve any disputes arising under or related to the Property, except for disputes between the purchaser and any party other than the Trustee if the resolution of such dispute will not impact the Estate, and except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Order.

I. The transactions contemplated by the PSA are undertaken by HDC (or SCD as the "back-up" bidder) in good faith, as that term is used in 11

U.S.C. § 363(m), and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to HDC (or SCD as the "back-up" bidder) unless such authorization is duly stayed pending such appeal. In the absence of a stay pending appeal, if HDC (or SCD as the "back-up" bidder) elects to close under the PSA at any time after entry of this Order, then, with respect to the Sale, HDC (or SCD as the "back-up" bidder) is a purchaser in good faith of the Property, and is entitled to all of the protections afforded by 11 U.S.C. § 363(m) if this Order or any authorization contained herein is reversed or modified on appeal.

J. The terms and provisions of the PSA and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its Estate, and its creditors, HDC, and their respective affiliates, successors and assigns, and any affected third parties.

K. The failure specifically to include any particular provisions of the PSA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Trustee and HDC (or SCD as the "back-up" bidder) be authorized to perform the PSA in its entirety.

~~L. The PSA may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this Court, provided that any such~~ RUF

~~modification, amendment or supplement does not have a material adverse effect on
the Debtor's Estate.~~

RU

M. This Order shall be effective and enforceable immediately upon entry. The stays otherwise imposed by Fed.R.Bankr.P. 6004(g) and 6006(d) are not applicable to this Order.


DATED: Honolulu, Hawaii, OCT 2 2006




United States Bankruptcy Judge

APPROVED AS TO FORM:


WALTER C. DAVISON
Attorney for Kunia Residential
Partners and Castle & Cooke Kunia,
Inc.



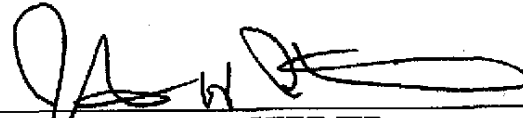
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Management, LLC



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Corporation



JONATHAN H. STEINER
Attorney for CMR Mortgage Fund,
LLC

**In re Halekua Development Corporation, Case No. 03-01279 (Chapter 7); ORDER RE:
SALE OF REAL PROPERTY; EXHIBITS A to F**

Exhibit A

Exhibit A

REINWALD O'CONNOR & PLAYDON LLP
A LIMITED LIABILITY LAW PARTNERSHIP

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Attorney for the Chapter 7 Trustee
JAMES B. NICHOLSON

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HALEKUA DEVELOPMENT
CORPORATION,
a Hawaii corporation,

Debtor.

Case No. 03-01279
(Chapter 7)

Auction Date:

Date: August 28, 2006

Time: 9:30 a.m.

Judge: Honorable Robert J. Faris

**INSTRUCTIONS FOR BIDDING
TO ACQUIRE INTEREST OF THE ESTATE**

James B. Nicholson, the successor Chapter 7 Trustee of the Estate of Halekua Development Corporation, submits the following bidding instructions soliciting competing bids for the Estate's 75.72% interest and HRT, Ltd.'s 24.28% undivided interest in the Real Property, the legal description described in the documents (hereinafter "Real Property").

The Trustee has entered or will enter into agreements, subject to Bankruptcy Court approval, with Kunia Residential Partners ("KRP"), HRT, Ltd. ("HRT") and Stanford Carr Development, LLC ("SCD") providing for the sale of both the Estate's 75.72% interest and HRT's 24.28% interest in the Real Property. The form of the purchase agreements and related documents (the "Purchase Documents") will be filed with the Court not less than ten (10) days prior to the auction. The Purchase Documents include the asset purchase agreement, the settlement agreement between HRT and the Trustee, which Bankruptcy Court approval of the Settlement Agreement will be binding on the sale of the Property to the Successful Bidder, the infrastructure agreement between HRT and the bidder (the "HRT Infrastructure Agreement"), and the connection agreement between Kunia Residential Partners ("KRP") and the bidder (the "KRP Connection Agreement"). Preliminary drafts of these documents are available for review from the Trustee.

I. BACKGROUND

On April 25, 2003 (the "Petition Date"), Halekua Development Corporation ("HDC") filed its Chapter 11 petition for relief. Thereafter, the case was converted to Chapter 7 and James B. Nicholson was appointed successor Trustee on January 27, 2006.

On the petition date, HDC owned a 75.72% undivided interest in the Real Property and HRT owned a 24.28% undivided interest in the Real Property.

AS TO ANY STATEMENTS IN THESE BIDDING INSTRUCTIONS INCONSISTENT OR CONTRADICTORY WITH THE PURCHASE DOCUMENTS, THE TERMS AND CONDITIONS CONTAINED IN THE PURCHASE DOCUMENTS SHALL CONTROL.

A. SECURED MONETARY OBLIGATIONS WITH INTEREST TO DECEMBER 31, 2005.

As of December 31, 2005, the amounts owed under the monetary obligations secured by liens on the Real Property are as follows:¹

HRT

Principal	5,806,813.97	
Pre-petition interest	149,237.00	
Post-petition interest	796,528.00	
Total HRT		\$ 6,752,578.97

SCD (by assignment)

Principal	1,278,597.78	
Pre-petition interest	192,412.25	
Post-petition interest	234,959.19	
Total SCD		\$ 1,705,969.00

¹ The amounts herein are the agreed upon principal balances due to the secured creditors and 7% interest through December 31, 2005. The secured creditors are also owed post-December 31, 2005 interest at the rate of seven percent (7%).

KRP

Principal	11,983,930.00	
Pre-petition interest	4,199,986.68	
Post-petition interest	2,254,620.47	
Post-petition infrastructure	133,517.00	
Total KRP		\$18,572,054.15

C&C (by assignment)

Principal	3,436,271.80	
Pre-petition interest	726,456.60	
Post-petition interest	646,489.82	
Total C&C		\$ 4,809,218.22

The Secured Creditors have agreed that the foregoing amounts are allowed secured claims.

The principal portion of each of these obligations continues to accrue interest from and after December 31, 2005 at the agreed upon rate of seven percent (7%) per annum. The foregoing liens shall attach to the proceeds of the sale of the Real Property.

The Real Property is also subject to unpaid City & County real property taxes that accrued both before and after the Petition Date (the "Secured Property Taxes"). The Secured Property Taxes are secured by a paramount lien on the Real Property and shall be paid at closing prior to any of the foregoing liens. The cash required to pay the foregoing secured claims and the Secured Property

Taxes must be included as part of the purchase price of any bid for the Property. Each secured creditor can credit bid the amount of its own secured claim but each secured creditor must pay in cash at closing (and cannot credit bid) the amount of the other agreed secured claims, including the Secured Property Taxes.

B. LAND USE COMMISSION AND COUNTY ZONING CONDITIONS.

The Successful Bidder must satisfy certain Land Use Commission ("LUC") conditions relating to the reclassification of the Real Property, from agricultural to urban, as set forth in the LUC order filed October 1, 1996 (the "LUC Order"), as well as certain County zoning conditions as set forth in the Unilateral Agreements dated March 6, 1995 and April 9, 1997 (the "Unilateral Agreements").

C. SECURED NON-MONETARY OBLIGATIONS.

The Real Property is subject to certain secured non-monetary obligations to HRT which must also be satisfied or assumed by the Successful Bidder.

(1) Fill Material.

HDC agreed to provide fill material ("Fill Material") to HRT. HRT has estimated that the monetary value of the Fill Material is \$6 million. This obligation is secured by HRT's mortgage on the Property. The Successful Bidder may satisfy the Fill Material obligation by either (a) assuming the obligation to

provide the Fill Material to HRT "in-kind" in amount of 400,000 cubic yards, or
(b) paying HRT \$6 million in cash as provided in the HRT Infrastructure Agreement (defined in the next subsection).

(2) Major Parkway Road and Offsite Infrastructure.

Pursuant to an agreement between HDC and HRT, HDC is obligated to construct an access road from the Real Property to Kunia Road (the "Major Parkway Road") and certain offsite infrastructure for certain lands transferred to HRT by HDC, at no cost to HRT, and to perform certain other obligations, including satisfaction of all obligations under the LUC Order and Unilateral Agreement. The Successful Bidder must enter into the Agreement re Infrastructure (the "HRT Infrastructure Agreement") to deal with these obligations. Pursuant to the HRT Infrastructure Agreement, the Successful Bidder must post a bond, letter of credit, or its equivalent, for \$10 million, to provide HRT with adequate assurance of performance. The specific terms of these obligations are set forth in the Purchase Documents.

(3) Robinson Trust Claims.

The Robinson Trust and HDC entered into an agreement in which HDC agreed to oversize the capacity of the sewer lines within the Real Property to accommodate flow from the Robinson Trust's adjacent 157-acre parcel. The

Trustee contends that this agreement is unrecorded and unsecured. The Property (as defined below) shall be sold free and clear of the Robinson Trust obligation.

(4) School Site.

The LUC Order requires HDC to contribute to the development, funding and/or construction of school facilities on a pro rata basis as a result of the development of Royal Kunia Phase II, as determined by the Department of Education ("DOE"). HDC entered into an agreement with DOE as to the level of funding and participation necessary to satisfy the LUC "fair share contribution" requirement. The agreement requires HDC to convey a 12-acre site to DOE, free and clear of liens, at no cost to DOE, provide the necessary offsite infrastructure and contribute \$500,000 towards the cost of constructing an access road. A 12-acre parcel was subdivided and designated as the school site.

Prior to the Petition Date, HDC transferred undivided ownership interests in the 12-acre site to RKES, LLC ("RKES") and HRT. The Trustee has filed adversary proceedings against RKES and HRT to avoid these transfers. The Trustee shall assign any and all claims and avoidance powers that the Trustee has against RKES with respect to the school site to the Successful Bidder. Under the HRT Settlement Agreement, HRT has agreed to convey its 24.28% undivided ownership interest in the school site to the Successful Bidder as part of the sale.

All secured creditors have agreed to release their liens on the school site at Closing.

The Successful Bidder must assume the obligation to satisfy the fair-share contribution requirement.

(5) Affordable Housing Requirement.

The Successful Bidder shall be required to satisfy the "affordable housing" requirements for the Real Property, HRT's 36-acre parcel and HRT's 13-acre parcel, without cost to HRT.

(6) LUC Approval of Transfer.

The LUC Order requires HDC obtain the approval or consent of the LUC to transfer any interest in the Property. The approval of the transfer by the LUC is not a condition to the payment of the Court-approved purchase price. Obtaining the LUC consent shall be the responsibility of the Successful Bidder and Purchaser. The full purchase price will be due and payable five (5) business days after the LUC consents to the transfer, but in no event later than December 31, 2006.

(7) Other Conditions.

The LUC Order and Unilateral Agreements contain other conditions and requirements applicable to the Real Property, which run with the land. The Successful Bidder shall be responsible for curing any default and taking the

necessary action to maintain and/or restore the land use and zoning entitlements. The Trustee makes no representation or warranties as to the land use or zoning entitlements. The Closing is not conditioned on the consent of the LUC to the transfer or the confirmation of the continued validity of the land use and zoning entitlements or amendment of the conditions or time limitations. The Trustee will not be responsible for seeking or obtaining any regulatory action by LUC or the City and County and shall not be obligated to seek or obtain the consent of the LUC to the transfer of the Real Property or to take any action with respect to the City zoning conditions or entitlements. The Successful Bidder shall be authorized to take appropriate action with the LUC and/or City and County immediately after the auction to obtain such consent to the transfer or confirmation of the land use entitlements.

D. DUE DILIGENCE.

The Trustee has certain "due diligence" materials relating to the Property, including:

- 1996 Land Use Commission Order;
- 1995 Unilateral Agreement;
- 1997 Unilateral Agreement;
- HRT documents and agreements;
- Robinson Trust Agreements;

- Master Sewer and Drainage Plans for Royal Kunia; and
- School Site "Fair Share Contribution" Letter Agreement.

These and other documents are available from the Trustee's counsel.

All bidders have the right to review the due diligence materials to understand the governmental obligations and contractual obligations of the Successful Bidder. All bidders must complete their due diligence investigation prior to the auction; no bid will be accepted which is subject to any additional due diligence.

E. PENDING LITIGATION.

- (1) Woo v. RKES, LLC., Adv. No. 05-90019.

The Trustee filed an adversary proceeding to recover the 12-acre site that HDC transferred to RKES before the Petition Date. The Trustee shall assign his rights and claims against RKES to the Successful Bidder.

- (2) Woo v. HRT, Ltd., et. al., Adv. No. 05-90121.

The Trustee has filed an adversary complaint to recover the transfer of the 24.28% undivided interest in the Real Property and the 12 acre school site, and the 36-acre apartment zoned site ("36-acre parcel") transferred to HRT by HDC prior to the Petition Date.

Pursuant to the HRT Settlement Agreement, claims in Adv. No. 05-90121 will be settled and released upon closing of the sale of the Real Property and payment of the purchase price, and HRT shall transfer its 24.28% undivided

interest in the school site and the Real Property to the Successful Bidder as part of the sale and HRT will release its mortgage on such property.

F. THE PROPERTY TO BE TRANSFERRED.

The property transferred to the Successful Bidder (the "Property") shall include the following:

(a) Real Property.

All of the Trustee's right, title and interest in and to the Real Property identified as Lot 2 of the Royal Kunia Apartment Subdivision, containing approximately 161.360 acres, bearing Tax Map designation (1) 9-4-2:71, located at Royal Kunia, Honolulu, Hawaii, together with the buildings, improvements, fixtures and other items of real property located on such land and all easements, rights, entitlements and privileges appurtenant or relating thereto (the "Real Property"). Pursuant to the HRT Settlement Agreement, HRT has agreed to the sale of HRT's 24.28% undivided interest in the Real Property, together with the Estate's 75.72% undivided interest, pursuant to Section 363(h) of the Bankruptcy Code.

(b) Tangible Personal Property.

All of the Trustee's right, title and interest in and to any and all fixtures, equipment and other items of personal property now or as of the Closing situate on, attached to, or used in connection with the Real Property, together with

any and all architectural, mechanical, engineering, environmental and other plans, studies or reports relating to the Real Property to the extent the Trustee has the right to assign such plans, studies or reports, and all books and records relating to the Property, to the extent that the Trustee has possession and control of the tangible personal property. The Trustee will cooperate with the Successful Bidder to obtain control of the tangible personal property.

(c) Intangible Personal Property.

To the extent assignable, all of the Trustee's right, title and interest in and to intangible personal property relating to or used in connection with the ownership, development, operation or maintenance of the Real Property or Royal Kunia Phase II, including without limitation, certificates of occupancy, permits, licenses, entitlements, approvals, contractual rights, transferable warranties and guaranties, the right to any trademarks and trade names, all contracts, contractual rights, development rights, escrow accounts, insurance policies, deposits, instruments, documents of title, general intangibles and business records pertaining to ownership, development, operation or maintenance of the Real Property or Royal Kunia Phase II, and all rights, claims and interests, directly or indirectly, in and to any current or contingent future interest in the Real Property or proceeds therefrom.

(d) Avoidance and Other Claims.

All of the Trustee's rights under federal or state law to avoid, set aside, or otherwise challenge the transfer of an undivided interest in the school site to RKES, including Woo v. RKES, Adversary No. 05-90119, all of the Trustee's rights to retain any property recovered pursuant to such rights, and all of the Trustee's rights to assert any trustee's or avoided liens with respect to such property. Pursuant to the HRT Settlement Agreement, all of the avoidance claims asserted by the Trustee against HRT will be released, and the Trustee will move to dismiss Adv. No. 05-90121.

(e) Use of Offsite Infrastructure.

All of the Trustee's rights to connect to or use the offsite infrastructure constructed by KRP for the benefit of the Real Property and/or Royal Kunia Phase II, as described in the KRP Connection Agreement.

(f) Turnover Rights.

All of the Trustee's rights to subpoena, demand, obtain, recover or require turnover of any plans, reports, studies or documents relating to Royal Kunia Phase II or any other assets, rights or property included within the Property.

(g) Purchase Rights.

All of the Trustee's rights or options, if any, to acquire or purchase any lands adjacent to the Real Property, excluding any property

previously transferred by HDC to HRT.

(h) Assumption Rights.

All of the Trustee's rights to cure any defaults and assume any contracts pursuant to Section 365 of the Bankruptcy Code.

All references to the Trustee's rights herein shall include the rights of HDC which vest in the Trustee as chapter 7 trustee of HDC's estate. The Property shall be transferred free and clear of encumbrances, other than the non-monetary encumbrances shown on the title report for the Real Property (excluding the obligations described in Paragraphs C(1) and C(2), above and the obligations described above.

G. AS-IS SALE.

The Property shall be sold on an "as-is where is" basis, with no representations or warranties being made by the Trustee or any other party as to the condition of the Property, the land use or zoning entitlements or the ability to develop the Real Property. The Successful Bidder will be responsible for obtaining the consent of the LUC to the transfer of the Real Property to the Successful Bidder. The Trustee will reasonably cooperate with the Successful Bidder's request for LUC consent to transfer.

II. QUALIFIED BIDDERS AND QUALIFIED BIDS

A. QUALIFIED BIDDERS.

To be a "Qualified Bidder," any entity that is not an existing secured creditor that is interested in purchasing the Real Property must, no less than seven (7) days before the date scheduled for the auction, deposit with an escrow company authorized to do business in the State of Hawaii chosen by the Trustee's counsel, Reinwald O'Connor & Playdon, a cashier's check or certified check, immediately available funds in the amount of ONE MILLION DOLLARS AND NO/100 (\$1,000,000.00), made payable to the Trustee of the Estate of Halekua Development Corporation (the "Initial Deposit").

If a Qualified Bidder is the Successful Bidder, the Initial Deposit will be credited to the purchase price. If one of the secured creditors is the Successful Bidder, the Initial Deposit shall be submitted by credit against its secured claim. Any Qualified Bidder that is not the Successful Bidder shall be refunded its deposit immediately after the auction.

B. GENERAL REQUIREMENTS FOR QUALIFIED BIDDERS.

The secured creditors, HRT, KRP/C&C and SCD, are deemed to be eligible to bid without the deposit of a \$1,000,000.00 cashier's check or certified check. In addition to the Initial Deposit, to become a Qualified Bidder, any party other than a secured creditor must concurrently provide the Trustee and the secured creditors with:

- (1) a letter identifying the bidder, the contact information for such bidder and disclosure of any relationship with HDC;
- (2) provide evidence of the Bidder's (a) financial ability to close the sale of the Real Property, (b) ability to consummate the transaction on the date and on terms and conditions of the purchase, and (c) ability to perform the non-monetary obligations to be performed by the Successful Bidder under the Purchase Documents; and
- (3) a bid that complies with Section III.B., below.

The obligation of the Successful Bidder to consummate the sale shall not be subject to any "due diligence" financing conditions or any consent by the LUC.

III. BIDDING PROCEDURE

A. NO RECOMMENDED BID.

The Trustee has received two (2) comparable bids, from KRP/C&C and SCD. These bids were originally submitted in 2005.

KRP/C&C and SCD have submitted new, revised bids since the initial bids and the Trustee has concluded that the selection of either the KRP/C&C bid or the SCD bid would not be appropriate and all qualified bidders will be eligible to make initial bid at the auction, the initial bidder will receive protection by

requiring the initial overbid to be at least \$300,000.00 over the first bid, and subsequent overbids at \$100,000.00 increments.

The bidding commence by one of the eligible bidders submitting a bid which satisfies the requirements of paying the accrued real property taxes through December 31, 2006, satisfy the secured debt, in the liquidated amounts to December 31, 2005, and the accrued post-January 1, 2006 interest at seven percent (7%), until closing, or December 31, 2006, whichever is earlier.

B. FORM OF BID.

Section 363(h) of the Bankruptcy Code allows the Trustee, with Court approval, to sell the Estate's 75.72% undivided interest and HRT's 24.28% undivided interest in the Real Property. Parties must bid for 100% of the Real Property by bidding a single price for a 100% interest; the Trustee will allocate the purchase price between the Estate and HRT as set forth in Section III.I., below. Pursuant to the Settlement Agreement and the provisions of III.I., below, HRT has consented to the sale of its 24.28% undivided interest in the Real Property and its 24.28% undivided interest in the School Site.

The Successful Bidder shall be required to execute Purchase Documents on terms substantially the same or more favorable to the Estate than those set forth in the form of the Purchase Documents filed by the Trustee with the Court prior to the auction.

As set forth in the Purchase Documents, the Successful Bidder who submits a bid must:

- (a) assume the Fill Material obligation, or pay \$6 million to HRT to satisfy the Fill Material obligation;
- (b) enter into the HRT Infrastructure Agreement;
- (c) agree to satisfy the affordable housing requirements with respect to the Real Property and HRT's 36-acre parcel and HRT's 13-acre parcel;
- (d) assume the obligation to satisfy the land use and zoning entitlement conditions applicable to the Real Property;
- (e) obtain the consent of the LUC to the transfer of the Real Property;
- (f) pay the City & County of Honolulu Secured Property Taxes, as a paramount secured lien on the Real Property; and
- (g) provide for a closing of the sale on the twentieth (20th) day after entry of the Sale Order, subject to the right of the Successful Bidder to buy extensions of the Closing Date pursuant to Section III.H., below.

C. SELECTION OF HIGHEST AND BEST BID.

As to the initial or bid, the Trustee will not select a single bidder as the Recommended Bid. The Trustee shall file a motion to confirm the highest and best bid. The eligible bidders shall offer their bids at the auction conducted at the bankruptcy court on the scheduled date.

The first initial over bid must exceed the initial bid by not less than \$300,000. Each subsequent overbid must exceed the previous bid by at least \$100,000.

The Eligible Bidder submitting the highest and best bid will be selected as the "Successful Bidder." The highest and best bid shall be determined based on which bid results in the greater net return to the Estate and the Trustee's assessment of the risks involved in any condition in that bid, assuming such bid otherwise complies with the requirements set forth herein. The net return to the Estate shall be calculated after deducting from the gross purchase price the full amount claimed by each of the secured creditors, including post-petition interest at the rate of seven percent (7%) per annum, through the Scheduled Closing Date, and the Secured Real Property Taxes through the Closing Date.

D. CONFIRMATION OF SALE.

Upon selection of the Successful Bidder, the Trustee will request that the Bankruptcy Court issue an order of the court confirming the sale to the Successful Bidder and making the sale subject to 11 U.S.C. § 363(m). Under

Section 363(m), the transfer of the Property will not be subject to any further proceedings, even if the order transferring the Property to the Successful Bidder is appealed or vacated on appeal unless the sale is stayed prior to closing of the sale.

E. LIQUIDATED DAMAGES.

If the Successful Bidder fails to consummate the sale, the Successful Bidder's Initial Deposit and all Extension Payments (defined in III.H below) will be retained by the Trustee as liquidated damages. If one of the secured creditors is the Successful Bidder and it fails to close, its secured claim shall be reduced by \$1 million and the Trustee shall retain all Extension Payments, as liquidated damages.

F. RETURN OF DEPOSITS.

Within three (3) business days or as soon as possible after the entry by the Bankruptcy Court of its order approving the sale of the Property to the Successful Bidder (the "Approval Order"), the deposits submitted by all bidders shall be returned, except for (i) the deposit of the Successful Bidder, in which case the deposit will be applied to the purchase price of the Property; and (ii) any bidder that forfeits its deposit by failing to close after it is selected as the Successful Bidder. Except as otherwise provided for herein, in the event the Trustee withdraws the motion to approve the sale of the Property, the deposits submitted by all bidders shall be returned promptly.

G. CLOSING.

Closing of the sale of Property shall occur and payment of the purchase price to the Trustee will be due from the Successful Bidder not later than the first business day that is twenty (20) calendar days after the Order confirming the Successful Bidder is entered (the "Scheduled Closing Date"). Payment shall be made by tendering the full purchase price (less any deposits) to escrow and shall be disbursed to the Trustee upon recordation of the deed conveying title to the Real Property (the "Closing"). If a secured creditor is the Successful Bidder, it shall be permitted to credit its secured claim against the Purchase Price.

H. SUCCESSFUL BIDDER'S RIGHT TO EXTEND CLOSING DATE.

The Successful Bidder may, however, elect to extend the Scheduled Closing Date for one (1) month at a time by delivering to the Trustee on or before the Scheduled Closing Date a notice of the Successful Bidder's intention to extend the Closing Date and depositing in escrow in immediately available funds the amount of \$132,061.59, which is equal to one (1) month of interest at the rate of seven percent (7%) per annum on the principal amount on all of the secured claims (the "Extension Payment"). The Extension Payment will compensate the Trustee for the interest that continues to accrue on the secured claim as the result of the delay in closing. The Extension Payment(s) shall not, therefore, be applied against

the purchase price to be paid by the Successful Bidder. All Extension Payments shall be nonrefundable when paid.

Under no circumstances shall the Closing Date be extended beyond the earlier of: (1) five (5) business days after the receipt of the consent from the LUC, or (2) December 31, 2006.

The purchase price must include the Secured Real Property Taxes due through the Closing Date. The sum of the purchase price and the Extension Payments shall include interest on the secured debt from the Scheduled Closing Date, through the Closing Date, at the rate of seven percent (7%) per annum. If the Successful Bidder opts to pay the full purchase price upon receipt of the consent of the LUC or December 31, 2006, in addition to all other amounts due under the purchase agreement, all interest at the rate of 7% accruing on the secured claims of HRT, SCD, KRP, and C&C on and after the confirmation date until the Closing Date shall be paid from the Extension Payments.

I. DISTRIBUTION OF PURCHASE PRICE AT CLOSING.

All liens and encumbrances will be transferred to the sales proceeds with the same validity and priority and to the same extent that the secured creditor had in the real property. The Trustee will pay all allowed secured claims in full from the sales proceeds as instructed by the court immediately at closing. Post-

petition interest on the secured claims shall be allowed at the rate of seven percent (7%) per annum.

The Trustee shall pay HRT on account of HRT's 24.28% undivided interest, 24.28% of the cash portion of purchase price when it is received, excluding any Extension Payments, plus any credit bid by the Successful Bidder. Whether paid in kind or in cash, the Fill Material obligation and the obligations assumed under Paragraphs C(1) and C(2) will not be included in the purchase price for purposes of calculating the amount payable to HRT for its 24.28% undivided interest.

IV. CONFIRMATION HEARING AND AUCTION DATE

The confirmation hearing and auction will take place on _____ in the courtroom of the Honorable Robert J. Faris, Judge of the United States Bankruptcy Court for the District of Hawaii, 1132 Bishop Street, Suite 250L, Honolulu, Hawaii 96813.

The auction will take place in the courtroom and the Trustee will seek a confirmation of the highest and best bid and an order will be entered thereafter.

DATED: Honolulu, Hawaii, _____.

JERROLD K. GUBEN
Attorney for Successor Trustee
JAMES B. NICHOLSON

Exhibit B

Exhibit B

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of _____, 2006, by JAMES B. NICHOLSON, (the "Trustee") as Trustee of the estate in the bankruptcy case of Halekua Development Corporation ("HDC") pending in the United States Bankruptcy Court for the District of Hawaii as Bankruptcy Case No. 03-01279 (the "Bankruptcy Case") and HRT, LTD., a Maryland Corporation ("HRT"). The Trustee and HRT are sometimes called a "Party" and together the "Parties."

Recitals:

- (a) Trustee is the owner of an approximately 75.72% undivided fee simple interest in that certain vacant land identified as Lot 2 of the Royal Kunia Apartment Subdivision, containing approximately 161.360 acres, located in the project known as Royal Kunia Phase II, at Royal Kunia, Oahu, Hawaii, bearing Tax Map designation (1) 9-4-2-71 (the "Property").
- (b) HRT holds record title to an approximately 24.28% undivided fee simple interest in the Property and in the "School Site," as defined below, but the Trustee has challenged the validity of those interests. HRT also holds a mortgage against the Property, which secures both the "Monetary Obligations" and the "Assumed Non-Monetary Obligations," as defined below. The Trustee disputes the nature and extent of the non-monetary obligations secured by the mortgage.
- (c) HRT holds title to the "HRT 36 Acre Lot," as defined below, though the Trustee has challenged the validity of HDC's transfer of the HRT 36 Acre Lot to HRT.
- (d) Trustee desires to conduct an auction sale of the Property in a manner that will maximize the amount received by the estate.
- (e) The Parties believe that they will be able to maximize the proceeds from the sale of the Property by resolving many of the disputes between them in advance of the auction and thereby providing each competing bidder with certainty and a level playing field.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Additional Definitions

In addition to the terms defined in the above recitals, for the purposes of this Agreement the following terms have the meanings specified or referred to in this Section 1.

"Adversary Proceedings" means the HRT Adversary Proceeding.

"Agreement re Infrastructure" means the proposed agreement between the Buyer and HRT providing for the assumption of the obligations to construct certain off-site infrastructure improvements, provide 400,000 cubic yards of fill material to HRT, satisfy the LUC conditions applicable to the Property, and provide HRT with \$10,000,000 in replacement collateral in the form of a letter of credit, bond, or other security or personal guarantee reasonably acceptable to HRT, which agreement shall be in a form acceptable to the Trustee, HRT and the Secured Creditors and filed with the Bankruptcy Court prior to the auction of the Property.

"Assumed Non-Monetary Obligations" means the obligations to be assumed by the Buyer under the Agreement re Infrastructure, including the obligation to provide the Fill Material to HRT and to satisfy the LUC conditions to development of the Property.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Hawaii.

"Bidding Instructions" means the bidding instructions submitted by the Trustee for approval by the Bankruptcy Court.

"Buyer" means the purchaser under the Sale Agreement, and will be either HRT or a third party whose bid for the Property is approved by the Bankruptcy Court, or the purchaser's designee.

"Closing" means the completion of the Contemplated Transactions, including without limitation the sale of the Property and transfer of legal title to the Property to the Buyer, subject only to the Approved Title Exceptions.

"Closing Date" means the date of the Closing.

"Closing Documents" means any of the documents and instruments necessary or appropriate to be executed and/or delivered in connection with the Contemplated Transactions.

"Connection Agreement" means the proposed agreement between the Trustee, the Buyer and KRP providing the Buyer with the right to use and connect to certain drainage, sewer and roadway improvements constructed by KRP in Royal Kunia Phase II and for the payment by Buyer of the cost of constructing the second phase of the Royal Kunia Community Center and a pro rata share of certain off-site drainage facilities, which agreement shall be in a form acceptable to KRP, the Secured Creditors and the Trustee and shall be filed with the Bankruptcy Court prior to the auction of the Property.

"Consent" means any written approval, consent, ratification, waiver, or other authorization (including any Governmental Authorization).

"Contemplated Transactions" means: (a) the sale, assignment, transfer and conveyance of the Property and related personal property by Trustee to the Buyer; (b) the performance by the Parties of their respective covenants and obligations under this Agreement, and (c) the payment to or credit against the purchase price of the claims of the Secured Creditors and the assumption by the Buyer of the Assumed Non-Monetary Obligations.

"Covered Claims" means any and all actions, causes of actions, suits at law or in equity, liabilities, claims, demands, losses, decrees, judgments, awards, Encumbrances, costs, expenses, fees, or damages, known or unknown, suspected or unsuspected, of every kind and nature whatsoever, which now exist or may hereafter exist, arising from, resulting from, or relating to, directly or indirectly, the Bankruptcy Case, the Adversary Proceedings, or the Property, the HRT 36 Acre Lot or the HDC/HRT Agreements.

"DOE" means the Department of Education of the State of Hawaii.

"Encumbrance" means any charge, claim, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, transfer, receipt of income, or exercise of any other attribute of ownership.

"Fill Material" means 400,000 cubic yards of soil fill material of the appropriate type for the purpose of back-filling gully and low land areas.

"Governmental Authorization" means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" means any (a) federal, state, local, or municipal government; or (b) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature over the Property.

"HDC/HRT Agreements" mean those agreements listed in Exhibit "A," which is attached hereto and incorporated herein by this reference.

"HRT Adversary Proceeding" means that certain Adversary Proceeding commenced on April 22, 2005 by the Trustee against HRT and others as Adversary Proceeding No. 05-90121 in the Bankruptcy Case with regard to the recovery of property transferred by HDC to HRT.

"HRT 13 Acre Lot" means Lot 2, as shown in File Plan 2171 containing approximately 13 acres, located in the project known as Royal Kunia Phase II, at Royal Kunia, Oahu, Hawaii, bearing Tax Map designation (1) 9-4-2-78, which HRT purchased from HDC in 1995.

"HRT 36 Acre Lot" means Lot 1 as shown on the Royal Kunia Apartment Subdivision, containing 36.660 acres, located in the project known as Royal Kunia Phase II, at Royal Kunia, Oahu, Hawaii, bearing Tax Map designation (1) 9-4-2-78.

"Legal Requirement" means any federal, state, local or municipal administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty, including without limitation all orders of the LUC and the City and/or County of Honolulu relating to the development of the Property, the HRT 36 Acre Lot or other real property owned by HRT that is subject to the Phase II Master Plan.

"LUC" means the Land Use Commission of the State of Hawaii.

"Monetary Obligations" means HRT's claims for amounts advanced pursuant to the Bankruptcy Court Order approving the debtor in possession loan which HRT made to HDC and all amounts advanced by HRT under the HDC/HRT Agreements, and all interest accruing on such sums.

"Order" means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Body or by any arbitrator.

"Organizational Documents" means (a) the articles of incorporation and the bylaws of a corporation; (b) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a person; and (c) any amendment to any of the foregoing.

"Phase II Master Plans" means the following plans all prepared by ParEn, Inc.: (a) Royal Kunia Revised Sewer Master Plan, dated May 1996, (b) Revised Water Master Plan for Royal Kunia Development, dated August 1996, and (c) Drainage Master Plan for the Royal Kunia Development, Phase II, dated September 1996.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Related Parties" means with respect to a Party, that Party's parent entities, subsidiaries, affiliates, partners, and joint venturers, any stockholder, member, partner, director, officer, employee, agent, consultant, advisor, or other representative of any such persons, including legal counsel, accountants, and financial advisors, and the successors and assigns of all such persons.

"RKES Adversary Proceeding" means that certain Adversary Proceeding commenced on April 12, 2005 by the Trustee against RKES LLC as Adversary Proceeding No. 05-90119 in the Bankruptcy Case with regard to the School Site.

"Sale Agreement" means the sale agreement between the Trustee and any Buyer that is approved by a Bankruptcy Court Order, and all other Closing Documents to be executed or delivered in connection with the Sale Agreement.

"School Site" means Lot 3 of the Royal Kunia Apartment Subdivision, containing approximately 12.00 acres, bearing Tax Map designation (1) 9-4-2-(79), located at Royal Kunia, Honolulu, Hawaii.

"Secured Creditors" means HRT, Kunia Residential Partners, LP, Stanford Carr Development (by assignment RKS), and Castle & Cooke Kunia, Inc. (by assignment).

"Settlement Order" means a final, appealable Order of the Bankruptcy Court in the Bankruptcy Case approving this Agreement and authorizing and directing Trustee to perform under this Agreement, and other terms reasonably approved by the Parties in advance.

2. Settlement of Pending Disputes and Mutual Cooperation in the Sale Process

2.1 Monetary Obligations. The Parties agree to settle the amount of the Monetary Obligations owing to HRT at \$6,752,578.97, as of December 31, 2005. This does not include the value of the Fill Material or the other Assumed Non-Monetary Obligations. HRT has agreed to reduce the interest rate on the amounts advanced pursuant to the prior Order of the Bankruptcy Court during the pendency of the chapter 11 case to 7% per annum from the date of advance to the date of payment. This reduction through December 31, 2005 is included in the foregoing number. HRT's Monetary Obligations will continue to accrue interest from and after December 31, 2005 at the rate of \$1,113.64 per day, which is interest on HRT's principal balance of its Monetary Obligations at the rate of 7% per annum.

2.2 Assumption of the Assumed Non-Monetary Obligations. HRT shall agree not to assert any claim against the Trustee or the estate arising from the HDC/HRT Agreements upon assumption of the Assumed Non-Monetary Obligations by the Buyer and payment in full of the Monetary Obligations pursuant to Section 2.1, above. HRT further consents to the sale of the Property and the School Site free and clear of HRT's Encumbrances so long as (a) its Monetary Obligations are paid in full at Closing; and (b) the Buyer assumes the Assumed Non-Monetary Obligations, enters into the Agreement re Infrastructure, and provides HRT with \$10,000,000 in replacement collateral in the form of a letter of credit, bond, or other security or personal guarantee reasonably acceptable to HRT, as required under the Bidding Instructions and the Agreement re Infrastructure. HRT reserves its right to challenge the adequate assurance of future performance provided by any Buyer, but agrees to release its Encumbrances on the Property in exchange for the alternative collateral described above and to release the Trustee at Closing, so long as the Bankruptcy Court determines the Buyer has provided

adequate assurance of its ability to perform all of the Assumed Non-Monetary Obligations. HRT further agrees that any Buyer may elect to provide the Fill Material in kind, or to pay to HRT \$6,000,000 in lieu of providing that Fill Material, at the sole option of the successful Buyer.

2.3 Consent to Sale of 24.28% Undivided Interest. HRT consents to the sale of its undivided interests in the Property and the School Site pursuant to Bankruptcy Code § 363(h) and waives the right to object to any such transfer, so long as HRT receives upon closing an amount equal to 24.28% of the consideration paid by the Buyer, minus the direct costs of sale and real property taxes, and excluding any consideration paid for the privilege of extending the Closing Date. For purposes of making this calculation, HRT consents to the exclusion from the consideration paid by the Buyer of any valuation of the Assumed Non-Monetary Obligations, including without limitation the obligation to provide Fill Material. The consideration shall, however, include any other claims of Secured Creditors that are paid, assumed or credit bid by the Buyer.

2.4 Auction Terms. HRT agrees to support a proposed sale process and reserves its right to bid at such auction, so long as the Bidding Instructions establish reasonable procedures for assuring that each party allowed to bid has sufficient financial resources and development expertise to consummate the Contemplated Transactions, post the alternative collateral described in Paragraph 2.2, above, and perform all of the Assumed Non-Monetary Obligations, and include the following provisions:

(a) The proceeds of the sale must be sufficient to pay in full all Secured Claims other than the Assumed Non-Monetary Obligations, including real property taxes, together with post-petition interest on all Secured Claims, at the rate of 7% per annum (from the petition date through the date the Closing Date) in cash at Closing;

(b) The Buyer will assume the Assumed Non-Monetary Obligations, as provided in the Agreement Re Infrastructure, including without limitation, construction of the road, offsite infrastructure and construction of the minimum number of affordable housing units for the Property, the HRT 36 Acre Lot and the 13 Acre Lot, in conformity with Paragraph 2.2, above, as part of the purchase price, such that HRT is not required to build any of the affordable housing on the HRT 36 Acre Lot or the HRT 13 Acre Lot, or to pay any cost for infrastructure up to the property lines of all property owned by HRT;

(c) The Trustee will transfer the Property "AS IS," without any warranties other than as to title, subject to permitted encumbrances (as defined in the sale agreement) but free and clear of all other liens, including any rights the Robinsons may have retained under the second mortgage. Each secured creditor shall release its Encumbrances and its Secured Claims (other than the Assumed Non-Monetary Obligations) shall be deemed fully satisfied upon receipt of payment in full with 7% interest pursuant to paragraph 2.4(a), above. These releases will extend to the Property,

the School Site and the HRT 36 Acre Lot;

(d) The proceeds of the sale must be sufficient to provide not less than \$2 million in unencumbered funds for the bankruptcy estate after payment in full of the Secured Claims and real property taxes;

(e) HRT and the Buyer shall enter into the Agreement re Infrastructure;

(f) The Buyer and KRP shall enter into the Connection Agreement (provided that no such agreement shall be required if KRP is the Buyer); and

(g) The consummation of the sale can be conditioned only on: (i) entry of an Order of the Bankruptcy Court authorizing the Trustee to enter into the Contemplated Transactions, (ii) obtaining approval of the transfer to the Buyer from the LUC or any other Governmental Body and any other required Consent, (iii) the transfer of the Property, (iv) making of the payments described herein, and (v) the conditions set forth above, and shall not be subject to any condition relating to due diligence or financing.

2.5 Auction Process. The Trustee agrees to proceed with an auction that complies with Paragraph 2.4, above, promptly after entry of the Settlement Order. The auction process may include such additional provisions as the Trustee reasonably believes will facilitate the sale, so long as they are not inconsistent with the provisions in Paragraph 2.4.

2.6 Solicitation of Offers. The Trustee is free to solicit, entertain encourage or accept any other proposals or offers for the sale of the Property.

3. Releases

3.1 Mutual Releases. On the Closing Date, the Parties on behalf of themselves and their Related Parties shall fully release and forever discharge the other Party and its respective Related Parties from any and all Covered Claims, except (a) express obligations under the Sale Agreement or the Closing Documents, and (b) as expressly reserved in this Agreement. The releases pursuant to this Paragraph shall be referred to herein as the "Releases." HRT agrees to look solely to the Buyer that assumes the Assumed Non-Monetary Obligations and to not to assert any claim against the estate or the Trustee with respect thereto but shall not release the Assumed Non-Monetary Obligations because they are being assumed by the Buyer.

3.2 Acknowledgement. The Parties represent and agree on behalf of themselves and their Related Parties (a) that they may hereafter discover facts in addition to or different with respect to the Releases, and (b) the Releases shall remain in effect as full and complete Releases notwithstanding the subsequent discovery or existence of any such additional or different facts. The Parties expressly waive the provisions of any and

all statutes or common law principles and doctrines that a general release may not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release, which if known might have materially affected its settlement with the other parties, with respect to the Releases.

3.3 HRT Adversary Proceeding. On the Closing Date, the Trustee will cause the HRT Adversary Proceeding, including all cross-claims and counterclaims filed therein, to be dismissed with prejudice.

4. Representations and Warranties of Trustee

Trustee represents and warrants to HRT as follows:

4.1 Authority. Upon the entry of the Settlement Order, this Agreement will constitute the legal, valid, and binding obligation of Trustee, enforceable against Trustee in accordance with its terms. Trustee has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

4.2 No Conflict. Neither the execution and delivery of this Agreement by Trustee nor the consummation or performance of any of the Contemplated Transactions by Trustee will, directly or indirectly (with or without notice or lapse of time) contravene, conflict with, or result in a violation or breach of any provision of, or give any person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any contract.

4.3 No Consent. Except for and in connection with the Settlement Order, Trustee is not required to give any notice to or obtain any Consent from any person in connection with the execution and delivery of this Agreement.

4.4 Legal Proceedings. Except for the Bankruptcy Case and the Adversary Proceedings, there is no pending Proceeding that has been commenced by or against Trustee. To the knowledge of Trustee, (a) no such Proceeding has been threatened, and (b) no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceeding.

5. Representations and Warranties of HRT

HRT represents and warrants to the Trustee as follows:

5.1 Organization and Good Standing. HRT is a corporation duly organized, validly existing, and in good standing under the laws of the State of Hawaii.

5.2 Authority. This Agreement constitutes the legal, valid, and binding obligation of HRT, enforceable against HRT in accordance with its terms. If the Trustee

and HRT enter into a Sale Agreement, upon the execution and delivery by HRT of the Closing Documents to be executed by HRT, the Closing Documents will constitute the legal, valid, and binding obligations of HRT, enforceable against HRT in accordance with their respective terms. HRT has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Closing Documents and to perform its obligations under this Agreement and the Closing Documents.

5.3 No Conflicts. Neither the execution and delivery of this Agreement by HRT nor the consummation or performance of any of the Contemplated Transactions by HRT will give any person the right to prevent, delay, or otherwise interfere with any of the Contemplated Transactions pursuant to: (a) any provision of HRT's Organizational Documents, (b) any Legal Requirement or Order to which HRT may be subject, or (c) any contract to which HRT is a party or by which HRT may be bound.

5.4 No Consents. HRT is not and will not be required to obtain any Consent from any person in connection with the execution and delivery of this Agreement, the Closing Documents or the consummation or performance of any of the Contemplated Transactions.

5.5 Certain Proceedings. Except for the HRT Adversary Proceeding, there is no pending Proceeding that has been commenced by or against HRT with respect to the Contemplated Transactions or the Property, and, to the knowledge of HRT, (a) no such Proceeding has been threatened, and (b) no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceeding.

6. Bankruptcy Court Approvals

6.1 Condition of Approval. This Agreement, and the rights and obligations of the Parties under this Agreement, are subject to the entry of the Settlement Order. If the Settlement Order has not been entered by the date scheduled for the auction of the property, either Party may thereafter terminate this Agreement upon written notice to the other Party, and upon such notice this Agreement shall be terminated. This Agreement is also conditioned on the Closing of the sale of the Property to the Buyer.

6.2 Motion to Approve; Cooperation. As promptly as practicable after the date of this Agreement, Trustee will file a motion in the Bankruptcy Case requesting the Settlement Order. The Parties agree to use their best efforts to obtain the Settlement Order as quickly as feasible. Between the date of this Agreement and the Closing, the Parties will cooperate with each other with respect to all filings the Trustee elects to make or is required to make in connection with the Contemplated Transactions.

6.3 Sale Condition. If a Buyer other than HRT is approved by the Bankruptcy Court, but the condition of a sale Closing is not met because the Buyer

approved by the Bankruptcy Court refuses to Close, this Agreement will remain in effect and the Trustee may, in his sole discretion, elect to sell the Property to any other qualified buyer and when the sale closes, whether to HRT, to the original bidder or to a replacement bidder, the condition to the effectiveness of this Agreement will be satisfied. The Trustee may, however, in his sole discretion, elect to terminate this Agreement, provided that before the Trustee terminates this Agreement he must first offer to sell the Property to HRT for a price equal to the balance owing to the Secured Creditors at the Closing Date, including post-petition interest, plus \$2,000,000 and all accrued real property taxes. If the Trustee submits such an offer to HRT, HRT will have thirty (30) days to agree to proceed with the purchase on such terms or terminate this Agreement for failure to satisfy the conditions in 6.1, above.

6.4 Rights upon Termination. If this Agreement is terminated upon notice by a Party because the Settlement Order is not entered by the required deadline or the conditions set forth in Section 6 are not met, the Parties reserve all of their rights against each other with respect to the Property, the School Site, and the Bankruptcy Case. The Parties have entered into this Agreement as a compromise and settlement of their claims in the Bankruptcy Case, and nothing in this Agreement shall be deemed an admission of any fact or legal position or an agreement as to the rights and claims of any other Party.

7. General Provisions

7.1 Expenses. Except as otherwise expressly provided in this Agreement, each Party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel, and accountants. In the event of a dispute arising out of this Agreement, the prevailing Party in any Proceeding shall be entitled to recover its costs and expenses and reasonable attorneys' fees, including such costs and expenses on appeal.

7.2 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand, (b) sent by telecopier (with written confirmation of receipt), (c) sent by certified mail, return receipt requested, or (d) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a Party may designate by notice to the other Parties):

Trustee: James B. Nicholson, Trustee
P.O. Box 15696
Honolulu, Hawaii 96830

Telephone No.: (808) 590-2157

Facsimile No.: (808) 595-3177

Copy to: Jerrold K. Guben, Esq.
Reinwald O'Connor & Playdon LLP
Pacific Guardian Center, Makai Tower
733 Bishop Street, 24th Floor
Honolulu, Hawaii 96813

Telephone No.: (808) 524-8350
Facsimile No.: (808) 531-8628

HRT: 3660 Waiialae Avenue
Honolulu, Hawaii 96816-3260
Attention: Alvin Awaya

Telephone No.: (808) 924-1000
Facsimile No.: (808) 922-3975

Copy to: Reuben S.F. Wong, Esq.
Law Office of Reuben S.F. Wong, Esq.
220 South King Street, Suite 2288
Honolulu, Hawaii 96813

Telephone No.: (808) 531-3526
Facsimile No.: (808) 531-3522

Jeffery C. Krause, Esq.
Stutman, Treister & Glatt, P.C.
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067

Telephone No.: (310) 228-5740
Facsimile No.: (310) 228-5788

7.3 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the Parties in the Bankruptcy Court, or in any courts of the State of Hawaii, City and County of Honolulu, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Hawaii, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

7.4 Further Assurances. The Parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement, the transfer, conveyance and assignment of the Property, and the documents referred to in this Agreement and the Sale Agreement. The obligation of this Section shall survive the Closing until the discharge of Trustee as trustee of the Bankruptcy Case.

7.5 Waiver. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

7.6 Entire Agreement and Modification. This Agreement (including the terms and conditions of the attachments to this Agreement) supersedes all prior agreements between the Parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the Party to be charged with the amendment.

7.7 Construction. This Agreement and any certificates or documents delivered pursuant to this Agreement will be construed without regard to which Party drafted the document or any particular provision therein.

7.8 Binding and No Third-Party Rights. This Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any person other than the Parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and assigns except as otherwise expressly provided in this Agreement.

7.9 Severability. If any material provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will be of no further force or effect.

7.10 Section Headings, Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding

Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

7.11 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

7.12 Governing Law. This Agreement will be governed by federal bankruptcy law, and the laws of the State of Hawaii without regard to conflicts of laws principles.

7.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

JAMES B. NICHOLSON, as Trustee of
Halekua Development Corp.

HRT, LTD., a Maryland corporation

By _____
ALVIN AWAYA
Its President

Attachments:
Exhibit A HDC/HRT Agreements

Exhibit C

Exhibit C

CONNECTION AGREEMENT

THIS CONNECTION AGREEMENT ("**Agreement**") is made as of _____, 2006 between **KUNIA RESIDENTIAL PARTNERS**, a Hawaii limited partnership ("**KRP**"), and _____, a _____ ("**Owner**").

Recitals:

- (a) KRP is the developer of the residential project known as Royal Kunia Phase I, located at Royal Kunia, Oahu, Hawaii ("**Phase I**").
- (b) Owner is concurrently herewith acquiring Lot 2, being a portion of Lot 3 of the Royal Kunia Phase II, Increment 1 Subdivision (File Plan 2171), containing approximately 161.360 acres, bearing Tax Map designation (1) 9-4-2-71 ("**Owner Lot**"), in the undeveloped project adjacent to Phase I known as Royal Kunia Phase II, located at Royal Kunia, Oahu, Hawaii, consisting of approximately 658 acres ("**Phase II**").
- (c) Pursuant to an agreement with the previous owner of the Owner Lot, KRP built certain roads, sewer lines, utility conduits, water lines, drainage lines and facilities, and other facilities in Phase I which were intended to serve both Phase I and Phase II (the "**Phase I Infrastructure**").
- (d) KRP and Owner desire to set forth their agreements regarding the connection of the Phase I Infrastructure to infrastructure in Phase II.

Agreements:

1. **Additional Definitions.** In addition to the terms defined in the above recitals, for the purposes of this Agreement the following terms have the meanings specified or referred to in this Section 1.

"**Association**" means the Royal Kunia Community Association, a Hawaii nonprofit corporation.

"**County**" means the City and County of Honolulu, State of Hawaii.

"**Connection Work**" means any construction or excavation work on or about the Phase I Infrastructure for the purpose of connecting the Phase II Infrastructure to the Phase I Infrastructure.

"**Declaration**" means the Amended and Restated Declaration of Protective Covenants for Royal Kunia Community, dated March 18, 1994, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-049225.

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"Five-Year Period" means the period ending on the date which is five (5) years after the date of this Agreement, subject, however, to extension for any delay caused by (a) a delay in obtaining Governmental Authorizations except to the extent the delay is caused by the negligent act or omission of the party obtaining the Governmental Authorization, (b) Force Majeure, or (c) the other party's failure to perform its obligations under this Agreement.

"Governmental Authorization" means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" means any (a) federal, state, local, or municipal government; or (b) body or agency exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature over the property described in this Agreement, or the infrastructure described in this Agreement, including the County, the State of Hawaii, and utility companies.

"HRT" means HRT, Ltd., a Maryland corporation.

"HRT Lots" means (a) Lot 1 as shown on File Plan 2171, containing 123.712 acres, bearing Tax Map designation (1) 9-4-2-1, (b) Lot 2 as shown on File Plan 2171, containing 13.304 acres, bearing Tax Map designation (1) 9-4-2-70, and (c) Lot 1 of the Royal Kunia Apartment Subdivision, containing 36.660 acres, bearing Tax Map designation (1) 9-4-2-78.

"KRP Property" means roads and other lands owned by KRP within Phase I, or easements owned by KRP within Phase I to the extent KRP has rights to grant easements therein to others, upon or under which KRP has constructed the Phase I Infrastructure, and the Recreation Center Lot.

"Legal Requirement" means any federal, state, local or municipal administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty or any requirements established by utility companies applicable to utility infrastructure.

"Master Plans" means the following plans all prepared by ParEn, Inc.: (a) Royal Kunia Revised Sewer Master Plan, dated May 1996, (b) Revised Water Master Plan for Royal Kunia Development, dated August 1996, and (c) Drainage Master Plan for the Royal Kunia Development, Phase II, dated September 1996.

"Phase II Infrastructure" means roads, sewer lines, utility conduits, water lines, drainage lines and facilities, and other facilities in Phase II which are intended to serve the Owner Lot, the HRT Lots, and/or other lots in Phase II.

"Phase II Owners" means any owner of a lot or lots in Phase II, including Owner and HRT.

"Recreation Center Lot" means Lot 1 of the Royal Kunia Subdivision, Increment E (File Plan 2308) containing approximately 12.093 acres, bearing Tax Map designation (1) 9-4-2-68 located in Phase I.

"School Site" means Lot 3 of the Royal Kunia Apartment Subdivision, being a portion of Lot 3 of the Royal Kunia Phase II, Increment I Subdivision (File Plan 2171), containing approximately 12.00 acres, bearing Tax Map designation (1) 9-4-2-79, located at Royal Kunia, Honolulu, Hawaii.

"Three-Year Period" means the period ending on the date which is three (3) years after the date of this Agreement, subject, however, to extension for any delay caused by (a) a delay in obtaining Governmental Authorizations except to the extent the delay is caused by the negligent act or omission of the party obtaining the Governmental Authorization, (b) Force Majeure, or (c) the other party's failure to perform its obligations under this Agreement.

2. **Payment for Existing Infrastructure.** KRP's obligations under this Agreement are conditioned on the indefeasible payment in full in immediately available funds in the amount of \$18,572,054.15, plus interest accruing on the principal amount of \$12,117,447.00, at the rate of seven percent (7%) per year from January 1, 2006 until payment is received by KRP (the **"Existing Infrastructure Payment"**). The Existing Infrastructure Payment represents the cost of the Phase I Infrastructure incurred by KRP through August 4, 2006 which was allocated to Phase II to provide the Phase I Infrastructure for the development of Phase II. Until KRP has received the Existing Infrastructure Payment, KRP shall have no obligations under this Agreement. Upon receipt of the Existing Infrastructure Payment, KRP will release the mortgage and all other security interests held by KRP in the Owner Lot, the other assets of Halekua Development Corporation, the HRT Lots, and the School Site.

3. **Phase II Connections**

3.1 **Connection.** Until the transfer to a Governmental Body or the Association, KRP will allow Owner to connect its Phase II Infrastructure to the Phase I Infrastructure. Upon transfer to a Governmental Body or the Association of any portion of the Phase I Infrastructure, KRP shall have no further obligations under this Agreement with respect to that portion of the Phase I Infrastructure which has been transferred to the Governmental Body or the Association.

3.2 **Limit on Connection.** The Master Plans show an allocation of sewer and water capacity to Phase II (**"Phase II Allocation"**). The Phase II Allocation does not include any capacity allocated to Phase I which was not used in the development of Phase I. Capacity in excess of the Phase II Allocation shall be allocated (a) first, to satisfy any contingent obligation to provide sewer capacity for up to 1,200 residential units for certain property located east and/or north of Phase II currently owned by one or

more Robinson trusts (the "**Mauka Property**") as described in two letters both dated July 24, 1992 from Castle & Cooke Kunia, Inc. to Stephen K. C. Mau, and from Stephen K. C. Mau to Herbert K. Horita, and (b) second, after establishment of a reserve to satisfy the contingent obligation in clause (a) or after resolution of the contingent obligation in clause (a) to the satisfaction of KRP and Owner, equally between KRP and Owner for use as KRP and Owner shall in their respective discretion determine (the "**Excess Drainage Capacity**"). Although Owner may permit other Phase II Owners to use the Phase II Allocation, all Connection Work must be done by or through the Owner or under the direct supervision of Owner. KRP shall have no obligations or liability under this Agreement to any other Phase II Owner other than Owner and except as provided in Section 11. KRP and Owner agree to share equally any consideration received by either one for providing any Phase II Allocation to the Mauka Property.

3.3 Cooperation. KRP will cooperate with Owner to facilitate connection to the Phase I Infrastructure, including Owner's confirmation from an applicable Government Body of Owner's right to connect to the Phase I Infrastructure before or after dedication and use the Phase II Allocation. KRP shall not be obligated to incur any out-of-pocket expenses or expend any sum in providing such cooperation. KRP will authorize its personnel, engineers, and vendors to work with the representatives of Owner to identify the location of the connection points of the Phase I Infrastructure, and will authorize its vendors to provide copies of plans and specifications of the Phase I Infrastructure. Owner shall be responsible for any copying charges.

3.4 Approval of Connection Plans. Prior to beginning any Connection Work, Owner shall provide plans and specifications of the Connection Work to KRP for review and approval which will not be unreasonably withheld or delayed. KRP will not charge for review of the Connection Work by its employees, but shall be reimbursed for any costs incurred to have a third party engineer or other appropriate consultant review the Connection Work. KRP shall not retain the right to review any Connection Work to the extent it involves connection to Phase I Infrastructure which has been transferred to a Governmental Body or the Association.

3.5 Compliance. All Connection Work shall be consistent with the Master Plans, and in compliance with all Legal Requirements and good engineering practices. Prior to commencing any Connection Work, Owner shall, at its sole cost and expense, obtain all required Governmental Authorizations.

3.6 Owner's Cost. The Connection Work shall be at the sole cost and expense of Owner. Owner shall be responsible for all construction costs, all fees payable to any Governmental Body, and all costs of third party engineering firms, surveyors, consultants, and other vendors with whom Owner works. KRP shall have no responsibility for the cost or expense of any Connection Work, any other Phase II Infrastructure, or any other construction or development with respect to Phase II.

3.7 **Easements.** KRP will grant to Owner in recordable form such road and utility easements over the KRP Property as are necessary or appropriate for the Connection Work and the use by Phase II of the Phase I Infrastructure. The easements shall automatically terminate upon the transfer of the easement area to the State of Hawaii or the County.

3.8 **Reservation of Rights.** KRP reserves the right to allow any other party, including any other Phase II Owner, to connect to the Phase I Infrastructure, on terms and conditions to be determined by KRP in its sole and absolute discretion, provided Phase II receives the Phase II Allocation and its allocated share of the Excess Drainage Capacity and the Gulch Drainage Facilities.

4. **Phase I Infrastructure.**

4.1 **KRP Representation.** KRP represents and warrants to Owner and no other person that the Phase I Infrastructure was constructed in accordance with the Master Plans and in accordance with applicable Legal Requirements in effect at the time of construction. The representation shall terminate and be of no further force and effect two (2) years after the date of this Agreement.

4.2 **Repair and Maintenance.** KRP shall maintain and repair those portions of the Phase I Infrastructure which are not already maintained by a Governmental Body, until such time as that portion of the Phase I Infrastructure is transferred to a Governmental Body or the Association, or a Governmental Body or the Association has otherwise assumed responsibility for such maintenance or repair; provided Owner shall be solely responsible for any damage caused by Owner or its agents. KRP shall have no further repair or maintenance obligation under this Agreement with respect to any portion of the Phase I Infrastructure after it has been transferred to a Governmental Body or the Association, or the Governmental Body or the Association has assumed maintenance responsibility therefor. KRP shall have no obligation to modify or upgrade any portion of the Phase I Infrastructure to comply with any Legal Requirements that came into effect after that portion of the Phase I infrastructure was first constructed.

4.3 **AS IS.** Except to the extent expressly stated in Section 4.1 or elsewhere in this Agreement, KRP has not made, does not make, and has not authorized anyone else to make any representation as to the present or future physical condition, value, use, development, Governmental Authorization, or any other matter or thing pertaining to the Phase I Infrastructure, and Owner acknowledges, and any other Phase II Owner acknowledges by connecting to or using any of the Phase I Infrastructure, directly or indirectly, that no such representation has been made. By proceeding with the Connection Work, or otherwise connecting to or using any of the Phase I Infrastructure, Owner and any other Phase II Owner accept the physical condition, value, use, development, and Governmental Authorization of the Phase I Infrastructure, acknowledge that they accept the Phase I Infrastructure "AS IS" and "WHERE IS",

assume responsibility for any Connection Work or other work that needs to be done in order to connect to the Phase I Infrastructure, and are relying on its or their own independent investigation of the Phase I Infrastructure.

5. Dedication of Phase I Infrastructure. KRP shall make commercially reasonable efforts to transfer to or dedicate to a Governmental Body the Phase I Infrastructure. KRP will cooperate with Owner in Owner's effort to obtain confirmation from such Governmental Body of Owner's right to use the Phase I Infrastructure and the Phase II Allocation after dedication. KRP shall have no obligation to modify or upgrade any portion of the Phase I Infrastructure to comply with any Legal Requirements that came into effect after that portion of the Phase I infrastructure was first constructed as a condition to such transfer or dedication; otherwise, KRP may make the transfer or dedication on such terms and conditions as such Governmental Body requires. If, after exercising such commercially reasonable efforts, KRP is not able to transfer or dedicate a portion of the Phase I Infrastructure to a Governmental Body within three (3) years of the date of this Agreement or in the case of the Gulch Drainage Facilities (defined below) within three (3) years of the date of completion of construction, KRP may transfer such portion to the Association, subject to the rights of Owner hereunder, on such terms as may be agreed upon by KRP and the Association; provided, if applicable, the transfer shall be subject to the Owner's Right of Entry and right to complete the Connection Work as provided in this Agreement.

6. Right of Entry.

6.1 Grant of Right of Entry. On the terms and conditions set forth in this Section 6, KRP hereby grants a right of entry to Owner to enter the KRP Property, (the "Right of Entry"), for the purposes of carrying out the Connection Work. This Right of Entry shall continue until the Connection Work is completed.

6.2 Use. The Right of Entry shall be used only for the Connection Work. Owner shall use the KRP Property and exercise its Right of Entry in such manner as to occasion the least possible interference with the use of the KRP Property and adjacent lands owned by KRP or others. Owner shall comply with all Legal Requirements applicable to its use and activities in or on the KRP Property.

6.3 AS IS. Except as provided in Section 4.1 hereof, KRP makes no representations or warranties as to the condition of the KRP Property, and does not represent or warrant the same to be in a safe and proper condition for the Connection Work or for any other purpose.

6.4 Due Care. Owner shall at all times exercise due care and diligence to prevent injury to persons and damage to or destruction of property, roads and improvements on the KRP Property and adjoining lands, and shall repair or reimburse

KRP for any and all such damage, destruction, or loss caused by, resulting from or arising out of the exercise of the Right of Entry and not due to the negligence of KRP.

6.5 Non-liability of Property Owner. Owner's entry and use of the KRP Property shall be at Owner's own risk, and KRP shall not be responsible or liable for injuries to or wrongful death of persons or damage or destruction or loss of property arising from or caused by the exercise of the Right of Entry granted to Owner.

6.6 Clean Condition. Owner shall carry out and dispose of all debris and trash resulting from its activities and leave the KRP Property in as clean a condition as it was prior to Owner's entry upon the KRP Property. Failure to remove its property or leave the KRP Property in such condition, or to implement all reasonable dust control measures will force KRP to do the same and assess Owner any charges and expenses suffered or incurred by KRP.

6.7 Assumption of Risk; Indemnification. Owner agrees and covenants with KRP, and its successors in interest, that Owner will and does hereby assume all risks of personal injury or wrongful death and of loss or damage to property by whomsoever owned on or in the KRP Property, arising out of or in connection with the exercise of the Right of Entry, and Owner hereby agrees to indemnify and save harmless KRP and its affiliates (including without limiting the generality of said term, its officers, employees or agents) against and from any and all claims for personal injury or wrongful death by third persons and any and all claims for loss or damage to property so caused, occasioned or resulting from any such claim or demand or any action or proceeding brought thereon, and will reimburse KRP for all of its costs and expenses (including reasonable attorney's fees) incurred in connection with the defense of any such claims, except to the extent such injury or death or property damage is caused by the negligence, willful act or gross neglect of KRP. The indemnification obligation shall survive any partial or final termination of this Agreement.

7. Gulch Drainage Facilities. Owner shall reimburse KRP sixty five percent ("**Owner's Allocated Share**") of the on-going infrastructure project for the drainage facilities adjacent to Waikele Gulch (the "**Gulch Drainage Facilities**"). Owner's Allocated Share, for the Gulch Drainage Facilities is estimated to be \$300,000 (after deducting from the total cost certain funds KRP expects to receive and apply to the cost). The foregoing is a good faith estimate of Owner's Allocated Share, but notwithstanding the estimate, Owner shall be liable to KRP for Owner's Allocated Share of the actual infrastructure costs incurred by KRP in completing the Gulch Drainage Facilities. Owner shall pay Owner's Allocated Share of the progress payments for the project within sixty (60) days of receipt of invoices therefor. Upon request from Owner, KRP will provide Owner reasonable back-up documentation of the invoices. Payments not made within thirty (30) days shall accrue interest at the rate of twelve percent (12%) per year from the date payment was due until paid. Owner's Allocated Share is in addition to the Existing Infrastructure Payment. Upon completion of the Gulch Drainage Facilities, Owner shall

be allocated a percentage share of the drainage capacity of the Gulch Drainage Facilities in proportion to Owner's Allocated Share. Owner shall have the right to assign such drainage capacity to other Phase II Owners in accordance with the Master Plans.

8. Royal Kunia Community.

8.1 **Annexation of Owner Lot.** As the Owner Lot is subdivided and developed, Owner shall subject and submit the subdivided and developed portions of the Owner Lot (the "**Subdivided Portion**") to the Declaration. Owner shall submit the Subdivided Portion or the residential lots within such Subdivided Portion (the "**Subdivided Lots**") to the Declaration prior to transferring the Subdivided Lots to individual buyers, as is customary in the development of residential projects. Upon subjecting a Subdivided Lot to the Declaration, the owner of the Subdivided Lot shall become a member of the Association, and shall be subject to, and be entitled to the benefits of, the covenants, conditions and rules of the Declaration and the Association. Owner may, but shall not be obligated to, submit to the Declaration any other properties owed or acquired by Owner that are entitled to be annexed to the Declaration pursuant to the terms of the Declaration.

8.2 Recreation Center.

(a) **KRP.** KRP shall complete construction on the Recreation Center Lot, within Three-Year Period, at a cost of approximately \$2,500,000 a recreation center containing approximately 5,200 square feet of space (excluding lanais) providing a multiple purpose room, kitchen, offices and storage, adjacent lanais and an adjacent parking lot ("**KRP's Recreational Facilities**").

(b) **Owner.** Owner shall complete construction on the Recreation Center Lot, within the Five-Year Period, at a cost of approximately \$2,500,000, a 25 meter swimming pool approximately 4,000 s.f. in size, with an adjacent children's pool approximately 400 s.f. in size, and a second recreational building containing not less than 5,000 square feet of space (excluding any lanais) providing men's and women's locker rooms and storage, an exercise room (without equipment), and a meeting room (unfurnished) ("**Owner's Recreational Facilities**").

(c) **Schematic.** A schematic consisting of two pages is attached to this Agreement as **Exhibit 8** which shows in detail KRP's Recreational Facilities and which labels as "future" improvements the adjacent Owner's Recreational Facilities.

(d) **Cooperation; Right of Entry.** Owner will work with KRP, and will consult with the Association, in the design of Owner's Recreational Facilities, and Owner and KRP will cooperate with each other and the Association in the construction of their respective improvements on the Recreation Center Lot. KRP is the

current owner of the Recreation Center Lot, and grants to Owner a Right of Entry to the Recreation Center Lot for the purpose of constructing the Owner Recreational Facilities.

8.3 Transfer to Association; Satisfaction of Obligation. KRP and Owner shall cooperate with each other to transfer to the Association the Recreation Center Lot and their respective KRP Recreational Facilities and Owner Recreational Facilities. Upon completion of the Owner Recreational Facilities as provided in this Agreement, the issuance of applicable Governmental Authorizations, and the transfer to the Association of the Owner Recreational Facilities, Owner shall have no further obligation under this Agreement or to KRP with respect to the Owner's Recreational Facilities.

8.4 Owner's Declarant's Rights. Owner shall only transfer its Declarant's rights under the Declaration, either in whole or in part, upon the conditions set forth in the Declaration.

8.5 Limitation on Assignment of Rights; No Third Party Rights. If Owner has failed to construct the Owner's Recreational Facilities within the Five-Year Period, KRP may at any time commencing twelve (12) months after the Five-year Period assign the right to enforce the Owner's obligations to construct the Recreational Facilities to the Association. KRP's rights under this Section 8 with respect to the construction of the Owner Recreational Facilities shall otherwise only be enforceable by KRP and shall otherwise not be assignable to or enforceable by any other person other than an entity which is controlled by or under common control with Castle & Cooke, Inc. No person shall have any third-party beneficiary rights with respect to the construction of the Owner Recreational Facilities.

9. Owner's Insurance

9.1 Insurance Required. Through the final completion of the Connection Work, Owner will provide, pay for, and maintain in full force and effect the insurance outlined in this Section 9 for coverages at not less than the prescribed minimum limits of liability, covering the Owner's activities, those of any and all contractors or subcontractors and anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. If Owner fails to maintain the insurance as set forth in this Section 9, KRP will have the right, but not the obligation, to purchase the insurance at Owner's expense. All insurance will be provided through companies authorized or permitted to do business in the State of Hawaii and which carry a Best's Rating of A- VII or higher or are otherwise acceptable to KRP. All coverages will be primary over any insurance or self-insurance program carried by KRP, and Owner's insurer will not seek contribution from other insurance available to KRP.

9.2 Certificate of Insurance. Before starting work, Owner shall deliver to KRP a certificate of insurance completed by a duly authorized representative of

Owner's insurer certifying that at least the minimum coverages required are in effect and specifying that the liability coverages are written on an occurrence form and that the coverages will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without 60 days advance written notice to KRP.

9.3 Additional Insured. The policy or policies providing insurance as required, with the exception workers' compensation, will include KRP and any other entity holding title to the affected lands as additional insureds on a primary basis for the Connection Work.

9.4 Waiver of Subrogation. Owner will require all insurance policies in any way related to the Connection Work and secured and maintained by Owner to include clauses stating each underwriter will waive all rights of recovery, under subrogation or otherwise, against KRP. Owner will require of any contractor or subcontractors, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this Section.

9.5 Commercial General Liability. Owner will maintain commercial general liability insurance covering all operations by or on behalf of Owner on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance will have minimum limits of \$2,000,000 per occurrence and \$5,000,000 in the aggregate, and coverages customary for substantial construction projects such as Phase I and Phase II, including without limitation coverage for contractual liability, broad form property damage, and non-owned automobile liability, and the indemnity obligations of this Agreement.

9.6 Automobile and Worker's Compensation. Owner will maintain business auto liability covering liability arising out of any auto (including owned, hired and non-owned autos), and workers' compensation and employer's liability insurance, with minimum limits of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, with coverages customary for substantial construction projects such as Phase I and Phase II.

10. Default and General Remedies.

10.1 Default; Attorney's Fees. If a party breaches, violates or fails to perform or satisfy any of the terms of this Agreement (all of which are hereinafter individually and collectively referred to as a "Default"), the other party may enforce any one or more of the remedies described in this Section 10 or any other rights or remedies to which such party may be entitled by law or equity or otherwise. The prevailing party shall be entitled to recover its attorneys' fees and other reasonable costs of enforcing this Agreement from the losing party.

10.2 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the Dispute Prevention & Resolution, Inc. ("DPR") in accordance with its Commercial Arbitration Rules. The arbitration shall be held in Honolulu, Hawaii, the results of the arbitration will be conclusive and binding on Owner and KRP, and judgment may be entered upon the award and may be enforced by appropriate judicial action in accordance with Chapter 658A of the Hawaii Revised Statutes, as amended. Each party hereby submits itself to the jurisdiction of the courts of the State of Hawaii located in Honolulu, Hawaii. The arbitration shall be conducted by one arbitrator agreed to by both Owner and KRP. If the parties are unable to agree upon a single arbitrator, then such arbitrator shall be selected by DPR in accordance with its rules. The arbitrator selected, in either manner, shall be a practicing attorney who has practiced for more than fifteen (15) years or a retired United States Federal or State judge who has served as a judge for more than ten (10) years, and in either case has substantial experience in commercial real estate matters. The award of the arbitrator shall be accompanied by a reasoned opinion. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.

10.3 Specific Performance. The parties acknowledge that a Default under this Agreement may cause the other party to suffer material injury or damages not compensable or easily measurable in money and that either party shall be entitled to seek specific performance or an injunction in the arbitration proceeding, and if not available in the arbitration proceeding to file a lawsuit in a court of competent jurisdiction in the County seeking specific performance or an injunction. Such action shall be limited to specific performance or injunctive relief, and shall not include a claim for damages, other than the recovery of attorneys' fees and costs.

11. HRT Lots Benefited. KRP acknowledges that Owner has certain obligations to provide offsite infrastructure to the HRT Lots, and Owner is connecting to the Phase I Infrastructure for the benefit of both the Owner Lot and the HRT Lots. If Owner fails to provide the HRT Lots with a connection to the Phase I Infrastructure, HRT and its successors and assigns shall have the same rights and benefits as Owner under this Agreement to connect the HRT Lots to the Phase I Infrastructure, subject to the same obligations and conditions.

12. Memorandum of Agreement. KRP and Owner shall execute and record in the Bureau of Conveyances of the State of Hawaii a memorandum of this Agreement in the form attached as Exhibit 12. The obligations of this Agreement shall run with the KRP Property and the Owner Lot and be binding upon the KRP Property and the Owner Lot, and shall be enforceable by KRP and Owner, respectively. Except as otherwise

expressly provided in this Agreement, the obligations under this Agreement shall automatically terminate as to any portion of the Owner Lot or the KRP Property upon the conveyance of that portion of the Owner Lot or the KRP Property to the State of Hawaii, the County, the Association (provided, if applicable, the transfer to the Association shall be subject to the Owner's rights hereunder including the Owner's Right of Entry, the right to complete the Connection Work, and to use the Phase I Infrastructure, all as provided in this Agreement), or any individual purchaser of an annexed Subdivided Lot. Owner and KRP shall execute and deliver to each other in recordable form partial releases as are necessary or appropriate to confirm the termination of the Memorandum of Agreement with respect to such portion of the Owner Lot or KRP Property. Owner and KRP shall execute and deliver to each other in recordable form a final termination of the Memorandum of Agreement upon completion of the following: (a) transfer of the Recreation Center Lot, the KRP Recreational Facilities and the Owner Recreational Facilities to the Association, (b) transfer or dedication of all of the Phase I infrastructure to a Governmental Body or the Association, (c) connection of the Phase II Infrastructure to the Phase I Infrastructure, and (d) the annexation of the Owner Lot.

13. General Provisions

13.1 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand, (b) sent by telecopier (with written confirmation of receipt), (c) sent by certified mail, return receipt requested, or (d) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Kunia: Kunia Residential Partners
100 Kahelu Avenue
Mililani, Hawaii 96789-3997
Attention: _____

Telephone No. (808) 548-4811
Facsimile No.: (808) 548-2975

Owner: _____

Attention: _____

Telephone No. _____
Facsimile No.: _____

13.2 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in any courts of the State of Hawaii, the County, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Hawaii, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

13.3 Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

13.4 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

13.5 Construction. This Agreement and any documents delivered pursuant to this Agreement will be construed without regard to which party drafted the document or any particular provision therein.

13.6 Binding on Successors. This Agreement shall be binding on and inure to the benefit of the successors and assigns of KRP and Owner.

13.7 Assignments and No Third-Party Rights. This Agreement shall not be assignable by KRP, except to an entity which is controlled by or under common control with Castle & Cooke, Inc. and which agrees in writing to be bound by the terms and conditions of this Agreement and assumes the obligations of KRP hereunder. This Agreement may only be assigned in whole and not in part by Owner to a successor owner of the Owner Lot or the portion thereof which has not been subdivided into residential lots, provided that the assignee of the Agreement shall agree to be bound by the terms of this Agreement and assume Owner's obligations hereunder, and provided further that Owner may assign the right to use the Phase I Infrastructure and portions of the Phase II Allocation to other Phase II Owners. Nothing expressed or referred to in this Agreement will be construed to give any person other than KRP and Owner any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement, except as expressly provided in this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this

Agreement and their permitted successors and assigns, except as otherwise expressly provided in this Agreement.

13.8 Section Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

13.9 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

13.10 Governing Law. This Agreement will be governed by the laws of the State of Hawaii without regard to conflicts of laws principles.

13.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signatures are on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

KUNIA RESIDENTIAL PARTNERS,
a Hawaii limited partnership

_____, a

By Castle & Cooke Kunia, Inc., a Hawaii
corporation
Its General Partner

By _____

Its

By _____

Owner

Its

By _____

Its

KRP

Attach Exhibit 8
Recreation Center Improvements

1477823.3
8/21/06

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup To:

Total Pages: _____

Tax Map Key No.: (1) 9-4-2: 68 and 71

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Memorandum") is made as of _____, 2006 by KUNIA RESIDENTIAL PARTNERS, a Hawaii limited partnership having an address at 100 Kahelu Avenue, Mililani, Hawaii 96789-3997 ("KRP") and _____, a _____ having an address at _____ ("Owner").

Recitals:

(a) Owner has acquired Lot 2 of the Royal Kunia Apartment Subdivision, containing approximately 161.360 acres, being a portion of Lot 3 of the Royal Kunia Phase II, Increment 1 Subdivision (File Plan 2171), bearing Tax Map designation (1) 9-4-2-71, located at Royal Kunia, Honolulu, Hawaii, more particularly described in Exhibit A attached to this Agreement ("Owner Lot").

(b) KRP is the owner of certain roadways in Royal Kunia Phase I and Lot 1 of the Royal Kunia Subdivision, Increment E (File Plan 2308) containing approximately 12.093 acres, bearing Tax Map designation (1) 9-4-2-68 located at Royal Kunia,

EXHIBIT 12

1477823.3
8/21/06

Honolulu, Hawaii, all as more particularly described in **Exhibit B** attached to this Agreement (the "**KRP Property**"),

(c) KRP and Owner have entered into an unrecorded Connection Agreement, dated _____, 2006 ("**Connection Agreement**"), providing for, among other matters, the connection of certain sewer, water, drainage and other infrastructure from the Owner Lot and other properties in Royal Kunia Phase II to existing infrastructure within the KRP Property, the annexation of the Owner Lot to the Amended and Restated Declaration of Protective Covenants for Royal Kunia Community, dated March 18, 1994, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-049225, as it may be amended from time to time, and the construction of certain recreational facilities on a portion of the KRP Property.

Agreements:

In consideration of the promises and benefits provided under the Connection Agreement, KRP and Owner have agreed and hereby agree as follows:

1. The terms and conditions of the Connection Agreement are hereby incorporated by reference as though full stated in this Memorandum.
2. The obligations of the Connection Agreement shall run with the Owner Lot and the KRP Property, and be binding upon the KRP Property and the Owner Lot, and shall be enforceable by KRP, as owner of the KRP Property, and Owner, as owner of the Owner Lot, and their respective permitted successors and assigns. The Connection Agreement does not run in favor of any other person except as expressly provided in the Connection Agreement.
3. This Memorandum shall automatically terminate as to any portion of the Owner Lot or the KRP Property upon the conveyance of that portion of the Owner Lot or the KRP Property to the State of Hawaii, the City and County of Honolulu, any public utility for utility purposes, or any individual purchaser of a residential subdivided lot within the Owner Lot which has been annexed to the Royal Kunia Community Association. Owner and KRP shall execute and deliver to each other such termination or partial release documents as are necessary or appropriate to confirm the termination of this Memorandum with respect to such portion of the Owner Lot or the KRP Property.

[Signatures are on the following page.]

IN WITNESS WHEREOF, KRP and Owner have executed this Memorandum as of the date first set forth above.

KUNIA RESIDENTIAL PARTNERS,
a Hawaii limited partnership

_____, a

By Castle & Cooke Kunia, Inc., a Hawaii
corporation
Its General Partner

By _____

Its

By _____

Owner

Its

By _____

Its

KRP

Exhibit D

Exhibit D

AGREEMENT RE INFRASTRUCTURE

THIS AGREEMENT RE INFRASTRUCTURE ("**Agreement**") is made as of _____, 2006 between _____, a _____ ("**Owner**"), and HRT, LTD., a Maryland corporation ("**HRT**").

Recitals:

(a) Owner is concurrently herewith acquiring Lot 2 of the Royal Kunia Apartment Subdivision, containing approximately 161.360 acres, bearing Tax Map designation (1) 9-4-2-71 ("**Owner Lot**"), in the undeveloped project known as Royal Kunia Phase II, located at Royal Kunia, Oahu, Hawaii ("**Phase II**"), consisting of approximately 658 acres.

(b) HRT owns three parcels in Phase II, being (i) Lot 1 as shown on File Plan 2171, containing 123.712 acres, bearing Tax Map designation (1) 9-4-2-1 ("**HRT 123 Lot**"), (ii) Lot 2 as shown on File Plan 2171, containing 13.304 acres, bearing Tax Map designation (1) 9-4-2-70 ("**HRT 13 Lot**"), and (iii) Lot 1 of the Royal Kunia Apartment Subdivision, containing 36.660 acres, bearing Tax Map designation (1) 9-4-2-78 ("**HRT 36 Lot**").

(c) The HRT 123 Lot, the HRT 13 Lot, and the HRT 36 Lot are sometimes collectively referred to in this Agreement as the "**HRT Lots**".

(d) Portions of Phase II, the Owner Lot and the HRT Lots, together with the Access Road, Utility Lines and Drainage Channels are depicted on the map attached to this Agreement as **Exhibit A** (the "**Phase II Map**").

(e) Owner and HRT desire to set forth their agreements regarding infrastructure improvements, utility and drainage easements, and other matters concerning their respective parcels in Phase II.

Agreements:

1. **Additional Definitions.** In addition to the terms defined in the above recitals, for the purposes of this Agreement the following terms have the meanings specified or referred to in this Section 1.

"**Agricultural Park**" means the 150.000 acre parcel of land transferred to the State for development as an agricultural park, bearing Tax Map designation (1) 9-4-2-80.

"**County**" means the City and County of Honolulu, State of Hawaii.

"**DOE**" means the Department of Education of the State of Hawaii.

EXHIBIT 4.2(c)

1477778.4
8/21/06

"DOE Fair Share Letters" means (a) the letter dated September 26, 1996 from Halekua Development Corporation to the DOE, and (b) the letter dated December 19, 2002 from the DOE to Herbert K. Horita, establishing the fair share contribution to the DOE required under the LUC Order in connection with the development of Phase II.

"DPP" means the Department of Planning and Permitting of the County.

"Drainage Channel" means one or more storm drainage channels that may be an open-ditch system, a box culvert system, or such other drainage system and structures reasonably determined by the owner of the lot upon which the Drainage Channel is located, consistent with the Phase II Master Plans and as good engineering practice dictates.

"Five-Year Deadline" means the date which is five years after the date of this Agreement, subject, however, to extension for any delay caused by (a) a delay in obtaining Governmental Authorizations except to the extent the delay is caused by the negligent act or omission of the party obtaining the Governmental Authorization, (b) Force Majeure, or (c) the other party's failure to perform its obligations under this Agreement.

"Governmental Authorization" means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" means any (a) federal, state, local, or municipal government; or (b) body or agency exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature over the property described in this Agreement or the infrastructure to be constructed hereunder, including the County, the State, and utility companies.

"Legal Requirement" means any federal, state, local or municipal administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty, and any utility company rules or requirements.

"LUC" means the Land Use Commission of the State of Hawaii.

"LUC Order" means the Amended Findings of Fact, Conclusions of Law, and Decision and Order, filed on October 1, 1996 in the LUC in Docket No. A92-683 entitled *In the Matter of Halekua Development Corporation*.

"Phase II Master Plans" means the following plans all prepared by ParEn, Inc.: (a) Royal Kunia Revised Sewer Master Plan, dated May 1996, (b) Revised Water Master Plan for Royal Kunia Development, dated August 1996, and (c) Drainage Master Plan for the Royal Kunia Development, Phase II, dated September 1996.

"School Site" means Lot 3 of the Royal Kunia Apartment Subdivision, being a portion of Lot 3 of the Royal Kunia Phase II, Increment 1 Subdivision (File Plan 2171), containing approximately 12.00 acres, bearing Tax Map designation (1) 9-4-2-79, located at Royal Kunia, Honolulu, Hawaii.

"School Site Agreement" means the School Site Agreement if any such agreement was delivered to Owner upon the purchase of the Owner Lot under the Purchase and Sale Agreement, dated _____, 2006, between James B. Nicholson, as Trustee of the Bankruptcy Estate of Halekua Development Corporation, in Bankruptcy Case No. 03-01279, pending in the United States Bankruptcy Court for the District, as Seller, and Owner, as Buyer, relating to the School Site.

"Seven-Year Deadline" means the date which is seven years after the date of this Agreement, subject, however, to extension for any delay caused by (a) a delay in obtaining Governmental Authorizations except to the extent the delay is caused by the act or omission of the party obtaining the Governmental Authorization, (b) Force Majeure, or (c) the other party's failure to perform its obligations under this Agreement.

"State" means the State of Hawaii.

"Substantial Completion" means when improvements are sufficiently complete they can be utilized for their intended purpose.

"Three-Year Deadline" means the date which is three years after the date of this Agreement, subject, however, to extension for any delay caused by (a) a delay in obtaining Governmental Authorizations except to the extent the delay is caused by the negligent act or omission of the party obtaining the Governmental Authorization, (b) Force Majeure, or (c) the other party's failure to perform its obligations under this Agreement.

"Utility Lines" means offsite utilities and drainage facilities necessary to allow development of the HRT Lots and as contemplated by the Phase II Master Plans, including sewer pipeline, water pipeline, and one or more conduits for electrical, telephone and cable lines and Drainage Channels, as depicted on the Phase II Map and in the Phase II Master Plans.

2. Access Road.

2.1 **Construction.** Owner shall, at its sole cost and expense, construct Road X Phase 1 and its underlying Utility Lines ("**Road X Phase 1**") and Road X Phase 2 and its underlying Utility Lines ("**Road X Phase 2**") as depicted on the Phase II Map (the "**Access Road**"). The Access Road shall be at least a two lane road constructed in accordance with the Legal Requirements for dedicating the Access Road to the County.

2.2 **Time Table.** Owner and HRT shall in good faith agree upon the time table for the completion of the Access Road in order to accommodate the development of the Owner Lot and the HRT Lots, subject to Governmental Authorizations; provided that (a) Owner may commence and complete construction of the Access Road at any time earlier than required for the development of the HRT Lots, (b) subject to obtaining Governmental Authorizations, Owner shall commence construction of Road X Phase 2 not later than the later of (i) twelve months after the date of this Agreement, or (ii) the completion of actual construction of any internal road or Utility Lines on any portion of the Owner Lot that has an aggregate construction cost in excess of \$500,000, and shall commence construction of Road X Phase 1 not later the later of (i) twenty-four months after the date of this Agreement, or (ii) the completion of actual construction of any internal road or Utility Lines on any portion of the Owner Lot that is north of Road X that has an aggregate construction cost in excess of \$500,000, and (c) once Owner commences construction of Road X Phase 2 or Road X Phase 1, as the case may be, Owner will diligently proceed until Substantial Completion of Road X Phase 2 or Road X Phase 1, as the case may be, subject to Governmental Authorizations, Force Majeure and performance by HRT of its obligations hereunder. Owner shall Substantially Complete Road X Phase 2 and thereby provide HRT with access to Kunia Road for each of the HRT Lots, not later than the Five-Year Deadline, and Road X Phase 1 not later than the Seven-Year Deadline.

2.3 **Easement.** Owner shall grant to HRT an easement for ingress and egress over the Access Road, such easement to terminate to the extent any portion of the Access Road are dedicated to a Governmental Body as a public roadway.

2.4 **Road Widening and Traffic Improvements.** HRT shall dedicate or grant easements, or both, to the applicable Governmental Body over such portion of the HRT Lots as may be required to widen Kunia Road or construct traffic signal and pedestrian walkway improvements as may be necessary or appropriate in connection with the construction of the Access Road as depicted on the Phase II Map or the development of Phase II. HRT shall not be entitled to any compensation for dedication of or grant of easements over that portion of the HRT Lots within the twenty-two foot set back that runs along Kunia Road up to a maximum of 1.3 acres, but shall be entitled to payment of the lesser of (a) the fair market value as a set-back area for any portion of the HRT Lots within the twenty two foot set back in excess of 1.3 acres, and (b) the Purchase Rate (defined below). If dedication or grants of easements are required over other portions of

the HRT Lots in order to widen Kunia Road or the Access Road (the "Road Widening Area"), HRT shall be entitled to compensation for the Road Widening Area at the same rate per square foot as the Owner paid to acquire the Owner Lot in the bankruptcy auction sale (the "Purchase Rate").

3. Utilities.

3.1 **Utilities and Drainage.** Owner shall, at its sole cost and expense, make available to the property lines of the HRT Lots the Utility Lines. HRT shall provide easements and rights of entry as necessary for construction.

3.2 **Alternate Sewer Connection.** The Phase II Map shows alternative connections for the sewer Utility Line connecting to the southeast corner of the HRT 36 Lot. The Phase II Master Plans provide for the sewer Utility Line to run from Anoiki Street through the School Site to the HRT 36 Lot. If Owner is unable to construct the sewer Utility Line through the School Site, Owner will, at its sole cost and expense, make available at the property line of the HRT 36 Lot the alternate sewer connection directly from Anoiki Street as shown on the Phase II Map.

3.3 **Capacity.** The Utility Lines shall have sufficient capacity to serve the Owner Lot and the HRT Lots as if those lots were developed to the maximum capacity permitted under the Phase II Master Plans and the County Legal Requirements, including zoning as of the date of this Agreement. HRT acknowledges and agrees that the capacity of the Utility Lines within Phase II shall be limited to the downstream capacity of the existing Phase I Infrastructure, and nothing herein shall require Owner or any other person to modify or increase the capacity of the existing Phase I Infrastructure. However, if and to the extent that there is any surplus capacity in the existing Phase I Infrastructure which (a) is within the fifty percent share of the excess capacity acquired by Owner as purchaser of the Owner Lot (and not including the fifty percent share owned by Kunia Residential Partners as developer of the Phase I Infrastructure), (b) is in excess of the capacity allocated to Phase II in the Phase II Master Plans, (c) excludes the sewer capacity for 1,200 units contingent obligation relating to the lands mauka of Phase II, (d) does not include any of the unused capacity allocated to Phase I, (e) is not allocated to the other Phase II lots under the Phase II Master Plans, (f) is not necessary for the development of the other Phase II lots in accordance with the Phase II Master Plans and County Legal Requirements and this Agreement, (g) is not necessary to comply with the Legal Requirements which may be imposed by the LUC or the County as a condition to the granting of consent for the transfer of the Owner Lot to Owner, or reinstatement of the zoning entitlements of the Owner Lot, and (h) is not necessary for any increase in the density of any Phase II lots resulting from the construction of additional housing units on the Phase II lots which additional units either (1) fulfill Owner's obligation under this Agreement to satisfy the affordable housing for the HRT Lots and/or (2) provided the

affordable housing requirement for the HRT Lots is otherwise satisfied, are equal to the number of affordable housing units Owner would have been required to construct to satisfy the affordable housing requirement for the HRT Lots, then Owner shall provide HRT with the first right to use such surplus capacity for the HRT 123 Lot if HRT elects to rezone any additional portion of the HRT 123 Lot from industrial to commercial (not residential) and files an application for approval of such rezoning prior to the Three Year Deadline. Furthermore, nothing herein is (i) intended to give HRT the right to use the capacity allocated to the other Phase II lots under the Phase II Master Plans, or (ii) give Owner or any other owner of a Phase II lot the right to use the capacity allocated to the HRT Lots under the Phase II Master Plans and current zoning. Subject to the foregoing, any unused capacity within the Utility Lines shall be allocated by Owner prior to dedication and shall thereafter be determined by the applicable Governmental Body

3.4 Time Table. Owner and HRT shall in good faith agree upon the time table for the completion of the Utility Lines in order to accommodate the development of the Owner Lot and the HRT Lots, subject to Governmental Authorizations; provided that (a) Owner may commence and complete construction of the Utility Lines at any time earlier than required for the development of the HRT Lots, (b) subject to obtaining Governmental Authorizations, Owner shall commence construction of the Utility Lines not under the Access Road not later than the later of (i) twenty-four months after the date of this Agreement, or (ii) the completion of actual construction of any internal road or Utility Lines on any portion of the Owner Lot that has an aggregate construction cost in excess of \$500,000, and (c) once Owner commences construction of the Utility Lines, Owner will diligently proceed until Substantial Completion, subject to Governmental Authorizations, Force Majeure and performance by HRT of its obligations hereunder. Owner shall Substantially Complete the Utility Lines no later than the Five-Year Deadline.

3.5 Dedication of Utility Lines. Owner's obligations under this Section 3 shall be completely satisfied with respect to any particular Utility Line upon Substantial Completion of such Utility Line as required by this Section 3, and dedication or conveyance of the Utility Line to a Governmental Body.

3.6 Reciprocal Easements. Owner and HRT shall grant, without payment therefor, to the other party easements on land owned by the other for the Utility Lines as necessary to service the lands in Phase II and for access to utilize such easements. All such easements shall be located on the lands of the other consistent with the Phase II Map, the Phase II Master Plans and as good engineering practice dictates. The party acquiring such easement shall pay the cost of all apparatus, equipment, lines and related facilities necessary to be installed in or on such easement for the benefit of that party's lands. The easement agreements shall be in form acceptable to a Governmental Body, and be assignable and/or run in favor of the applicable

Governmental Body. The agreement to grant reciprocal easements shall terminate as to the land to be encumbered upon dedication or other final acceptance of the Access Road and Utility Lines to a Governmental Body.

4. Fill Material.

4.1 Delivery of Fill Material. Not later than the Three-Year Deadline, Owner shall, at its sole cost and expense, deliver to the HRT 123 Lot, and HRT shall accept delivery of, 400,000 cubic yards of soil fill material of the appropriate type for the purpose of back-filling gullies or gully and low land areas on the HRT 123 Lot ("**Fill Material**"). Owner shall stockpile the Fill Material on the HRT 123 Lot in a location to be mutually agreed upon by Owner and HRT. HRT shall be responsible for distributing the Fill Material on the HRT Lots and complying with Legal Requirements for the Fill Material on the HRT Lots.

4.2 Payment in Lieu. In lieu of delivering all or a portion of the Fill Material, Owner may at any time pay to HRT a lump sum payment in immediately available funds in an amount equal to \$15 per cubic yard for any Fill Material not yet delivered. The lump sum payment shall satisfy in full the obligation to deliver the Fill Material.

4.3 Permits. HRT shall, at its sole cost and expense, obtain all necessary Governmental Authorizations to allow the stockpiling of the Fill Material on the HRT 123 Lot (the "**Stockpile Permits**"). HRT shall as soon as possible after written request by Owner file at the applicable Governmental Body the necessary applications for, and diligently pursue the obtaining of, the Stockpile Permits.

4.4 Agent for Permits. If HRT fails to promptly apply for the Stockpile Permits after Owner provides the notice under Section 4.3, (a) Owner may (but is not required to), on behalf of HRT, file any and all necessary or appropriate applications with and provide information to the applicable Governmental Body in order to obtain the Stockpile Permits, and (b) HRT hereby appoints Owner as its agent for obtaining the Stockpile Permits and any other appropriate or necessary Governmental Authorization to stockpile the Fill Material on the HRT 123 Lot.

4.5 Time Table. Owner and HRT shall in good faith agree upon the time table for the delivery of the Fill Material in order to accommodate the development of the Owner Lot and the HRT 123 Lot, subject to Governmental Authorization; provided that Owner may commence delivery of the Fill Material at any time earlier than required for the development of the HRT 123 Lot, and shall complete that delivery or make the cash payment-in-lieu as provided under Section 4.2 no later than the Three-Year Deadline.

5. Drainage Easements.

5.1 Over HRT Lots. HRT shall grant to the State, Owner and the County easements for storm drainage purposes over the Drainage Channels on the HRT Lots to provide drainage for the Agricultural Park, the School Site and the portion of the Owner Lot designated as a park or open space that is adjacent to the School Site (the "Park Site"); provided, however, the drainage from the School Site and the Park Site shall only be permitted over the HRT 36 Lot. Owner will obtain from the State and/or the County the necessary engineering information concerning the quantity of water to be drained through such easements from the Agricultural Park within a reasonable period of time after HRT provides the Owner with the proposed entry and exit points from the Agricultural Park onto the HRT 123 Lot. Owner shall also provide such information as HRT needs from Owner with respect to the necessary engineering information concerning the quantity of water to be drained through such easements and the proposed entry points onto the HRT 123 Lot. Owner shall provide HRT with the proposed entry and exit points from the HRT Lots onto and from the Owner Lot. The entry and exit points shall be agreed upon by the State, Owner, the County and HRT in good faith, consistent with the Phase II Map, the Phase II Master Plans and as good engineering practice dictates.

5.2 Over Owner Lot. Owner shall grant to the State, County, and HRT easements for storm drainage purposes over the Owner Lot to provide drainage for the Agricultural Park and the HRT 123 Lot. HRT shall provide Owner with the necessary engineering information concerning the quantity of water to be drained through such easement and the proposed entry points onto the Owner Lot and the Access Road. The entry and exit points shall be agreed upon by the State, Owner, the County and HRT in good faith, consistent with the Phase II Map, the Phase II Master Plans and as good engineering practice dictates.

5.3 HRT Construction. HRT shall, at its sole cost and expense, construct any necessary and appropriate Drainage Channels on the HRT Lots, consistent with the Phase II Map, the Phase II Master Plans, to accommodate the storm drainage for the Agricultural Park, the School Site and the HRT Lots, not later than the Five-Year Deadline. HRT shall use diligent efforts to obtain the Governmental Authorizations in a timely manner, but shall not be required to incur extraordinary additional costs or be subjected to material additional conditions in order to expedite obtaining such Governmental Authorizations. HRT may determine the location and type of the Drainage Channels on the HRT Lots as HRT may reasonably decide consistent with the Phase II Map and the Phase II Master Plans and as good engineering practice dictates, provided that such Drainage Channels are designed and constructed in accordance with County dedication standards. HRT shall connect the Drainage Channels on the HRT Lots to the drainage culvert located at the boundary of the HRT 36 Lot and Phase I (which has already been constructed) consistent with the Phase II Master Plans.

5.4 Owner Construction. Owner shall, at its sole cost and expense, construct any necessary and appropriate Drainage Channels on the Owner Lot, consistent with the Phase II Map and the Phase II Master Plans, to accommodate the storm drainage from the Agricultural Park and the HRT 123 Lot. Owner may determine the location and type of Drainage Channels in the Access Road or on the Owner Lot as Owner may reasonably decide consistent with the Phase II Map and the Phase II Master Plans and as good engineering practice dictates, provided that such Drainage Channels are designed and constructed in accordance with County dedication standards.

5.5 Time Table. Owner and HRT shall in good faith agree upon the time table for the construction of the Drainage Channels on the HRT Lots, the Owner Lot, and the Access Road in order to accommodate the development of the Owner Lot and the HRT Lots, subject to Governmental Authorization; provided that Owner may commence construction of the Drainage Channel on the Access Road at any time earlier than required for the development of the HRT Lots. Owner shall Substantially Complete the Drainage Channel not later than the Five-Year Deadline.

5.6 Form of Easement Agreement. HRT and Owner shall grant to each other the storm drainage easements as required by this Section 5 (which shall include flowage easements) in a form to be agreed upon and as may be required by a Governmental Body. The drainage easements shall be assignable to and/or run in favor of the applicable Governmental Body.

6. LUC Obligations

6.1 Compliance. Owner shall comply with and satisfy all of the conditions of the LUC Order with respect to the Owner Lot. Owner shall comply with and satisfy the conditions of the LUC Order for the HRT Lots with respect to affordable housing, offsite road improvements, school facilities, offsite drainage, and offsite infrastructure for the Agricultural Park (excluding the Drainage Channel on the HRT Lots). HRT shall comply with and satisfy all of the other conditions of the LUC Order with respect to the HRT Lots except as otherwise expressly provided in this Agreement and subject to Governmental Authorization. In satisfying the condition of the LUC Order with respect to the affordable housing requirement for the HRT Lots, none of the affordable housing will be built on the HRT Lots. Owner shall be responsible for satisfying the foregoing conditions of the LUC Order to the extent required for development of the HRT Lots as contemplated by the Phase II Master Plans and current zoning of the HRT Lots, and Owner shall not be responsible for satisfying any increase to the obligations under the foregoing conditions of the LUC Order because of developments which are not consistent with or are of greater density than the Phase II Master Plans or current zoning. Owner shall have no obligation to satisfy the requirements or obligations of the LUC Order under this Agreement with respect to any other property.

6.2 School Site. It is understood that Owner intends to comply with the requirement of the LUC Order to contribute to the development, funding, and/or construction of school facilities, as provided in LUC Order paragraph 6 and the DOE Fair Share Letters, either by the School Site Agreement or through litigation or other means by causing the owner of the School Site to satisfy such obligations.

6.3 HRT's Development Costs. HRT shall be responsible for complying with Governmental Authorizations (including the LUC Order) and other Legal Requirements with respect to the improvements constructed or to be constructed on the HRT Lots (except that HRT shall not be required to build any affordable housing on the HRT Lots), and for the development costs on or within the HRT Lots, including costs of infrastructure installed on or within the HRT Lots, the costs to connect to the infrastructure at the property line of the HRT Lots, and typical development fees such as building permit, water meter and sewer hook-up fees.

7. Security for Performance.

7.1 Secured Obligation. In exchange for HRT's agreement to release its mortgage on the Owner Lot, Owner shall provide to HRT security as provided in this Section 7, to secure Owner's performance of Owner's obligations under this Agreement for (a) Road X Phase 2 (and its underlying Utility Lines) and any Utility Lines that are not under the Access Road within the Five-Year Deadline, (b) Road X Phase 1 (and its underlying Utility Lines) within the Seven-Year Deadline, and (c) to provide the Fill Material or cash payment-in-lieu within the Three-Year Deadline. Owner shall use diligent efforts to obtain the Governmental Authorizations in a timely manner, but shall not be required to incur extraordinary additional costs or be subjected to material additional conditions in order to expedite obtaining such Governmental Authorizations.

7.2 HRT Information. To the extent that any Governmental Authorizations require information from HRT regarding HRT's development plans for the HRT Lots, Owner may not be able to process the request for certain Governmental Authorizations until HRT is able to provide that information satisfactory to the applicable Governmental Body. HRT shall use commercially reasonable efforts to provide such information, other than traffic projections, on a timely basis so that Owner may proceed with applying for the requisite Governmental Authorizations and the development of Phase II will not be delayed. HRT shall use commercially reasonable efforts to provide the traffic projections consistent with the Phase II Master Plans and the County Legal Requirements for the HRT Lots within three (3) months of the date of this Agreement and any delay in providing the traffic projections beyond three (3) months from the date of this Agreement shall extend the Five-Year Deadline and the Seven-Year Deadline and the time to commence work under Paragraph 2.2, above to the extent caused by the delay.

7.3 Security. Owner may, in its discretion, provide either (a) a letter of credit or a bond in an initial amount of not less \$10,000,000, or (b) such other security

acceptable to HRT in its reasonable discretion. The bond shall be substantially in the form of Exhibit 7.3 attached to this Agreement. The amount of the letter of credit or the bond shall be reduced as the secured obligations are satisfied, as set forth in Exhibit 7.3, and in any event shall be released and of no further force or effect as of the date of Owner's discharge or full performance of the obligations secured.

8. **Royal Kunia Community; Cooperation.**

8.1 **Royal Kunia Community.** Owner will cooperate with HRT in annexing the HRT 13 Lot and the HRT 36 Lot to the Amended and Restated Declaration of Protective Covenants for Royal Kunia Community, dated March 18, 1994. After the earlier of (a) the annexation of all or any portion of the HRT 13 Lot or the HRT 36 Lot, or (b) the assignment to HRT of the unilateral right to annex the HRT 13 Lot and the HRT 36 Lot, HRT shall contribute to Owner the sum of \$625,000 (or in the event of a partial annexation, a pro rata portion thereof based on the relative acreage -annexed) (the "Contribution") towards Owner's cost for building the Owner's share of the recreation center on Lot 1 of the Royal Kunia Subdivision, Increment E (File Plan 2308), which center is to conveyed to the Association for the benefit of the members of the Association (the "Recreation Center"). HRT will pay the Contribution to Owner on a prorata monthly basis as construction of Owner's portion of the Recreation Center is completed, based on invoices provided to HRT with such back-up documentation as HRT may reasonably request.

8.2 **Cooperation.** Owner and HRT agree to cooperate with each other and to work together in good faith to facilitate the timely and efficient development of Phase II, and the infrastructure and reciprocal easements described in this Agreement and/or necessary to complete the development of Phase II. The parties agree promptly (a) to furnish upon request to each other any necessary and appropriate information, (b) to execute and deliver to each other such approvals, consents and other documents, and (c) to do such other acts and things, all as the other party may reasonably request, in each case, for the purpose of granting such easements, rights of entry and rights of way and/or carrying out the intent of this Agreement and the development of the Phase II, in each case, without fee or unreasonable delay. Without limiting the generality of the foregoing, HRT and Owner shall cooperate with each other to file such petitions and applications with the LUC or the County as HRT or Owner may deem necessary to maintain, amend, restore or reinstate the land use and zoning entitlements for Phase II.

9. **Right of Entry.**

9.1 **Grant of Right of Entry.** On the terms and conditions set forth in this Section 9, Owner hereby grants a right of entry to HRT to enter the Owner Lot, and HRT hereby grants a right of entry to Owner to enter the HRT Lots (the "Rights of Entry"), for the purposes of complying with, carrying out, and satisfying the parties' respective agreements and obligations set forth in this Agreement (the "Projects"). The

parties' respective Rights of Entry shall continue until the respective Projects are completed or the obligations are waived by the party in whose favor the obligations run.

9.2 **Use.** The Rights of Entry are granted with respect to the Owner Lot and the HRT Lots (collectively, the "**Property**"), and shall be used only for the Projects. The parties shall use the Property and exercise their respective Rights of Entry in such manner as to occasion the least possible interference with the use of the Property and adjacent lands owned by the parties. The parties shall comply with all Legal Requirements applicable to their use and activities in or on the Property.

9.3 **AS IS.** Neither party makes any representations or warranties as to the condition of their respective Properties, and neither party represents or warrants the same to be in a safe and proper condition for the Projects or for any other purpose.

9.4 **Due Care.** Each party shall at all times exercise due care and diligence to prevent injury to persons and damage to or destruction of property, roads and improvements on the Property and adjoining lands, and shall repair or reimburse the other party for any and all such damage, destruction, or loss caused by, resulting from or arising out of the exercise of the Rights of Entry and not due to the negligence of the other party.

9.5 **Non-liability of Property Owner.** Entry and use of the Property by a party shall be at that party's own risk and the other party shall not be responsible or liable for injuries to or wrongful death of persons or damage or destruction or loss of property arising from or caused by the exercise of the Rights of Entry granted to the party.

9.6 **Clean Condition.** The party exercising the Right of Entry shall carry out and dispose of all debris and trash resulting from its activities and leave the Property in as clean a condition as it was prior to that party's entry upon the Property. Failure to remove its property or leave the Premises in such condition, or to implement all reasonable dust control measures will force the other party to do the same and assess the party any charges and expenses suffered or incurred by the other party.

9.7 **Assumption of Risk; Indemnification.** Each party agrees and covenants with the other party, and its successors in interest, that each party will and does hereby assume all risks of personal injury or wrongful death and of loss or damage to property by whomsoever owned on or in the Property of the other party, arising out of or in connection with the exercise of the Right of Entry, and each party hereby agrees to indemnify and save harmless the other party and its affiliates (including without limiting the generality of said term, their officers, employees or agents) against and from any and all claims for personal injury or wrongful death by third persons and any and all claims for loss or damage to property so caused, occasioned or resulting from any such claim or demand or any action or proceeding brought thereon, and will reimburse the other party

for all of its costs and expenses (including reasonable attorneys' fees) incurred in connection with the defense of any such claims, except where such injury or death or property damage is caused by the negligence, willful act or gross neglect of the other party.

10. Default and General Remedies.

10.1 Default; Attorneys' Fees. If a party breaches, violates or fails to perform or satisfy any of the terms of this Agreement (all of which are hereinafter individually and collectively referred to as a "Default"), the other party may enforce any one or more of the remedies described in this Section 10 or any other rights or remedies to which such party may be entitled by law or equity or otherwise. The prevailing party shall be entitled to recover its attorneys' fees and other reasonable costs of enforcing this Agreement from the losing party.

10.2 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with the Expedited Procedures under its Commercial Arbitration Rules. The arbitration shall be held in Honolulu, Hawaii, the results of the arbitration will be conclusive and binding on Owner and HRT, and judgment may be entered upon the award and may be enforced by appropriate judicial action in accordance with Chapter 658A of the Hawaii Revised Statutes, as amended. Each party hereby submits itself to the jurisdiction of the courts of the State of Hawaii located in Honolulu, Hawaii. The arbitration shall be conducted by one arbitrator agreed to by both Owner and HRT. If the parties are unable to agree upon a single arbitrator, then such arbitrator shall be selected by the American Arbitration Association in accordance with its rules. The arbitrator selected, in either manner, shall be a practicing attorney who has practiced for more than fifteen (15) years or a retired United States Federal or State judge who has served as a judge for more than ten (10) years, and in either case has substantial experience in commercial real estate matters. The award of the arbitrator shall be accompanied by a reasoned opinion. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.

10.3 Specific Performance. The parties acknowledge that a Default under this Agreement may cause the other party to suffer material injury or damages not compensable or easily measurable in money and that either party shall be entitled to seek specific performance or an injunction in the arbitration proceeding, and if not available in the arbitration proceeding to file a lawsuit in a court of competent jurisdiction in the County seeking specific performance or an injunction. Such action shall be limited to specific performance or injunctive relief, and shall not include a claim for damages, other than the recovery of attorneys' fees and costs.

10.4 **Consolidation.** Owner, HRT, and all bonding companies, are bound, each to each other, by the arbitration provisions set forth in this Section 10, provided that they have signed this Agreement or an agreement that incorporates this Section 10 by reference or signed another agreement to be bound by this arbitration provision. Each such party agrees that it may be joined as an additional party to an arbitration involving other parties under any such agreement. If more than one arbitration is begun under any such agreement and any party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator(s) selected in the first-filed of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that (those) arbitrator(s).

11. **Halekua Agreement**

11.1 **Infrastructure Obligations.** It has been the intent of HRT and Owner in this Agreement, among other matters, to clarify and specify with particularity all of the infrastructure obligations which remain owing to HRT as of the date hereof under those sections and paragraphs attached hereto as **Exhibit 11** (as modified in Exhibit 11) (the "**Infrastructure Obligations**") which have been extracted from that certain Purchase Agreement (1 Parcel) dated June 29, 1995, by and between HRT, Ltd. and Halekua Development Corporation, as amended by an Amendment to Purchase Agreement (1 Parcel) dated September 1, 1995 (the "**Halekua Agreements**"), and that none of the provisions set forth in Exhibit 11 shall apply unless it is determined to be an Omitted Obligation (as defined below). Any deadlines for performance or remedies set forth in Exhibit 11 are superseded by the deadlines and remedies set forth in this Agreement. In the event of any inconsistency between the terms of this Agreement and the terms set forth in Exhibit 11, this terms of this Agreement shall control. In the event that HRT shall in good faith determine that a material Infrastructure Obligation was inadvertently omitted from this Agreement (an "**Omitted Obligation**"), HRT may notify Owner in writing of the Omitted Obligation, and shall include sufficient detail describing, and evidence supporting, this determination. Owner shall within thirty (30) days after receipt of such notice, respond to HRT in writing, confirming or disputing such Omitted Obligation as binding on Owner, or reasonably requesting clarification or evidence in respect thereof.

Notwithstanding anything to the contrary, the Infrastructure Obligations do not include any of the provisions in the Halekua Agreements which obligated Halekua Development Corporation to transfer land to HRT as delay damages or are not set forth in Exhibit 11.

11.2 **Dispute Resolution.** Any dispute as to any Omitted Obligation shall be addressed as follows:

(a) The parties shall meet to discuss and negotiate a satisfactory resolution, if possible.

(b) Absent a satisfactory resolution within a reasonable time, either party may submit the dispute to mediation, and the parties shall attempt in good faith to mediate a satisfactory resolution.

(c) In the event mediation fails to resolve the dispute, either party may pursue arbitration or an action for specific performance or an injunction as provided in Section 10 above.

11.3 Personal to HRT. Notwithstanding the provisions of Section 12.7 below, the right to identify and enforce an Omitted Obligation under this Section 11 shall belong exclusively to HRT, and HRT's affiliates, Honolulu, Ltd. and 300 Corporation, solely in their capacity as co-owners of minority interests in the HRT Lots, and shall not be transferable to any other person, including any buyer of the HRT Lots or a portion thereof.

12. General Provisions

12.1 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand, (b) sent by telecopier (with written confirmation of receipt), (c) sent by certified mail, return receipt requested, or (d) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Owner: _____

Attention: _____

Telephone No. _____

Facsimile No.: _____

HRT: HRT, Ltd.
3660 Waialae Avenue
Honolulu, Hawaii 96816-3260
Attention: Alvin Awaya

Telephone No.: (808) 924-1000

Facsimile No.: (808) 922-3975

12.2 Force Majeure. The obligations of Owner or HRT under this Agreement shall be excused to the extent such obligations are prevented, delayed or hindered by strikes, work stoppages, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials, or reasonable substitutes for those items, governmental restrictions, regulations or controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, hurricane, tsunami, earthquake, flood, storms, embargo, riots, war, moratorium, terrorist acts, tortious acts of others and other causes beyond the reasonable control of the party obligated to perform; provided, however, timely performance shall not be excused to the extent caused by (a) any delay in Governmental Authorizations caused by the act or omission of the party seeking to be excused; or (b) any change in market or economic conditions, including without limitation interest rates, property values or costs of construction ("**Force Majeure**").

12.3 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in any courts of the State of Hawaii, the County, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Hawaii, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

12.4 Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

12.5 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

12.6 Construction. This Agreement and any documents delivered pursuant to this Agreement will be construed without regard to which party drafted the document or any particular provision therein.

12.7 Binding on Successors. This Agreement shall be binding on and inure to the benefit of the successors and assigns of Owner and HRT, and HRT's affiliates, Honolulu, Ltd. and 300 Corporation, solely in their capacity as co-owners of

minority interests in the HRT Lots, and shall run with the land and be binding upon and inure to the benefit of the successor owners of the Owner Lot and the HRT Lots.

12.8 Memorandum of Agreement. At the request of either party, the other party shall execute a memorandum of this Agreement, in form suitable for recording in the Bureau of Conveyances of the State of Hawaii, providing for record notice of this Agreement.

12.9 Assignments and No Third-Party Rights. This Agreement may be assigned by either party without the prior consent of the other party. Nothing expressed or referred to in this Agreement will be construed to give any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and assigns except as otherwise expressly provided in this Agreement.

12.10 Section Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

12.11 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.12 Governing Law. This Agreement will be governed by the laws of the State of Hawaii without regard to conflicts of laws principles.

12.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signatures are on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

HRT, LTD., a Maryland corporation

_____, a

By _____

By _____

Its

Its

HRT

Owner

Attachments:

Exhibit A Phase II Map

Exhibit 7.3 Bond

Exhibit 11 Halekua Agreement

HALEKUA AGREEMENT

Excerpts from the Purchase Agreement (1 Parcel) dated June 29, 1995, by and between HRT, Ltd. And Halekua Development Corporation, as amended by Amendment to Purchase Agreement (1 Parcel) dated September 1, 1995.

The amendments to the Halekua Agreement are indicated by brackets [] for deleted language and *italics* for added language. Certain clarifications have been added and are identified by ***bold italics***.

8. Costs For Large Lot Subdivision.

To induce HRT to enter into this Agreement, HALEKUA shall personally pay or obtain financing for all costs and expenses necessary or required in order that the Property may be subdivided and the parcel of land conveyed to HRT; it being understood that all such costs and expenses shall include, without limitations, all governmental fees and charges, roadways, all expenses and costs required by the City and County of Honolulu to complete the subdivision and all other infrastructure costs for subdivision purposes, including survey costs and engineering costs, and HALEKUA shall pay for and fully construct the Major Parkway Road shown on Exhibit "A" together with all other infrastructure required by all governmental agencies, including without limitations, all offsite [improvements for said parcels of land to be conveyed to HRT] *improvements for said parcels of land and the easements to be conveyed to HRT pursuant to paragraph 24, Easements and Documents*, such as water, sewer and all utilities with adequate sizing of such water, sewer and utilities to the outer boundaries of the said parcels of land in order that said parcels of land to be conveyed to HRT may be fully developed to its highest and best use ***under current zoning and land use entitlements***; provided however, if the offsite water reservoir for Increments 2 and 3 of the Royal Kunia Phase II (residential housing) and the Kunia Road widening do not affect HRT's development of the said parcels of land to be acquired by HRT as set forth herein then the term "infrastructure" shall not include said offsite water reservoir and/or said road widening; provided further however, if by December 31, 1996, HALEKUA is unable to complete the construction of the Major Parkway Road, and all said infrastructure work then HALEKUA at its costs and expense may fully bond the construction of said road, utilities and infrastructure work by providing HRT with an owner's completion bond and a labor and material bond, satisfactory to HRT, in an amount equal to 100% of the cost of construction of said road and 100% of the cost of construction of all utilities and other infrastructure work required by all appropriate governmental agencies and such bond shall name HRT as an additional obligee thereof.

EXHIBIT 11

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Water And Sewer For Large Lots. HALEKUA agrees to use its best efforts to provide without any cost or expense to HRT, appropriate allocations to HRT and to the HRT Lands all of the water and sewer capacity required by HRT for the highest and best use of the HRT Lands under current zoning and land use entitlements; provided however, if the water allocation and sewer capacity allowed by the Board of Water Supply and the City and County of Honolulu is insufficient to develop the entire Property, then HALEKUA shall use its best efforts to have such water allocation and sewer capacity to be allocated pro rata between the HRT Lands and the HALEKUA Lands based upon the square footage of the respective land areas and provided further HALEKUA further agrees to use its best efforts to furnish to HRT all water it has meeting all governmental requirements until such time as HALEKUA turns over the water system to the Board of Water Supply or other appropriate governmental agency which would then furnish HRT with water for the HRT Lands; provided however the water rates to be charged by HALEKUA for water usage shall be the same as the water rates charged by the Board of Water Supply.

10. Cooperation to Subdivide; Indemnification of HRT.

Upon HRT acquiring said 20% undivided interest in the Property, HRT agrees that it shall, at the request of HALEKUA cooperate with HALEKUA in executing such documents as may be reasonably necessary in order for HALEKUA to process applications for governmental permits, consents and approvals:

a. [To subdivide the Property into the 63 acre and 60 acre "Light Industrial" zoned land and the 8 or more acres of the Apartment Parcel described in paragraph 2 herein;] *To subdivide the Property into the 63-acres described in paragraph 2 herein.*

b. To develop the Major Parkway Road and infrastructure work; and

c. To rezone other parts of the 347-acre Property; provided, however, HALEKUA shall fully indemnify and hold harmless HRT against any and all loss, liabilities, damages, costs and expenses, including reasonable attorneys' fees, incurred by HRT as a result of it cooperating and/or executing documents as required by this paragraph.

24. Easements and Documents.

a. *Reciprocal Easements. That the parties understand that the development of the HRT Lands and the HALEKUA Lands must be coordinated and that reciprocal easements over the lands of the other are necessary. Accordingly each party shall grant, without payment therefor, to the other party easements on land owned by the other for utilities, including water, sewer, electricity and telephone as necessary to service the lands owned by the other and for access to utilize such easements; provided*

however, all such easements shall be located on the lands of the other so as to cause the least interference with the highest and best use of the lands so encumbered under current zoning and land use entitlements; and provided further however, the party acquiring such easement shall pay the cost of all apparatus, equipment, lines and related facilities necessary to be installed in or on such easement. The agreement to grant reciprocal easements shall terminate as to the land to be encumbered upon completion of the Major Parkway Road and completion of the infrastructure work required on the part of HALEKUA to be constructed herein.

b. *Storm Drainage Easement Over HRT Lands.* That in addition to the aforesaid reciprocal easements, HALEKUA or the City and County of Honolulu shall have an easement for storm drainage purposes over the industrial zoned lands to be owned by HRT and over the industrial zoned lands to be owned by HRT under a separate Purchase Agreement (2 Parcels) also dated June 29, 1995, involving 60 acres of industrial land and other lands upon the following conditions (both of which industrial zoned lands are hereinafter referred to as the "123-acre Parcel"):

(1) that the storm drainage easement shall serve solely the lands owned by HALEKUA on the North side of the HRT industrial zoned lands;

(2) that HALEKUA shall, by December 31, 1996, furnish HRT with all engineering information concerning the quantity of water to be drained through such easement and shall provide HRT with the precise entry point (on the North boundary of the 123-acre Parcel) and precise exit point (on the South boundary of the 123-acre Parcel); provided, however, such entry and exit points shall be mutually agreeable.

(3) that HALEKUA shall, at its costs and expense and at no cost to HRT provide HRT with sufficient soil material of the appropriate type necessary to back-fill all gully and/or low land areas along the drainage ditch or box culvert or other drainage system to be built on the 123-acre Parcel and that HALEKUA shall, at its costs and expense cause such soil material to be stockpiled upon the 123-acre Parcel; and

(4) that HRT shall pay the cost of constructing the storm drainage channel (whether as an open-ditch system, box culvert system or any other drainage system as HRT may determine) to accommodate the storm drainage of the lands owned by HALEKUA on the North side of the 123-acre Parcel as well as the drainage from the 123-acre Parcel itself and that the alignment of said storm drainage easement within the 123-acre Parcel shall be determined by HRT in its sole discretion;

c. *Storm Drainage Easement Over HALEKUA Lands.* That in addition to the aforesaid reciprocal easements, HRT shall have an easement for storm drainage purposes over the HALEKUA Lands and over the Major Parkway Road to serve the storm drainage of the HALEKUA Lands on the North side of the 123-acre Parcel, the

storm drainage of the 123-acre Parcel itself and the storm drainage of the apartment zoned parcel to be owned by HRT, upon the following conditions:

(1) that within 180 days after HALEKUA furnishes HRT with the quantity of water to be drained from the lands owned by HALEKUA on the North side of the 123-acre Parcel, then HRT shall furnish HALEKUA with all engineering information concerning the quantity of water to be drained through such easement over the HALEKUA Lands and Major Parkway Road;

(2) HALEKUA shall pay the cost of constructing the drainage channel or channels from the outer boundaries of the 123-acre Parcel and HRT apartment zoned lands, with sufficient size so as to accommodate all of the storm drainage from the HRT Lands, the storm drainage from the lands of HALEKUA from the North side of the 123-acre Parcel and the storm drainage from the HRT apartment zoned lands, all of which drainage shall empty into the golf course land of HALEKUA or other lands of HALEKUA; provided, however, the alignment of said drainage easement within the HALEKUA Lands shall be determined by HALEKUA except that the alignment shall not abut the HRT apartment zoned land unless such drainage is underground and within the roadway right-of-way.

d. Roadway Easement. That in addition to the aforesaid easements, HRT shall have, with respect to the HRT Lands an easement for roadway purposes over the Major Parkway Road until such time as HALEKUA conveys to same to the City and County of Honolulu as a public roadway.

e. Documents. That at the request of either party hereto, the other party shall execute and deliver to the other an easement document in a recordable form and as may be reasonably required to convey the easements referred to hereinabove.

Exhibit D

Exhibit D

AGREEMENT RE INFRASTRUCTURE

THIS AGREEMENT RE INFRASTRUCTURE ("Agreement") is made as of _____, 2006 between _____, a _____ ("Owner"), and HRT, LTD., a Maryland corporation ("HRT").

Recitals:

(a) Owner is concurrently herewith acquiring Lot 2 of the Royal Kunia Apartment Subdivision, containing approximately 161.360 acres, bearing Tax Map designation (1) 9-4-2-71 ("Owner Lot"), in the undeveloped project known as Royal Kunia Phase II, located at Royal Kunia, Oahu, Hawaii ("Phase II"), consisting of approximately 658 acres.

(b) HRT owns three parcels in Phase II, being (i) Lot 1 as shown on File Plan 2171, containing 123.712 acres, bearing Tax Map designation (1) 9-4-2-1 ("HRT 123 Lot"), (ii) Lot 2 as shown on File Plan 2171, containing 13.304 acres, bearing Tax Map designation (1) 9-4-2-70 ("HRT 13 Lot"), and (iii) Lot 1 of the Royal Kunia Apartment Subdivision, containing 36.660 acres, bearing Tax Map designation (1) 9-4-2-78 ("HRT 36 Lot").

(c) The HRT 123 Lot, the HRT 13 Lot, and the HRT 36 Lot are sometimes collectively referred to in this Agreement as the "HRT Lots".

(d) Portions of Phase II, the Owner Lot and the HRT Lots, together with the Access Road, Utility Lines and Drainage Channels are depicted on the map attached to this Agreement as Exhibit A (the "Phase II Map").

(e) Owner and HRT desire to set forth their agreements regarding infrastructure improvements, utility and drainage easements, and other matters concerning their respective parcels in Phase II.

Agreements:

1. **Additional Definitions.** In addition to the terms defined in the above recitals, for the purposes of this Agreement the following terms have the meanings specified or referred to in this Section 1.

"Agricultural Park" means the 150.000 acre parcel of land transferred to the State for development as an agricultural park, bearing Tax Map designation (1) 9-4-2-80.

"County" means the City and County of Honolulu, State of Hawaii.

"DOE" means the Department of Education of the State of Hawaii.

EXHIBIT 4.2(c)

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"DOE Fair Share Letters" means (a) the letter dated September 26, 1996 from Halekua Development Corporation to the DOE, and (b) the letter dated December 19, 2002 from the DOE to Herbert K. Horita, establishing the fair share contribution to the DOE required under the LUC Order in connection with the development of Phase II.

"DPP" means the Department of Planning and Permitting of the County.

"Drainage Channel" means one or more storm drainage channels that may be an open-ditch system, a box culvert system, or such other drainage system and structures reasonably determined by the owner of the lot upon which the Drainage Channel is located, consistent with the Phase II Master Plans and as good engineering practice dictates.

"Five-Year Deadline" means the date which is five years after the date of this Agreement, subject, however, to extension for any delay caused by (a) a delay in obtaining Governmental Authorizations except to the extent the delay is caused by the negligent act or omission of the party obtaining the Governmental Authorization, (b) Force Majeure, or (c) the other party's failure to perform its obligations under this Agreement.

"Governmental Authorization" means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" means any (a) federal, state, local, or municipal government; or (b) body or agency exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature over the property described in this Agreement or the infrastructure to be constructed hereunder, including the County, the State, and utility companies.

"Legal Requirement" means any federal, state, local or municipal administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty, and any utility company rules or requirements.

"LUC" means the Land Use Commission of the State of Hawaii.

"LUC Order" means the Amended Findings of Fact, Conclusions of Law, and Decision and Order, filed on October 1, 1996 in the LUC in Docket No. A92-683 entitled *In the Matter of Halekua Development Corporation*.

"Phase II Master Plans" means the following plans all prepared by ParEn, Inc.: (a) Royal Kunia Revised Sewer Master Plan, dated May 1996, (b) Revised Water Master Plan for Royal Kunia Development, dated August 1996, and (c) Drainage Master Plan for the Royal Kunia Development, Phase II, dated September 1996.

"School Site" means Lot 3 of the Royal Kunia Apartment Subdivision, being a portion of Lot 3 of the Royal Kunia Phase II, Increment 1 Subdivision (File Plan 2171), containing approximately 12.00 acres, bearing Tax Map designation (1) 9-4-2-79, located at Royal Kunia, Honolulu, Hawaii.

"School Site Agreement" means the School Site Agreement if any such agreement was delivered to Owner upon the purchase of the Owner Lot under the Purchase and Sale Agreement, dated _____, 2006, between James B. Nicholson, as Trustee of the Bankruptcy Estate of Halekua Development Corporation, in Bankruptcy Case No. 03-01279, pending in the United States Bankruptcy Court for the District, as Seller, and Owner, as Buyer, relating to the School Site.

"Seven-Year Deadline" means the date which is seven years after the date of this Agreement, subject, however, to extension for any delay caused by (a) a delay in obtaining Governmental Authorizations except to the extent the delay is caused by the act or omission of the party obtaining the Governmental Authorization, (b) Force Majeure, or (c) the other party's failure to perform its obligations under this Agreement.

"State" means the State of Hawaii.

"Substantial Completion" means when improvements are sufficiently complete they can be utilized for their intended purpose.

"Three-Year Deadline" means the date which is three years after the date of this Agreement, subject, however, to extension for any delay caused by (a) a delay in obtaining Governmental Authorizations except to the extent the delay is caused by the negligent act or omission of the party obtaining the Governmental Authorization, (b) Force Majeure, or (c) the other party's failure to perform its obligations under this Agreement.

"Utility Lines" means offsite utilities and drainage facilities necessary to allow development of the HRT Lots and as contemplated by the Phase II Master Plans, including sewer pipeline, water pipeline, and one or more conduits for electrical, telephone and cable lines and Drainage Channels, as depicted on the Phase II Map and in the Phase II Master Plans.

2. **Access Road.**

2.1 **Construction.** Owner shall, at its sole cost and expense, construct Road X Phase 1 and its underlying Utility Lines ("**Road X Phase 1**") and Road X Phase 2 and its underlying Utility Lines ("**Road X Phase 2**") as depicted on the Phase II Map (the "**Access Road**"). The Access Road shall be at least a two lane road constructed in accordance with the Legal Requirements for dedicating the Access Road to the County.

2.2 **Time Table.** Owner and HRT shall in good faith agree upon the time table for the completion of the Access Road in order to accommodate the development of the Owner Lot and the HRT Lots, subject to Governmental Authorizations; provided that (a) Owner may commence and complete construction of the Access Road at any time earlier than required for the development of the HRT Lots, (b) subject to obtaining Governmental Authorizations, Owner shall commence construction of Road X Phase 2 not later than the later of (i) twelve months after the date of this Agreement, or (ii) the completion of actual construction of any internal road or Utility Lines on any portion of the Owner Lot that has an aggregate construction cost in excess of \$500,000, and shall commence construction of Road X Phase 1 not later the later of (i) twenty-four months after the date of this Agreement, or (ii) the completion of actual construction of any internal road or Utility Lines on any portion of the Owner Lot that is north of Road X that has an aggregate construction cost in excess of \$500,000, and (c) once Owner commences construction of Road X Phase 2 or Road X Phase 1, as the case may be, Owner will diligently proceed until Substantial Completion of Road X Phase 2 or Road X Phase 1, as the case may be, subject to Governmental Authorizations, Force Majeure and performance by HRT of its obligations hereunder. Owner shall Substantially Complete Road X Phase 2 and thereby provide HRT with access to Kunia Road for each of the HRT Lots, not later than the Five-Year Deadline, and Road X Phase 1 not later than the Seven-Year Deadline.

2.3 **Easement.** Owner shall grant to HRT an easement for ingress and egress over the Access Road, such easement to terminate to the extent any portion of the Access Road are dedicated to a Governmental Body as a public roadway.

2.4 **Road Widening and Traffic Improvements.** HRT shall dedicate or grant easements, or both, to the applicable Governmental Body over such portion of the HRT Lots as may be required to widen Kunia Road or construct traffic signal and pedestrian walkway improvements as may be necessary or appropriate in connection with the construction of the Access Road as depicted on the Phase II Map or the development of Phase II. HRT shall not be entitled to any compensation for dedication of or grant of easements over that portion of the HRT Lots within the twenty-two foot set back that runs along Kunia Road up to a maximum of 1.3 acres, but shall be entitled to payment of the lesser of (a) the fair market value as a set-back area for any portion of the HRT Lots within the twenty two foot set back in excess of 1.3 acres, and (b) the Purchase Rate (defined below). If dedication or grants of easements are required over other portions of

the HRT Lots in order to widen Kunia Road or the Access Road (the "**Road Widening Area**"), HRT shall be entitled to compensation for the Road Widening Area at the same rate per square foot as the Owner paid to acquire the Owner Lot in the bankruptcy auction sale (the "**Purchase Rate**").

3. **Utilities.**

3.1 **Utilities and Drainage.** Owner shall, at its sole cost and expense, make available to the property lines of the HRT Lots the Utility Lines. HRT shall provide easements and rights of entry as necessary for construction.

3.2 **Alternate Sewer Connection.** The Phase II Map shows alternative connections for the sewer Utility Line connecting to the southeast corner of the HRT 36 Lot. The Phase II Master Plans provide for the sewer Utility Line to run from Anoiki Street through the School Site to the HRT 36 Lot. If Owner is unable to construct the sewer Utility Line through the School Site, Owner will, at its sole cost and expense, make available at the property line of the HRT 36 Lot the alternate sewer connection directly from Anoiki Street as shown on the Phase II Map.

3.3 **Capacity.** The Utility Lines shall have sufficient capacity to serve the Owner Lot and the HRT Lots as if those lots were developed to the maximum capacity permitted under the Phase II Master Plans and the County Legal Requirements, including zoning as of the date of this Agreement. HRT acknowledges and agrees that the capacity of the Utility Lines within Phase II shall be limited to the downstream capacity of the existing Phase I Infrastructure, and nothing herein shall require Owner or any other person to modify or increase the capacity of the existing Phase I Infrastructure. However, if and to the extent that there is any surplus capacity in the existing Phase I Infrastructure which (a) is within the fifty percent share of the excess capacity acquired by Owner as purchaser of the Owner Lot (and not including the fifty percent share owned by Kunia Residential Partners as developer of the Phase I Infrastructure), (b) is in excess of the capacity allocated to Phase II in the Phase II Master Plans, (c) excludes the sewer capacity for 1,200 units contingent obligation relating to the lands mauka of Phase II, (d) does not include any of the unused capacity allocated to Phase I, (e) is not allocated to the other Phase II lots under the Phase II Master Plans, (f) is not necessary for the development of the other Phase II lots in accordance with the Phase II Master Plans and County Legal Requirements and this Agreement, (g) is not necessary to comply with the Legal Requirements which may be imposed by the LUC or the County as a condition to the granting of consent for the transfer of the Owner Lot to Owner, or reinstatement of the zoning entitlements of the Owner Lot, and (h) is not necessary for any increase in the density of any Phase II lots resulting from the construction of additional housing units on the Phase II lots which additional units either (1) fulfill Owner's obligation under this Agreement to satisfy the affordable housing for the HRT Lots and/or (2) provided the

affordable housing requirement for the HRT Lots is otherwise satisfied, are equal to the number of affordable housing units Owner would have been required to construct to satisfy the affordable housing requirement for the HRT Lots, then Owner shall provide HRT with the first right to use such surplus capacity for the HRT 123 Lot if HRT elects to rezone any additional portion of the HRT 123 Lot from industrial to commercial (not residential) and files an application for approval of such rezoning prior to the Three Year Deadline. Furthermore, nothing herein is (i) intended to give HRT the right to use the capacity allocated to the other Phase II lots under the Phase II Master Plans, or (ii) give Owner or any other owner of a Phase II lot the right to use the capacity allocated to the HRT Lots under the Phase II Master Plans and current zoning. Subject to the foregoing, any unused capacity within the Utility Lines shall be allocated by Owner prior to dedication and shall thereafter be determined by the applicable Governmental Body

3.4 Time Table. Owner and HRT shall in good faith agree upon the time table for the completion of the Utility Lines in order to accommodate the development of the Owner Lot and the HRT Lots, subject to Governmental Authorizations; provided that (a) Owner may commence and complete construction of the Utility Lines at any time earlier than required for the development of the HRT Lots, (b) subject to obtaining Governmental Authorizations, Owner shall commence construction of the Utility Lines not under the Access Road not later than the later of (i) twenty-four months after the date of this Agreement, or (ii) the completion of actual construction of any internal road or Utility Lines on any portion of the Owner Lot that has an aggregate construction cost in excess of \$500,000, and (c) once Owner commences construction of the Utility Lines, Owner will diligently proceed until Substantial Completion, subject to Governmental Authorizations, Force Majeure and performance by HRT of its obligations hereunder. Owner shall Substantially Complete the Utility Lines no later than the Five-Year Deadline.

3.5 Dedication of Utility Lines. Owner's obligations under this Section 3 shall be completely satisfied with respect to any particular Utility Line upon Substantial Completion of such Utility Line as required by this Section 3, and dedication or conveyance of the Utility Line to a Governmental Body.

3.6 Reciprocal Easements. Owner and HRT shall grant, without payment therefor, to the other party easements on land owned by the other for the Utility Lines as necessary to service the lands in Phase II and for access to utilize such easements. All such easements shall be located on the lands of the other consistent with the Phase II Map, the Phase II Master Plans and as good engineering practice dictates. The party acquiring such easement shall pay the cost of all apparatus, equipment, lines and related facilities necessary to be installed in or on such easement for the benefit of that party's lands. The easement agreements shall be in form acceptable to a Governmental Body, and be assignable and/or run in favor of the applicable

Governmental Body. The agreement to grant reciprocal easements shall terminate as to the land to be encumbered upon dedication or other final acceptance of the Access Road and Utility Lines to a Governmental Body.

4. Fill Material.

4.1 Delivery of Fill Material. Not later than the Three-Year Deadline, Owner shall, at its sole cost and expense, deliver to the HRT 123 Lot, and HRT shall accept delivery of, 400,000 cubic yards of soil fill material of the appropriate type for the purpose of back-filling gullies or gully and low land areas on the HRT 123 Lot ("**Fill Material**"). Owner shall stockpile the Fill Material on the HRT 123 Lot in a location to be mutually agreed upon by Owner and HRT. HRT shall be responsible for distributing the Fill Material on the HRT Lots and complying with Legal Requirements for the Fill Material on the HRT Lots.

4.2 Payment in Lieu. In lieu of delivering all or a portion of the Fill Material, Owner may at any time pay to HRT a lump sum payment in immediately available funds in an amount equal to \$15 per cubic yard for any Fill Material not yet delivered. The lump sum payment shall satisfy in full the obligation to deliver the Fill Material.

4.3 Permits. HRT shall, at its sole cost and expense, obtain all necessary Governmental Authorizations to allow the stockpiling of the Fill Material on the HRT 123 Lot (the "**Stockpile Permits**"). HRT shall as soon as possible after written request by Owner file at the applicable Governmental Body the necessary applications for, and diligently pursue the obtaining of, the Stockpile Permits.

4.4 Agent for Permits. If HRT fails to promptly apply for the Stockpile Permits after Owner provides the notice under Section 4.3, (a) Owner may (but is not required to), on behalf of HRT, file any and all necessary or appropriate applications with and provide information to the applicable Governmental Body in order to obtain the Stockpile Permits, and (b) HRT hereby appoints Owner as its agent for obtaining the Stockpile Permits and any other appropriate or necessary Governmental Authorization to stockpile the Fill Material on the HRT 123 Lot.

4.5 Time Table. Owner and HRT shall in good faith agree upon the time table for the delivery of the Fill Material in order to accommodate the development of the Owner Lot and the HRT 123 Lot, subject to Governmental Authorization; provided that Owner may commence delivery of the Fill Material at any time earlier than required for the development of the HRT 123 Lot, and shall complete that delivery or make the cash payment-in-lieu as provided under Section 4.2 no later than the Three-Year Deadline.

5. Drainage Easements.

5.1 Over HRT Lots. HRT shall grant to the State, Owner and the County easements for storm drainage purposes over the Drainage Channels on the HRT Lots to provide drainage for the Agricultural Park, the School Site and the portion of the Owner Lot designated as a park or open space that is adjacent to the School Site (the "Park Site"); provided, however, the drainage from the School Site and the Park Site shall only be permitted over the HRT 36 Lot. Owner will obtain from the State and/or the County the necessary engineering information concerning the quantity of water to be drained through such easements from the Agricultural Park within a reasonable period of time after HRT provides the Owner with the proposed entry and exit points from the Agricultural Park onto the HRT 123 Lot. Owner shall also provide such information as HRT needs from Owner with respect to the necessary engineering information concerning the quantity of water to be drained through such easements and the proposed entry points onto the HRT 123 Lot. Owner shall provide HRT with the proposed entry and exit points from the HRT Lots onto and from the Owner Lot. The entry and exit points shall be agreed upon by the State, Owner, the County and HRT in good faith, consistent with the Phase II Map, the Phase II Master Plans and as good engineering practice dictates.

5.2 Over Owner Lot. Owner shall grant to the State, County, and HRT easements for storm drainage purposes over the Owner Lot to provide drainage for the Agricultural Park and the HRT 123 Lot. HRT shall provide Owner with the necessary engineering information concerning the quantity of water to be drained through such easement and the proposed entry points onto the Owner Lot and the Access Road. The entry and exit points shall be agreed upon by the State, Owner, the County and HRT in good faith, consistent with the Phase II Map, the Phase II Master Plans and as good engineering practice dictates.

5.3 HRT Construction. HRT shall, at its sole cost and expense, construct any necessary and appropriate Drainage Channels on the HRT Lots, consistent with the Phase II Map, the Phase II Master Plans, to accommodate the storm drainage for the Agricultural Park, the School Site and the HRT Lots, not later than the Five-Year Deadline. HRT shall use diligent efforts to obtain the Governmental Authorizations in a timely manner, but shall not be required to incur extraordinary additional costs or be subjected to material additional conditions in order to expedite obtaining such Governmental Authorizations. HRT may determine the location and type of the Drainage Channels on the HRT Lots as HRT may reasonably decide consistent with the Phase II Map and the Phase II Master Plans and as good engineering practice dictates, provided that such Drainage Channels are designed and constructed in accordance with County dedication standards. HRT shall connect the Drainage Channels on the HRT Lots to the drainage culvert located at the boundary of the HRT 36 Lot and Phase I (which has already been constructed) consistent with the Phase II Master Plans.

5.4 Owner Construction. Owner shall, at its sole cost and expense, construct any necessary and appropriate Drainage Channels on the Owner Lot, consistent with the Phase II Map and the Phase II Master Plans, to accommodate the storm drainage from the Agricultural Park and the HRT 123 Lot. Owner may determine the location and type of Drainage Channels in the Access Road or on the Owner Lot as Owner may reasonably decide consistent with the Phase II Map and the Phase II Master Plans and as good engineering practice dictates, provided that such Drainage Channels are designed and constructed in accordance with County dedication standards.

5.5 Time Table. Owner and HRT shall in good faith agree upon the time table for the construction of the Drainage Channels on the HRT Lots, the Owner Lot, and the Access Road in order to accommodate the development of the Owner Lot and the HRT Lots, subject to Governmental Authorization; provided that Owner may commence construction of the Drainage Channel on the Access Road at any time earlier than required for the development of the HRT Lots. Owner shall Substantially Complete the Drainage Channel not later than the Five-Year Deadline.

5.6 Form of Easement Agreement. HRT and Owner shall grant to each other the storm drainage easements as required by this Section 5 (which shall include flowage easements) in a form to be agreed upon and as may be required by a Governmental Body. The drainage easements shall be assignable to and/or run in favor of the applicable Governmental Body.

6. LUC Obligations

6.1 Compliance. Owner shall comply with and satisfy all of the conditions of the LUC Order with respect to the Owner Lot. Owner shall comply with and satisfy the conditions of the LUC Order for the HRT Lots with respect to affordable housing, offsite road improvements, school facilities, offsite drainage, and offsite infrastructure for the Agricultural Park (excluding the Drainage Channel on the HRT Lots). HRT shall comply with and satisfy all of the other conditions of the LUC Order with respect to the HRT Lots except as otherwise expressly provided in this Agreement and subject to Governmental Authorization. In satisfying the condition of the LUC Order with respect to the affordable housing requirement for the HRT Lots, none of the affordable housing will be built on the HRT Lots. Owner shall be responsible for satisfying the foregoing conditions of the LUC Order to the extent required for development of the HRT Lots as contemplated by the Phase II Master Plans and current zoning of the HRT Lots, and Owner shall not be responsible for satisfying any increase to the obligations under the foregoing conditions of the LUC Order because of developments which are not consistent with or are of greater density than the Phase II Master Plans or current zoning. Owner shall have no obligation to satisfy the requirements or obligations of the LUC Order under this Agreement with respect to any other property.

6.2 School Site. It is understood that Owner intends to comply with the requirement of the LUC Order to contribute to the development, funding, and/or construction of school facilities, as provided in LUC Order paragraph 6 and the DOE Fair Share Letters, either by the School Site Agreement or through litigation or other means by causing the owner of the School Site to satisfy such obligations.

6.3 HRT's Development Costs. HRT shall be responsible for complying with Governmental Authorizations (including the LUC Order) and other Legal Requirements with respect to the improvements constructed or to be constructed on the HRT Lots (except that HRT shall not be required to build any affordable housing on the HRT Lots), and for the development costs on or within the HRT Lots, including costs of infrastructure installed on or within the HRT Lots, the costs to connect to the infrastructure at the property line of the HRT Lots, and typical development fees such as building permit, water meter and sewer hook-up fees.

7. Security for Performance.

7.1 Secured Obligation. In exchange for HRT's agreement to release its mortgage on the Owner Lot, Owner shall provide to HRT security as provided in this Section 7, to secure Owner's performance of Owner's obligations under this Agreement for (a) Road X Phase 2 (and its underlying Utility Lines) and any Utility Lines that are not under the Access Road within the Five-Year Deadline, (b) Road X Phase 1 (and its underlying Utility Lines) within the Seven-Year Deadline, and (c) to provide the Fill Material or cash payment-in-lieu within the Three-Year Deadline. Owner shall use diligent efforts to obtain the Governmental Authorizations in a timely manner, but shall not be required to incur extraordinary additional costs or be subjected to material additional conditions in order to expedite obtaining such Governmental Authorizations.

7.2 HRT Information. To the extent that any Governmental Authorizations require information from HRT regarding HRT's development plans for the HRT Lots, Owner may not be able to process the request for certain Governmental Authorizations until HRT is able to provide that information satisfactory to the applicable Governmental Body. HRT shall use commercially reasonable efforts to provide such information, other than traffic projections, on a timely basis so that Owner may proceed with applying for the requisite Governmental Authorizations and the development of Phase II will not be delayed. HRT shall use commercially reasonable efforts to provide the traffic projections consistent with the Phase II Master Plans and the County Legal Requirements for the HRT Lots within three (3) months of the date of this Agreement and any delay in providing the traffic projections beyond three (3) months from the date of this Agreement shall extend the Five-Year Deadline and the Seven-Year Deadline and the time to commence work under Paragraph 2.2, above to the extent caused by the delay.

7.3 Security. Owner may, in its discretion, provide either (a) a letter of credit or a bond in an initial amount of not less \$10,000,000, or (b) such other security

acceptable to HRT in its reasonable discretion. The bond shall be substantially in the form of Exhibit 7.3 attached to this Agreement. The amount of the letter of credit or the bond shall be reduced as the secured obligations are satisfied, as set forth in Exhibit 7.3, and in any event shall be released and of no further force or effect as of the date of Owner's discharge or full performance of the obligations secured.

8. **Royal Kunia Community; Cooperation.**

8.1 **Royal Kunia Community.** Owner will cooperate with HRT in annexing the HRT 13 Lot and the HRT 36 Lot to the Amended and Restated Declaration of Protective Covenants for Royal Kunia Community, dated March 18, 1994. After the earlier of (a) the annexation of all or any portion of the HRT 13 Lot or the HRT 36 Lot, or (b) the assignment to HRT of the unilateral right to annex the HRT 13 Lot and the HRT 36 Lot, HRT shall contribute to Owner the sum of \$625,000 (or in the event of a partial annexation, a pro rata portion thereof based on the relative acreage -annexed) (the "Contribution") towards Owner's cost for building the Owner's share of the recreation center on Lot 1 of the Royal Kunia Subdivision, Increment E (File Plan 2308), which center is to conveyed to the Association for the benefit of the members of the Association (the "Recreation Center"). HRT will pay the Contribution to Owner on a prorata monthly basis as construction of Owner's portion of the Recreation Center is completed, based on invoices provided to HRT with such back-up documentation as HRT may reasonably request.

8.2 **Cooperation.** Owner and HRT agree to cooperate with each other and to work together in good faith to facilitate the timely and efficient development of Phase II, and the infrastructure and reciprocal easements described in this Agreement and/or necessary to complete the development of Phase II. The parties agree promptly (a) to furnish upon request to each other any necessary and appropriate information, (b) to execute and deliver to each other such approvals, consents and other documents, and (c) to do such other acts and things, all as the other party may reasonably request, in each case, for the purpose of granting such easements, rights of entry and rights of way and/or carrying out the intent of this Agreement and the development of the Phase II, in each case, without fee or unreasonable delay. Without limiting the generality of the foregoing, HRT and Owner shall cooperate with each other to file such petitions and applications with the LUC or the County as HRT or Owner may deem necessary to maintain, amend, restore or reinstate the land use and zoning entitlements for Phase II.

9. **Right of Entry.**

9.1 **Grant of Right of Entry.** On the terms and conditions set forth in this Section 9, Owner hereby grants a right of entry to HRT to enter the Owner Lot, and HRT hereby grants a right of entry to Owner to enter the HRT Lots (the "Rights of Entry"), for the purposes of complying with, carrying out, and satisfying the parties' respective agreements and obligations set forth in this Agreement (the "Projects"). The

parties' respective Rights of Entry shall continue until the respective Projects are completed or the obligations are waived by the party in whose favor the obligations run.

9.2 **Use.** The Rights of Entry are granted with respect to the Owner Lot and the HRT Lots (collectively, the "Property"), and shall be used only for the Projects. The parties shall use the Property and exercise their respective Rights of Entry in such manner as to occasion the least possible interference with the use of the Property and adjacent lands owned by the parties. The parties shall comply with all Legal Requirements applicable to their use and activities in or on the Property.

9.3 **AS IS.** Neither party makes any representations or warranties as to the condition of their respective Properties, and neither party represents or warrants the same to be in a safe and proper condition for the Projects or for any other purpose.

9.4 **Due Care.** Each party shall at all times exercise due care and diligence to prevent injury to persons and damage to or destruction of property, roads and improvements on the Property and adjoining lands, and shall repair or reimburse the other party for any and all such damage, destruction, or loss caused by, resulting from or arising out of the exercise of the Rights of Entry and not due to the negligence of the other party.

9.5 **Non-liability of Property Owner.** Entry and use of the Property by a party shall be at that party's own risk and the other party shall not be responsible or liable for injuries to or wrongful death of persons or damage or destruction or loss of property arising from or caused by the exercise of the Rights of Entry granted to the party.

9.6 **Clean Condition.** The party exercising the Right of Entry shall carry out and dispose of all debris and trash resulting from its activities and leave the Property in as clean a condition as it was prior to that party's entry upon the Property. Failure to remove its property or leave the Premises in such condition, or to implement all reasonable dust control measures will force the other party to do the same and assess the party any charges and expenses suffered or incurred by the other party.

9.7 **Assumption of Risk; Indemnification.** Each party agrees and covenants with the other party, and its successors in interest, that each party will and does hereby assume all risks of personal injury or wrongful death and of loss or damage to property by whomsoever owned on or in the Property of the other party, arising out of or in connection with the exercise of the Right of Entry, and each party hereby agrees to indemnify and save harmless the other party and its affiliates (including without limiting the generality of said term, their officers, employees or agents) against and from any and all claims for personal injury or wrongful death by third persons and any and all claims for loss or damage to property so caused, occasioned or resulting from any such claim or demand or any action or proceeding brought thereon, and will reimburse the other party

for all of its costs and expenses (including reasonable attorneys' fees) incurred in connection with the defense of any such claims, except where such injury or death or property damage is caused by the negligence, willful act or gross neglect of the other party.

10. Default and General Remedies.

10.1 **Default; Attorneys' Fees.** If a party breaches, violates or fails to perform or satisfy any of the terms of this Agreement (all of which are hereinafter individually and collectively referred to as a "Default"), the other party may enforce any one or more of the remedies described in this Section 10 or any other rights or remedies to which such party may be entitled by law or equity or otherwise. The prevailing party shall be entitled to recover its attorneys' fees and other reasonable costs of enforcing this Agreement from the losing party.

10.2 **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with the Expedited Procedures under its Commercial Arbitration Rules. The arbitration shall be held in Honolulu, Hawaii, the results of the arbitration will be conclusive and binding on Owner and HRT, and judgment may be entered upon the award and may be enforced by appropriate judicial action in accordance with Chapter 658A of the Hawaii Revised Statutes, as amended. Each party hereby submits itself to the jurisdiction of the courts of the State of Hawaii located in Honolulu, Hawaii. The arbitration shall be conducted by one arbitrator agreed to by both Owner and HRT. If the parties are unable to agree upon a single arbitrator, then such arbitrator shall be selected by the American Arbitration Association in accordance with its rules. The arbitrator selected, in either manner, shall be a practicing attorney who has practiced for more than fifteen (15) years or a retired United States Federal or State judge who has served as a judge for more than ten (10) years, and in either case has substantial experience in commercial real estate matters. The award of the arbitrator shall be accompanied by a reasoned opinion. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.

10.3 **Specific Performance.** The parties acknowledge that a Default under this Agreement may cause the other party to suffer material injury or damages not compensable or easily measurable in money and that either party shall be entitled to seek specific performance or an injunction in the arbitration proceeding, and if not available in the arbitration proceeding to file a lawsuit in a court of competent jurisdiction in the County seeking specific performance or an injunction. Such action shall be limited to specific performance or injunctive relief, and shall not include a claim for damages, other than the recovery of attorneys' fees and costs.

10.4 **Consolidation.** Owner, HRT, and all bonding companies, are bound, each to each other, by the arbitration provisions set forth in this Section 10, provided that they have signed this Agreement or an agreement that incorporates this Section 10 by reference or signed another agreement to be bound by this arbitration provision. Each such party agrees that it may be joined as an additional party to an arbitration involving other parties under any such agreement. If more than one arbitration is begun under any such agreement and any party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator(s) selected in the first-filed of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that (those) arbitrator(s).

11. **Halekua Agreement**

11.1 **Infrastructure Obligations.** It has been the intent of HRT and Owner in this Agreement, among other matters, to clarify and specify with particularity all of the infrastructure obligations which remain owing to HRT as of the date hereof under those sections and paragraphs attached hereto as **Exhibit 11** (as modified in Exhibit 11) (the "**Infrastructure Obligations**") which have been extracted from that certain Purchase Agreement (1 Parcel) dated June 29, 1995, by and between HRT, Ltd. and Halekua Development Corporation, as amended by an Amendment to Purchase Agreement (1 Parcel) dated September 1, 1995 (the "**Halekua Agreements**"), and that none of the provisions set forth in Exhibit 11 shall apply unless it is determined to be an Omitted Obligation (as defined below). Any deadlines for performance or remedies set forth in Exhibit 11 are superseded by the deadlines and remedies set forth in this Agreement. In the event of any inconsistency between the terms of this Agreement and the terms set forth in Exhibit 11, this terms of this Agreement shall control. In the event that HRT shall in good faith determine that a material Infrastructure Obligation was inadvertently omitted from this Agreement (an "**Omitted Obligation**"), HRT may notify Owner in writing of the Omitted Obligation, and shall include sufficient detail describing, and evidence supporting, this determination. Owner shall within thirty (30) days after receipt of such notice, respond to HRT in writing, confirming or disputing such Omitted Obligation as binding on Owner, or reasonably requesting clarification or evidence in respect thereof.

Notwithstanding anything to the contrary, the Infrastructure Obligations do not include any of the provisions in the Halekua Agreements which obligated Halekua Development Corporation to transfer land to HRT as delay damages or are not set forth in Exhibit 11.

11.2 **Dispute Resolution.** Any dispute as to any Omitted Obligation shall be addressed as follows:

(a) The parties shall meet to discuss and negotiate a satisfactory resolution, if possible.

(b) Absent a satisfactory resolution within a reasonable time, either party may submit the dispute to mediation, and the parties shall attempt in good faith to mediate a satisfactory resolution.

(c) In the event mediation fails to resolve the dispute, either party may pursue arbitration or an action for specific performance or an injunction as provided in Section 10 above.

11.3 **Personal to HRT.** Notwithstanding the provisions of Section 12.7 below, the right to identify and enforce an Omitted Obligation under this Section 11 shall belong exclusively to HRT, and HRT's affiliates, Honolulu, Ltd. and 300 Corporation, solely in their capacity as co-owners of minority interests in the HRT Lots, and shall not be transferable to any other person, including any buyer of the HRT Lots or a portion thereof.

12. General Provisions

12.1 **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand, (b) sent by telecopier (with written confirmation of receipt), (c) sent by certified mail, return receipt requested, or (d) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Owner:

Attention: _____

Telephone No. _____

Facsimile No.: _____

HRT:

HRT, Ltd.
3660 Waiialae Avenue
Honolulu, Hawaii 96816-3260
Attention: Alvin Awaya

Telephone No.: (808) 924-1000

Facsimile No.: (808) 922-3975

12.2 Force Majeure. The obligations of Owner or HRT under this Agreement shall be excused to the extent such obligations are prevented, delayed or hindered by strikes, work stoppages, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials, or reasonable substitutes for those items, governmental restrictions, regulations or controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, hurricane, tsunami, earthquake, flood, storms, embargo, riots, war, moratorium, terrorist acts, tortious acts of others and other causes beyond the reasonable control of the party obligated to perform; provided, however, timely performance shall not be excused to the extent caused by (a) any delay in Governmental Authorizations caused by the act or omission of the party seeking to be excused; or (b) any change in market or economic conditions, including without limitation interest rates, property values or costs of construction ("**Force Majeure**").

12.3 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in any courts of the State of Hawaii, the County, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Hawaii, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

12.4 Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

12.5 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

12.6 Construction. This Agreement and any documents delivered pursuant to this Agreement will be construed without regard to which party drafted the document or any particular provision therein.

12.7 Binding on Successors. This Agreement shall be binding on and inure to the benefit of the successors and assigns of Owner and HRT, and HRT's affiliates, Honolulu, Ltd. and 300 Corporation, solely in their capacity as co-owners of

minority interests in the HRT Lots, and shall run with the land and be binding upon and inure to the benefit of the successor owners of the Owner Lot and the HRT Lots.

12.8 Memorandum of Agreement. At the request of either party, the other party shall execute a memorandum of this Agreement, in form suitable for recording in the Bureau of Conveyances of the State of Hawaii, providing for record notice of this Agreement.

12.9 Assignments and No Third-Party Rights. This Agreement may be assigned by either party without the prior consent of the other party. Nothing expressed or referred to in this Agreement will be construed to give any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and assigns except as otherwise expressly provided in this Agreement.

12.10 Section Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

12.11 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.12 Governing Law. This Agreement will be governed by the laws of the State of Hawaii without regard to conflicts of laws principles.

12.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signatures are on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

HRT, LTD., a Maryland corporation _____, a

By _____

Its

HRT

By _____

Its

Owner

Attachments:

Exhibit A Phase II Map

Exhibit 7.3 Bond

Exhibit 11 Halekua Agreement

HALEKUA AGREEMENT

Excerpts from the Purchase Agreement (1 Parcel) dated June 29, 1995, by and between HRT, Ltd. And Halekua Development Corporation, as amended by Amendment to Purchase Agreement (1 Parcel) dated September 1, 1995.

The amendments to the Halekua Agreement are indicated by brackets [] for deleted language and *italics* for added language. Certain clarifications have been added and are identified by ***bold italics***.

8. Costs For Large Lot Subdivision.

To induce HRT to enter into this Agreement, HALEKUA shall personally pay or obtain financing for all costs and expenses necessary or required in order that the Property may be subdivided and the parcel of land conveyed to HRT; it being understood that all such costs and expenses shall include, without limitations, all governmental fees and charges, roadways, all expenses and costs required by the City and County of Honolulu to complete the subdivision and all other infrastructure costs for subdivision purposes, including survey costs and engineering costs, and HALEKUA shall pay for and fully construct the Major Parkway Road shown on Exhibit "A" together with all other infrastructure required by all governmental agencies, including without limitations, all offsite [improvements for said parcels of land to be conveyed to HRT] *improvements for said parcels of land and the easements to be conveyed to HRT pursuant to paragraph 24, Easements and Documents*, such as water, sewer and all utilities with adequate sizing of such water, sewer and utilities to the outer boundaries of the said parcels of land in order that said parcels of land to be conveyed to HRT may be fully developed to its highest and best use ***under current zoning and land use entitlements***; provided however, if the offsite water reservoir for Increments 2 and 3 of the Royal Kunia Phase II (residential housing) and the Kunia Road widening do not affect HRT's development of the said parcels of land to be acquired by HRT as set forth herein then the term "infrastructure" shall not include said offsite water reservoir and/or said road widening; provided further however, if by December 31, 1996, HALEKUA is unable to complete the construction of the Major Parkway Road, and all said infrastructure work then HALEKUA at its costs and expense may fully bond the construction of said road, utilities and infrastructure work by providing HRT with an owner's completion bond and a labor and material bond, satisfactory to HRT, in an amount equal to 100% of the cost of construction of said road and 100% of the cost of construction of all utilities and other infrastructure work required by all appropriate governmental agencies and such bond shall name HRT as an additional obligee thereof.

EXHIBIT 11

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Water And Sewer For Large Lots. HALEKUA agrees to use its best efforts to provide without any cost or expense to HRT, appropriate allocations to HRT and to the HRT Lands all of the water and sewer capacity required by HRT for the highest and best use of the HRT Lands under current zoning and land use entitlements; provided however, if the water allocation and sewer capacity allowed by the Board of Water Supply and the City and County of Honolulu is insufficient to develop the entire Property, then HALEKUA shall use its best efforts to have such water allocation and sewer capacity to be allocated pro rata between the HRT Lands and the HALEKUA Lands based upon the square footage of the respective land areas and provided further HALEKUA further agrees to use its best efforts to furnish to HRT all water it has meeting all governmental requirements until such time as HALEKUA turns over the water system to the Board of Water Supply or other appropriate governmental agency which would then furnish HRT with water for the HRT Lands; provided however the water rates to be charged by HALEKUA for water usage shall be the same as the water rates charged by the Board of Water Supply.

10. Cooperation to Subdivide; Indemnification of HRT.

Upon HRT acquiring said 20% undivided interest in the Property, HRT agrees that it shall, at the request of HALEKUA cooperate with HALEKUA in executing such documents as may be reasonably necessary in order for HALEKUA to process applications for governmental permits, consents and approvals:

a. [To subdivide the Property into the 63 acre and 60 acre "Light Industrial" zoned land and the 8 or more acres of the Apartment Parcel described in paragraph 2 herein;] *To subdivide the Property into the 63-acres described in paragraph 2 herein.*

b. To develop the Major Parkway Road and infrastructure work; and

c. To rezone other parts of the 347-acre Property; provided, however, HALEKUA shall fully indemnify and hold harmless HRT against any and all loss, liabilities, damages, costs and expenses, including reasonable attorneys' fees, incurred by HRT as a result of it cooperating and/or executing documents as required by this paragraph.

24. Easements and Documents.

a. *Reciprocal Easements. That the parties understand that the development of the HRT Lands and the HALEKUA Lands must be coordinated and that reciprocal easements over the lands of the other are necessary. Accordingly each party shall grant, without payment therefor, to the other party easements on land owned by the other for utilities, including water, sewer, electricity and telephone as necessary to service the lands owned by the other and for access to utilize such easements; provided*

however, all such easements shall be located on the lands of the other so as to cause the least interference with the highest and best use of the lands so encumbered under current zoning and land use entitlements; and provided further however, the party acquiring such easement shall pay the cost of all apparatus, equipment, lines and related facilities necessary to be installed in or on such easement. The agreement to grant reciprocal easements shall terminate as to the land to be encumbered upon completion of the Major Parkway Road and completion of the infrastructure work required on the part of HALEKUA to be constructed herein.

b. *Storm Drainage Easement Over HRT Lands.* That in addition to the aforesaid reciprocal easements, HALEKUA or the City and County of Honolulu shall have an easement for storm drainage purposes over the industrial zoned lands to be owned by HRT and over the industrial zoned lands to be owned by HRT under a separate Purchase Agreement (2 Parcels) also dated June 29, 1995, involving 60 acres of industrial land and other lands upon the following conditions (both of which industrial zoned lands are hereinafter referred to as the "123-acre Parcel"):

(1) that the storm drainage easement shall serve solely the lands owned by HALEKUA on the North side of the HRT industrial zoned lands;

(2) that HALEKUA shall, by December 31, 1996, furnish HRT with all engineering information concerning the quantity of water to be drained through such easement and shall provide HRT with the precise entry point (on the North boundary of the 123-acre Parcel) and precise exit point (on the South boundary of the 123-acre Parcel); provided, however, such entry and exit points shall be mutually agreeable.

(3) that HALEKUA shall, at its costs and expense and at no cost to HRT provide HRT with sufficient soil material of the appropriate type necessary to back-fill all gully and/or low land areas along the drainage ditch or box culvert or other drainage system to be built on the 123-acre Parcel and that HALEKUA shall, at its costs and expense cause such soil material to be stockpiled upon the 123-acre Parcel; and

(4) that HRT shall pay the cost of constructing the storm drainage channel (whether as an open-ditch system, box culvert system or any other drainage system as HRT may determine) to accommodate the storm drainage of the lands owned by HALEKUA on the North side of the 123-acre Parcel as well as the drainage from the 123-acre Parcel itself and that the alignment of said storm drainage easement within the 123-acre Parcel shall be determined by HRT in its sole discretion;

c. *Storm Drainage Easement Over HALEKUA Lands.* That in addition to the aforesaid reciprocal easements, HRT shall have an easement for storm drainage purposes over the HALEKUA Lands and over the Major Parkway Road to serve the storm drainage of the HALEKUA Lands on the North side of the 123-acre Parcel, the

storm drainage of the 123-acre Parcel itself and the storm drainage of the apartment zoned parcel to be owned by HRT, upon the following conditions:

(1) that within 180 days after HALEKUA furnishes HRT with the quantity of water to be drained from the lands owned by HALEKUA on the North side of the 123-acre Parcel, then HRT shall furnish HALEKUA with all engineering information concerning the quantity of water to be drained through such easement over the HALEKUA Lands and Major Parkway Road;

(2) HALEKUA shall pay the cost of constructing the drainage channel or channels from the outer boundaries of the 123-acre Parcel and HRT apartment zoned lands, with sufficient size so as to accommodate all of the storm drainage from the HRT Lands, the storm drainage from the lands of HALEKUA from the North side of the 123-acre Parcel and the storm drainage from the HRT apartment zoned lands, all of which drainage shall empty into the golf course land of HALEKUA or other lands of HALEKUA; provided, however, the alignment of said drainage easement within the HALEKUA Lands shall be determined by HALEKUA except that the alignment shall not abut the HRT apartment zoned land unless such drainage is underground and within the roadway right-of-way.

d. Roadway Easement. That in addition to the aforesaid easements, HRT shall have, with respect to the HRT Lands an easement for roadway purposes over the Major Parkway Road until such time as HALEKUA conveys to same to the City and County of Honolulu as a public roadway.

e. Documents. That at the request of either party hereto, the other party shall execute and deliver to the other an easement document in a recordable form and as may be reasonably required to convey the easements referred to hereinabove.

Exhibit E

Exhibit E

PERFORMANCE BOND

THIS PERFORMANCE BOND ("Bond") is made as of _____, 2006 by _____, a _____ ("Surety") and _____, a _____ ("Principal") in favor of HRT, LTD., a Maryland corporation ("Owner").

This Bond is given to secure the performance by the Principal with respect to the following specific projects defined and described in the Agreement re Infrastructure, dated _____, 2006, by and between Principal and Owner (the "Agreement"): (a) Road X Phase 1 (including underlying Utility Lines, (b) Road X Phase 2 (including underlying Utility Lines), (c) the Utility Lines, (d) the drainage channels, and (e) the Fill Material (collectively, the Projects"). This Bond does not secure any other obligations under the Agreement.

This Bond is in the original maximum amount of Ten Million and No/100 Dollars (\$10,000,000), which maximum amount shall be reduced by each of the amounts set forth in the following table upon Substantial Completion of each of the Projects (the original amount and as subsequently reduced, the "Maximum Amount"):

Amount	Projects
\$3,500,000	Road X Phase 1
\$4,100,000	Road X Phase 2
\$2,200,000	Fill Material
\$100,000	Utility Lines not under Access Road
\$100,000	Drainage Channels

1. The Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Agreement with respect to the Projects, which is incorporated herein by reference.

2. If the Principal performs the Agreement with respect to the Projects, the Surety and the Principal shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Principal and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Principal Default and has requested and attempted to arrange a conference with the Principal and

EXHIBIT 7.3

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Error! Unknown document property name.

Exhibit B

the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Agreement with respect to the Projects. If the Owner, the Principal and the Surety agree, the Principal shall be allowed a reasonable time to perform the Agreement with respect to the Projects, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Principal Default; and

3.2 The Owner has declared a Principal Default. Such Principal Default shall not be declared earlier than twenty days after the Principal and the Surety have received notice as provided in Subparagraph 3.1.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Principal, with consent of the Owner, to perform and complete the Agreement with respect to the Projects; or

4.2 Undertake to perform and complete the Agreement with respect to the Projects itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Agreement with respect to the Projects, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with a performance bond for the-then Maximum Amount, executed by a qualified surety equivalent to the bond issued on the Agreement, and pay to the Owner the amount of damages as described in Paragraph 6 resulting from the Principal's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has declared a default by Principal, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Principal under the Agreement with respect to the Projects, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Agreement with respect to the Projects. To the limit of the-then Maximum Amount of this Bond, the Surety is obligated without duplication for:

6.1 The responsibilities of the Principal for correction of defective work and completion of the Agreement with respect to the Projects;

6.2 Additional legal, design professional and delay costs resulting from the Principal's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Actual damages caused by delayed performance or nonperformance of the Principal.

7. The Surety shall not be liable to the Owner or others for obligations of the Principal that are unrelated to the Agreement with respect to the Projects. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Agreement or to related subcontracts, purchase orders and other obligations.

9. Any controversy or claim arising out of or relating to this Bond, or the breach thereof, shall be settled by arbitration as provided in Section 10 of the Agreement, and shall be instituted within two years after Principal Default or within two years after the Principal ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Principal shall be mailed or delivered to the following addresses:

Surety: _____
Honolulu, Hawaii 96 _____

Principal: _____
Honolulu, Hawaii 96 _____

Owner: HRT, Ltd.
3660 Waialae Avenue
Honolulu, Hawaii 96816-3260
Attention: Alvin Awaya

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions

12.1 Agreement: the agreement between the Owner and the Principal identified on the first page.

12.2 Principal Default: Failure of the Principal, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Agreement with respect to the Projects.

12.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to perform and complete or comply with the terms of the Agreement with respect to the Projects.

12.4 Substantial Completion: The stage in the progress of a Project when the Project is sufficiently complete the Owner can utilize the improvements for their intended purpose.

_____, a

_____, a

By _____

By _____

its

its

Principal

Surety

Exhibit F

Exhibit F

PURCHASE AND SALE AGREEMENT

Between

JAMES B. NICHOLSON, as Trustee

Seller

and

Buyer

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7/28/06

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PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("**Agreement**") is made as of _____, 2006, by **JAMES B. NICHOLSON**, as Trustee of the Bankruptcy Estate of Halekua Development Corporation ("**Debtor**"), in Bankruptcy Case No. 03-01279 ("**Bankruptcy Case**"), pending in the United States Bankruptcy Court for the District of Hawaii ("**Seller**"), and _____, a _____ ("**Buyer**").

RECITALS

(a) Seller is the owner of, or is entitled to sell, the fee simple interest in that certain vacant land identified as Lot 2 of the Royal Kunia Apartment Subdivision, being a portion of Lot 3 of the Royal Kunia Phase II, Increment 1 Subdivision (File Plan 2171).

(b) Seller desires to sell, and Buyer desires to purchase, the Property (defined below) for the consideration and on the terms set forth in this Agreement.

AGREEMENT

The parties, intending to be legally bound, agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms have the meanings specified or referred to in this *Section 1*:

"**Agreement re Infrastructure**" means the Agreement re Infrastructure attached to this Agreement as Exhibit 4.2(c) between Buyer or its nominee and HRT.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Hawaii.

"**Bankruptcy Order**" means a final, unstayed order of the Bankruptcy Court in the Bankruptcy Case which includes approval of the terms and conditions of this Agreement, authorizes and directs Seller to complete the Contemplated Transactions, finds that Buyer is entitled to the protections of Bankruptcy Code § 363(m), and other terms reasonably acceptable to Buyer, all approved by Buyer in advance.

"**Closing Date**" means the date and time as of which the Closing actually takes place.

"**Consent**" means any written approval, consent, ratification, waiver, or other authorization (including any Governmental Authorization).

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"Contemplated Transactions" means all of the transactions contemplated by this Agreement, including: (a) the sale, assignment, transfer and conveyance of the Property by Seller to Buyer; (b) the execution, delivery, and performance of the documents and instruments to be delivered pursuant to this Agreement; and (c) the performance by Buyer and Seller of their respective covenants and obligations under this Agreement.

"Contract" means any agreement, contract, obligation, promise, or undertaking (whether written or oral and whether express or implied) with respect to the Property under which Seller has or may acquire any rights, including without limitation rights to obtain drainage or other easements from neighboring properties.

"County" means the City and County of Honolulu, State of Hawaii.

"DOE" means the Department of Education of the State of Hawaii.

"DCCA" means the Department of Commerce and Consumer Affairs of the State of Hawaii.

"Encumbrance" means any charge, claim, condition, equitable interest, lien, option, pledge, security interest, easement, right of first refusal, or restriction of any kind, including any restriction on use, transfer, receipt of income, or exercise of any other attribute of ownership.

"Escrow Agent" means the main office of Title Guaranty Escrow Services, Inc., or such other escrow company authorized to do business in the State of Hawaii mutually chosen by Seller and Buyer to act as an escrow agent for the Contemplated Transactions.

"Governmental Authorization" means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" means any (a) federal, state, local, or municipal government; or (b) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature over the Property.

"HRT" means HRT, Ltd., a Maryland corporation.

"Legal Requirement" means any federal, state, local or municipal administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty.

"LUC" means the Land Use Commission of the State of Hawaii.

"LUC Order" means the Amended Findings of Fact, Conclusions of Law, and Decision and Order issued by the LUC on October 1, 1996, in which the lands comprising Royal Kunia Phase II were reclassified from agricultural to urban.

"Order" means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Body or by any arbitrator.

"Organizational Documents" means (a) the articles of incorporation and the bylaws of a corporation; (b) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a person; and (c) any amendment to any of the foregoing.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Representative" means with respect to a particular person, any director, officer, employee, agent, consultant, advisor, or other representative of such person, including legal counsel, accountants, and financial advisors.

"RKES Adversary Proceeding" means the adversary Proceeding filed in the Bankruptcy Case entitled *Woo v. RKES*, Adversary No. 05-90119, and all of the claims asserted therein.

"School Site" means Lot 3 of the Royal Kunia Apartment Subdivision, containing approximately 12.00 acres, being a portion of Lot 3 of the Royal Kunia Phase II, Increment 1 Subdivision (File Plan 2171), bearing Tax Map designation (1) 9-4-2-79, located at Royal Kunia, Honolulu, Hawaii.

"School Site Agreement" means an agreement with the holder(s) of legal title to the School Site, which is (a) recorded as an Encumbrance against the School Site, (b) provides for the construction of public school facilities on the School Site, and the transfer of the School Site and such improvements to the DOE at no cost to the owner of the Property, (c) has been approved by the LUC and the DOE as satisfying the fair share contribution for the development of the Property as a residential subdivision, (d) is in form and substance satisfactory to Buyer, (e) runs in favor of the owner of the Property and the owner's successors and assigns, and (f) provides as remedies for nonperformance that such owner of the Property may either specifically enforce the agreement or demand transfer of title to the School Site to such owner without cost.

"Threatened" means a claim, Proceeding, dispute, action, or other matter will be deemed to have been "Threatened" if Seller has knowledge of any demand or statement

asserting such claim, proceeding, dispute action or other matter which has been made in writing or any notice has been given in writing.

"Title Company" means _____ or such other title company authorized to do business in the State of Hawaii chosen by Buyer and acceptable to Seller.

"Unilateral Agreement" means the Unilateral Agreements dated March 6, 1995 and April 9, 1997 executed and recorded by Debtor setting forth the conditions to rezoning of the lands comprising Royal Kunia Phase II, Increments I and II, including the rezoning of the Real Property for residential use.

2. SALE OF PROPERTY

2.1 Sale of Property. Subject to the terms and conditions of this Agreement, at the Closing, Seller agrees to sell, assign, transfer and convey to Buyer and Buyer agrees to purchase from Seller the following described property (collectively the **"Property"**):

(a) **Real Property.** All of the land identified as Lot 2 of the Royal Kunia Apartment Subdivision, containing approximately 161.360 acres, being a portion of Lot 3 of the Royal Kunia Phase II, Increment 1 Subdivision (File Plan 2171), bearing Tax Map designation (1) 9-4-2-71, located at Royal Kunia, Honolulu, Hawaii, together with the buildings, improvements, fixtures and other items of real property located on such land (the **"Real Property"**).

(b) **Tangible Personal Property.** All fixtures, equipment, machinery, fittings, building supplies, maintenance and repair supplies, tools, irrigation facilities, maintenance equipment, architectural, mechanical, engineering and other plans with respect to the Real Property to the extent the Seller has the right to assign such plans, all books and records with respect to the Property, and other articles of personal property now or as of the Closing situate on, attached to, or used in connection with the Real Property.

(c) **Intangible Personal Property.** To the extent assignable to Buyer, all of Seller's right, title and interest in and to intangible personal property relating to or used in connection with the ownership, development, operation or maintenance of the Real Property, including without limitation, certificates of occupancy, permits, licenses, transferable warranties and guaranties, the right to any trademarks and trade names, all Contracts, escrow accounts, insurance policies, deposits, instruments, documents of title, general intangibles and business records pertaining to the Real Property, and all rights, claims and interests, directly or indirectly, in and to any current or contingent future interest in the Real Property or proceeds therefrom.

(d) **Avoidance Claims against RKES.** All of Seller's rights under federal or state law to avoid, set aside, or otherwise challenge the transfer of an undivided

interest in the School Site and related assets to RKES, including without limitation, the RKES Adversary Proceeding, all of Seller's rights to retain any property recovered pursuant to such rights, and all of Seller's rights to assert any trustee's or avoided liens with respect to such property.

2.2 HRT's Interest in Property and School Site. The Bankruptcy Court has entered an Order in the Bankruptcy Case which provides for (a) the release of the mortgage in favor of HRT encumbering the Property, (b) the transfer of HRT's undivided 24.28% in the Property to Buyer pursuant to Bankruptcy Code § 363(h), and (c) the transfer to Buyer of all of HRT's undivided interest in the School Site. HRT has consented to such relief in exchange for (a) the immediate cash payment to HRT of its monetary claims secured by the mortgage, and (b) the Buyer's agreements under this Agreement and the Agreement re Infrastructure.

2.3 Exclusions from Sale. Notwithstanding anything to the contrary contained in Section 2.1, (a) Seller is not transferring to Buyer any cash or cash equivalents or any interest in the Hawaii limited partnership known as Kunia Residential Partners¹, and (b) Buyer is not assuming any obligations or liabilities with respect to the Contracts or the Property except as (i) expressly provided for in this Agreement, and (ii) imposed on the Property by Governmental Bodies which the owner of the Property is required to satisfy.

2.4 Purchase Price. Subject to the adjustments and prorations provided in this Agreement, the purchase price (the "**Purchase Price**") for the Property will be (a) _____ U.S. Dollars (U.S. \$ _____). The Purchase Price will be paid as follows:

(a) Upon the execution and delivery of this Agreement, Buyer will deposit into an account maintained by the Escrow Agent with a bank or other financial institution designated by Buyer an earnest money deposit in the amount of One Million U.S. Dollars (\$1,000,000) (the "**Deposit**") in immediately available federal funds, constituting a deposit to be applied, subject to the provisions of this Agreement, toward the payment of the Purchase Price. The Deposit shall be held and invested by Escrow Agent in accordance with the joint written instructions of Seller and Buyer given to Escrow Agent contemporaneously herewith. All interest earned on the Deposit shall be credited to Buyer. If Buyer is a secured creditor of the Debtor, the Deposit may be submitted by way of a credit against the balance of the Buyer's secured claim against the Debtor.

(b) At the Closing, Buyer shall pay Seller an amount (the "**Closing Payment**") equal to (i) the Purchase Price, (ii) plus or minus net adjustments and prorations provided for in this Agreement, and (iii) minus the Deposit. The Closing Payment shall be made by wire or intra-bank transfer in immediately available federal

¹ Subject to court determination.

funds to Escrow Agent at least one (1) business day prior to the Closing. The Deposit shall be disbursed by Escrow Agent to Seller at the Closing.

2.5 Buyer Reacquiring Its Own Property. Notwithstanding the provisions of this Agreement indicating otherwise, the related documents or the Bankruptcy Code that refers to or describes this transaction as a purchase and sale, Seller and Buyer hereby acknowledge that the Contemplated Transactions shall not constitute a sale, transfer, assignment or exchange for any tax, land use entitlement or other non-bankruptcy purpose because, inter alia, pursuant to Internal Revenue Code section 1399, Buyer and Seller are not separate taxable entities and Buyer is reacquiring its own property out of the Bankruptcy Case.

3. TITLE AND CONDITION OF THE PROPERTY

3.1 Title Report; Permitted Encumbrances. Attached to this Agreement as Exhibit 3.1 is the current status title report for the Property issued by the Title Company (the "Title Report") which includes as Encumbrances items ___ through ___ consisting of real property taxes, existing mortgages, related security documents, judgment liens and notice of the Bankruptcy Case, now encumbering the Property (the "Existing Liens"). The Bankruptcy Order shall provide that the Property is to be conveyed to Buyer free and clear of the Existing Liens or other Encumbrances which are not Permitted Encumbrances. The Encumbrances listed in the Title Report other than Existing Liens, mechanic's or materialmen's liens, and leases, tenancy agreements or rights of possession shall be "Permitted Encumbrances."

3.2 Title Insurance. The title insurance policy to be issued at the Closing by the Title Company based on the Title Report (the "Title Policy") shall be an ALTA Owner's Policy (1992) or equivalent in the amount of the Purchase Price with such endorsements as Buyer may reasonably require, subject to the Permitted Encumbrances. The Title Policy shall not list as Encumbrances any of the Existing Liens, nor the standard exceptions for unrecorded mechanic's or materialmen's lien claims and leases, tenancy agreements or other rights of possession which the Title Company is permitted by applicable law to remove or modify upon the delivery of standard affidavits of title from Seller.

3.3 Inspection of Property. The closing of the Contemplated Transactions is not conditioned on or subject to any due diligence review or inspection of the Property. However, during the period extending from the date of this Agreement to and including the Closing Date, Buyer and its Representatives and prospective lenders and their Representatives (collectively "Buyer's Advisors") shall have the right, upon reasonable notice to Seller and at times reasonably convenient to Seller and Buyer, to (a) enter upon the Property to perform reasonable non-destructive inspections and tests of the Property; (b) examine any and all books and records maintained by Seller or its Representatives

relating to receipts and expenditures pertaining to the Property; (c) make investigations with regard to zoning, building code and other legal requirements with respect to the Property; and (d) review the terms and provisions of the Contracts, permits, the financial information, and other agreements, surveys, engineering and architectural reports, and instruments within the possession of Seller or its Representatives relating to the Property or any portion thereof.

3.4 Inspection Indemnity. Any investigation or examination of the Property or the books and records pertaining to the Property is performed at the sole risk and expense of Buyer, and Buyer shall be solely responsible for the acts or omissions of any of Buyer's Advisors brought on, or to, the Property by Buyer. Buyer shall defend, indemnify and hold Seller harmless from and against all claims for personal injury, wrongful death or property damage against Seller or the Property arising from or as a result of, any act or omission of Buyer or Buyer's Advisors, in connection with any inspection or examination of the Property or the books and records of the Property by Buyer or Buyer's Advisors.

3.5 Condition of Property. As a material inducement to Seller to execute this Agreement, Buyer acknowledges, represents and warrants that, (a) Buyer has accepted the physical condition, value, financing status, use, and development of the Property, (b) the Property will be purchased by Buyer "AS IS" and, upon closing, Buyer shall assume responsibility for the physical condition of the Property, (c) Buyer will have decided to purchase the Property solely on the basis of its own independent investigation and Seller's representations in this Agreement. Seller has not made, does not make, and has not authorized anyone else to make any representation as to the present or future physical condition, value, financing status, use, development or any other matter or thing pertaining to the Property except as expressly set forth in this Agreement, and Buyer acknowledges that no such representation has been made and that in entering into this Agreement Buyer does not rely on any representation other than those expressly set forth in this Agreement.

3.6 Disclaimer. Subject to the provisions of *Section 12* of this Agreement, as of the Closing the physical condition of the Property shall be substantially the same condition as that existing on the date of this Agreement, reasonable wear, tear and deterioration excepted. **Except as expressly set forth in this Agreement, Seller makes no warranty or representation, express or implied or arising by operation of law, including, without limitation, any warranty of condition, habitability, merchantability, or fitness for a particular purpose of the Property.** Seller shall not be liable for or bound by any verbal or written statements, representations, real estate broker's "setups" or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or any other person unless the same are specifically set forth in this Agreement or in any certificate or document delivered by Seller pursuant to this Agreement or at Closing.

3.7 Authorization to Seek Consents. Seller hereby authorizes Buyer to execute, file, and record any and all applications, documents, petitions, pleadings, instruments and certificates and to take such other actions as may be required to obtain LUC Consent to the transfer of the Property to Buyer, and/or to amend the existing LUC Order and County zoning ordinances to cure any existing defaults. Buyer is hereby designated as the authorized representative of Seller (as owner of the Property), with full power and authority to: (a) file a petition or petitions with the Department of Planning and Permitting ("DPP") and/or County to cure any defaults under the 1995 and 1997 Unilateral Agreements affecting the Property and to restore or reinstate the zoning entitlements for the Property, (b) negotiate, agree to or accept any modifications or additions to the conditions to zoning as may be required to cure such defaults and reinstate or restore said entitlements, (c) appear and submit testimony at any public hearings, and (d) execute and file such documents, agreements, plans and instruments and take all other actions as may be necessary or appropriate, in Buyer's sole discretion, to obtain approval of the petition(s) by DPP and/or the County. Seller shall execute letters of authorization confirming the same. Notwithstanding anything to the contrary herein, Buyer acknowledges and agrees that the Closing shall not be conditioned in any way upon obtaining the Consent of the LUC or the approval of said petition(s).

4. CLOSING AND PRORATIONS

4.1 Closing.

(a) **Scheduled Closing.** The purchase and sale (the "Closing") provided for in this Agreement will take place at _____, Honolulu, Hawaii, at 10:00 a.m. (local time) twenty (20) days after the entry of the Bankruptcy Order, subject to Buyer's extension right in subsection 4.1(b).

(b) **Extension of Closing.** Solely for the purpose of obtaining the Consents and undertaking the other actions described in *Section 3.7*, Buyer shall have the right to extend the Closing for one month at a time until not later than February 28, 2007, by providing written notice to Seller and depositing with Escrow Agent the amount of \$132,061.59 (or a prorated amount if the extension is for less than 30 days) in immediately available federal funds (the "Extension Fee") not later than five (5) days before the then scheduled Closing. The Extension Fee is solely for the privilege of extending the Closing, is immediately earned by Seller, is not a part of the Deposit and will not be applied to the Purchase Price, and is refundable if and only if the Contemplated Transaction fails to close because of a material breach of Seller (Buyer not being in material breach of its obligations under this Agreement). Obtaining any of the Consents or other actions under *Section 3.7* is not a condition to Closing, and Buyer shall be obligated to close, in any event, not later than the earlier of (a) ten (10) business days after receipt of the Consent of the LUC, or (b) February 28, 2007 (subject to satisfaction of the conditions to Closing in *Sections 9 and 10*). The first extension fee payment is due twenty (20) days after the entry of the order approving the sale.

(c) **No Termination.** Subject to the provisions of *Section 11*, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this *Section 4.1* will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

4.2 Seller's Closing Documents and Requirements. At the Closing, Seller will deliver to Buyer or deposit with the Escrow Agent as applicable, the following documents, in each case duly executed by Seller or the appropriate person, and if applicable, acknowledged and in recordable form ("**Seller's Closing Documents**"):

(a) A Limited Warranty Deed conveying to Buyer the Real Property, in the form of **Exhibit 4.2(a)** attached to this Agreement.

(b) A Bill of Sale transferring to Buyer all of the tangible and intangible personal property and the Contracts, in the form of **Exhibit 4.2(b)** attached to this Agreement.

(c) The Agreement re Infrastructure, in the form of **Exhibit 4.2(c)** attached to this Agreement.

(d) A Connection Agreement, in the form of **Exhibit 4.2(d)** attached to this Agreement.

(e) A Limited Warranty Deed conveying to Buyer HRT's interests in the Real Property and the School Site, in the form of **Exhibit 4.2(e)** attached to this Agreement.

(f) An Assignment of Declarant's Rights, in the form of **Exhibit 4.2(f)** attached to this Agreement.

(g) The School Site Agreement, in form and substance acceptable to Seller and Buyer.

(h) Releases of mortgages, releasing the Existing Liens from the Property and the Existing School Site Liens from the School Site.

(i) Certificates of non-foreign status in form and content required by law certifying that each of Seller and HRT is not a "foreign person" as such term is used under Section 1445 of the Internal Revenue Code.

(j) Certificates of resident status in form and content required by law certifying each of Seller and HRT is a "resident person" as such term is used in H.R.S. Section 235-68.

(k) Written notices in form reasonably satisfactory to Buyer, regarding the sale of the Property, executed by Seller and addressed to any Governmental Body that

requires notice of the sale of the Property under applicable Legal Requirements or Orders.

4.3 Buyer's Closing Documents and Requirements. At the Closing, Buyer will deliver to Seller or deposit with the Escrow Agent as applicable, the following funds and documents, in each case duly executed by Seller or the appropriate person, and if applicable, acknowledged and in recordable form ("**Buyer's Closing Documents**"):

- (a) The balance of the Purchase Price as required by *Section 2.3(b)*.
- (b) The Agreement re Infrastructure.
- (c) The Connection Agreement
- (d) The Assignment of Declarant's Rights
- (e) A certificate of good standing for Buyer issued by the DCCA not more than thirty (30) days before the Closing Date.
- (f) A certificate from _____ certifying the resolutions of Buyer approving the Contemplated Transactions.

4.4 Expenses. Buyer shall pay all costs of the premium for the Title Policy (including any endorsements), the escrow fees charged by the Escrow Agent, the conveyance tax, the recording fees for the Limited Warranty Deeds and releases, and any mortgage recording fees.

4.5 Prorations. All utility charges, if any, will be prorated to the Closing Date and Buyer will obtain a final billing therefor. All utility security deposits, if any, will be retained by Seller. There will be no prorations of the real property taxes; Buyer will be responsible for paying at Closing through the Escrow Agent all due and payable real property taxes encumbering the Real Property, including any penalties and interest.

4.6 RKES Adversary Proceeding. In the event the Seller is unable to obtain a School Site Agreement satisfactory to the Buyer, the Buyer may, in its sole discretion, waive the School Site Agreement as a Seller's Closing Document and require the Seller to assign to the Buyer at Closing all of Seller's avoidance claims against RKES, including Seller's claims in the RKES Adversary Proceeding.

5. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

5.1 Authority. Upon the entry of the Bankruptcy Order, this Agreement will constitute the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms. Upon the execution and delivery by Seller of the Seller's

Closing Documents, the Seller's Closing Documents will constitute the legal, valid, and binding obligations of Seller, enforceable against Seller in accordance with their respective terms. Seller has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and the Seller's Closing Documents and to perform its obligations under this Agreement and the Seller's Closing Documents.

5.2 No Conflict. Neither the execution and delivery of this Agreement by Seller nor the consummation or performance of any of the Contemplated Transactions by Seller will, directly or indirectly (with or without notice or lapse of time) contravene, conflict with, or result in a violation or breach of any provision of, or give any person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Contract.

5.3 No Consent. Except for and in connection with the Bankruptcy Order and except for the Consent of the LUC and notice to the City and County of Honolulu, Seller is not required to give any notice to or obtain any Consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

5.4 Legal Proceedings; Orders. Except for the Bankruptcy Case, the Adversary Proceedings filed in the Bankruptcy Case, and the LUC Proceeding to show cause against the Debtor, there is no pending Proceeding that has been commenced by or against Seller. To the knowledge of Seller, (a) no such Proceeding has been Threatened, and (b) no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceeding.

5.5 Brokers or Finders. Seller is not represented by any broker or real estate agent in connection with the Contemplated Transactions. Seller has incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement and will indemnify and hold Buyer harmless from any such payment alleged to be due by or through Seller as a result of the action of Seller or her agents.

6. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

6.1 Organization and Good Standing. Buyer is a _____ duly organized, validly existing, and in good standing under the laws of the State of _____.

6.2 Authority. This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the Buyer's Closing Documents, the Buyer's Closing Documents will constitute the legal, valid, and binding obligations of Buyer, enforceable

against Buyer in accordance with their respective terms. Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents.

6.3 No Conflicts. Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any person the right to prevent, delay, or otherwise interfere with any of the Contemplated Transactions pursuant to: (a) any provision of Buyer's organizational documents, (b) any Legal Requirement or Order to which Buyer may be subject or (c) any Contract to which Buyer is a party or by which Buyer may be bound.

6.4 No Consents. Except for the Consent from the LUC, Buyer is not and will not be required to obtain any Consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

6.5 Certain Proceedings. There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions. To Buyer's knowledge, no such Proceeding has been Threatened.

6.6 Brokers or Finders. Buyer is not represented by any broker or real estate agent in connection with the Contemplated Transactions. Buyer and its officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement and will indemnify and hold Seller harmless from any such payment alleged to be due by or through Buyer as a result of the action of Buyer or its officers or agents.

7. COVENANTS OF SELLER PRIOR TO CLOSING DATE

7.1 Access and Investigation. Between the date of this Agreement and the Closing Date, Seller will, and will cause his Representatives to, (a) afford Buyer and Buyer's Advisors full and free access to the Property (including subsurface testing), contracts, books and records, and other documents and data, (b) furnish Buyer and Buyer's Advisors with copies of all such contracts, books and records, and other existing documents and data as Buyer may reasonably request, and (c) furnish Buyer and Buyer's Advisors with such additional financial, operating, and other data and information as Buyer may reasonably request.

7.2 Condition of the Property. Between the date of this Agreement and the Closing Date, Seller will (a) use good faith efforts to preserve intact the Property and the Contracts, (b) confer with Buyer concerning any matters of a material nature concerning the Property, and (c) otherwise report periodically to Buyer concerning the status of the of the Property.

7.3 Required Approvals. As promptly as practicable after the date of this Agreement, Seller will file a motion in the Bankruptcy Case requesting the Bankruptcy Order. Between the date of this Agreement and the Closing Date, Seller will (a) cooperate with Buyer with respect to all filings that Buyer elects to make or is required by Legal Requirements to make in connection with the Contemplated Transactions, including Consent of the LUC and confirmation of land use entitlements. Notwithstanding anything to the contrary herein, Buyer acknowledges and agrees that the Closing shall not be conditioned in any way upon obtaining the Consent of the LUC or the confirmation of land use entitlements.

7.4 Good Faith Efforts. Between the date of this Agreement and the Closing Date, Seller will use good faith efforts to cause the conditions in *Sections 9 and 10* to be satisfied.

7.5 Delivery of Plans and Other Documents. Between the date hereof and a reasonable period after the Closing Date, Seller will use good faith efforts to obtain, by way of subpoena, demand, motion to compel production of documents and/or motion to compel turnover, and deliver to Buyer all plans, studies, reports, contracts and documents owned by the Debtor relating to the Real Property, the School Site or Royal Kunia Phase II.

8. COVENANTS OF BUYER PRIOR TO CLOSING DATE

8.1 Approvals of Governmental Bodies. Between the date of this Agreement and the Closing Date, Buyer will cooperate with Seller with respect to its filings in connection with the Bankruptcy Order; provided that this Agreement will not require Buyer to dispose of or make any change in any portion of its business or to incur any other burden to obtain a Governmental Authorization.

8.2 Good Faith Efforts. Except as set forth in the proviso to *Section 8.1*, between the date of this Agreement and the Closing Date, Buyer will use good faith efforts to cause the conditions in *Sections 9 and 10* to be satisfied.

9. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE

Buyer's obligation to purchase the Property and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

9.1 Accuracy of Representations. All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement, and must be accurate in all material respects as of the

Closing Date as if made on the Closing Date, without giving effect to any supplement to the Disclosure Letter.

9.2 Seller's Performance. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects. Each document required to be delivered pursuant to *Section 4.2* must have been delivered, and each of the other covenants and obligations in *Sections 7.3* must have been performed and complied with in all respects.

9.3 Title Insurance. Buyer shall have received unconditional and binding commitments to issue the Title Policy consistent with *Section 3.3*.

9.4 Bankruptcy Order. The Bankruptcy Order shall have been entered in the Bankruptcy Case and shall not have been stayed pending any appeal.

9.5 Transfer of HRT's Interests in the Property and the School Site. Concurrently with the transfer of the Property to Buyer, HRT shall have transferred to Buyer all of HRT's undivided interest in the Property and the School Site (being an approximately 24.28% undivided interest), free and clear of Encumbrance items _____ through _____ shown on the status title report issued by the Title Company attached to this Agreement as **Exhibit 9.5** (the "**Existing School Site Liens**"), and Buyer shall have obtained an unconditional and binding commitment from the Title Company to issue to Buyer a title insurance policy insuring vesting of such title in Buyer, free of the Existing Liens and the Existing School Site Liens and subject to no other Encumbrances except as shown in the Title Report and the School Site status title report.

9.6 Additional Documents. Seller shall deliver or cause to be delivered to Buyer such other documents as Buyer may reasonably request for the purpose of (a) evidencing the accuracy of any of Seller's representations and warranties, (b) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller, (c) evidencing the satisfaction of any condition referred to in this *Section 9*, or (d) otherwise facilitating the consummation or performance of any of the Contemplated Transactions.

10. CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

Seller's obligation to sell the Property and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller, in whole or in part):

10.1 Accuracy of Representations. All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations

and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

10.2 Buyer's Performance. All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects. Buyer must have delivered each of the documents required to be delivered by Buyer pursuant to *Section 4.3* and must have made the cash payments required to be made by Buyer pursuant to *Section 2.3(b)*.

10.3 Bankruptcy Order. The Bankruptcy Order shall have been entered in the Bankruptcy Case and shall not have been stayed pending any appeal.

10.4 Additional Documents. Buyer shall deliver or caused to be delivered to Seller such other documents as Seller may reasonably request for the purpose of (a) evidencing the accuracy of any representation or warranty of Buyer, (b) evidencing the performance by Buyer of, or the compliance by Buyer with, any covenant or obligation required to be performed or complied with by Buyer, (c) evidencing the satisfaction of any condition referred to in this *Section 10*, or (d) otherwise facilitating the consummation of any of the Contemplated Transactions.

11. TERMINATION

11.1 Termination Events. This Agreement may, by notice given prior to or at the Closing, be terminated:

(a) By either Buyer or Seller if a material breach of any provision of this Agreement has been committed by the other party and such breach has not been cured or waived;

(b) By Buyer if any of the conditions in *Section 9* has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not waived such condition on or before the Closing Date; or by Seller, if any of the conditions in *Section 10* has not been satisfied of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Seller to comply with their obligations under this Agreement) and Seller has not waived such condition on or before the Closing Date;

(c) By mutual consent of Buyer and Seller; or

(d) By either Buyer or Seller if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with

its obligations under this Agreement) on or before ~~December~~February 28, 2006,2007, or such later date as the parties may agree upon.

11.2 Effect of Termination. If this Agreement is terminated pursuant to *Section 11.1(b),(c) or (d)*, the Deposit and all interest earned thereon shall be returned to Buyer and all further obligations of the parties under this Agreement will terminate, except that the obligations in *Section 13.1* will survive. Except as provided below, the Extension Fee will be kept by Seller as a fee already earned for giving Buyer the privilege of extending the Closing Date.

If this Agreement is terminated by Buyer pursuant to Section 11.1(a) because of the breach of the Agreement by Seller or pursuant to Section 11.1(b) because one or more of the conditions to the Buyer's obligations under this Agreement is not satisfied as a result of Seller's failure to comply with its obligations under this Agreement, Buyer shall be entitled to a refund of both the Deposit and the Extension Fee, and Buyer's right to pursue all legal remedies will survive such termination unimpaired.

In the event of breach of this Agreement by Buyer, Seller's sole remedy shall be to terminate this Agreement pursuant to Section 11.1(a) and retain the Deposit as liquidated damages. The parties hereby acknowledge and agree that in such event, the amount of Seller's actual damages in such circumstance would be difficult, if not impossible, to determine, and the Deposit represents a reasonable estimate of such damages. The Extension Fee will be kept by Seller as a fee already earned for giving Buyer the privilege of extending the Closing Date except as otherwise provided in this Agreement.

12. RISK OF LOSS; EMINENT DOMAIN

12.1 Waiver of Chapter 508. Seller and Buyer hereby waive the Uniform Vendor and Purchaser Risk Act, Hawaii Revised Statutes Chapter 508. If, prior to the Closing, the Property is damaged by fire, vandalism, acts of God or other casualty or cause ("**Casualty**"), or the Property or a portion thereof is taken or made subject to condemnation, eminent domain or other governmental acquisition proceedings (a "**Taking**") then the procedures of this *Section 12* shall apply.

12.2 Obligated to Close. If the cost of required repair or replacement related to or arising out of the Casualty or if the value of the Taking is \$5,000,000 or less, Buyer shall proceed to close and take the Property as diminished by such events, subject to a reduction in the Purchase Price, which reduction shall be equal to the applicable deductible amount under Seller's insurance policy (the "**Deductible**") or, in the event that no insurance proceeds are available to cover such repair or replacement, the full amount of the cost to repair or replace the Casualty, but which shall not exceed \$5,000,000. All insurance proceeds on account of the Casualty or awards on account of a Taking shall be assigned to Buyer.

12.3 Option to Terminate. If the cost of repair or replacement related to or arising out of the Casualty is greater than \$5,000,000 (whether or not the cause of the Casualty is a casualty that is covered by Seller's insurance policy), or if the value of the Taking is greater than \$5,000,000, then in either of such events Buyer or Seller may terminate this Agreement by written notice given to the other party at or prior to the Closing.

12.4 Determination of Cost of Casualty or Taking. The cost of repair or replacement related to or arising out of the Casualty or the value of the Taking shall be determined by Seller and Buyer, or, if they are unable to agree, by an independent appraiser selected by two other appraisers, each of which shall be selected by Seller and Buyer. The value of the Taking shall be based on the sum of (a) the fair market value of the land subject to the Taking, and (b) any reduction in the fair market value of the remaining Property to be acquired resulting from the exclusion of such condemned property, in each case as determined by Seller and Buyer or by the independent appraiser.

12.5 Insurance. If, pursuant to the preceding Sections, Buyer is either obligated or elects to take the Property as it is together with the insurance proceeds or the right to receive the same (a) Seller agrees to cooperate with Buyer in any loss adjustment negotiations, legal actions and agreements with the insurance company, and to assign to Buyer at the Closing its rights to such insurance proceeds and will not settle any insurance claims or legal actions relating thereto without Buyer's prior written consent; and (b) an amount equal to any deductible from the insurance proceeds shall be credited against the Purchase Price at Closing.

12.6 Termination. If this Agreement is terminated pursuant to this *Section 12*, the Deposit shall be delivered to Buyer and the parties hereto shall be released from all further obligations and liabilities hereunder, except with respect to the obligations set forth in *Section 13.1*.

13. GENERAL PROVISIONS

13.1 Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel, and accountants. In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a breach of this Agreement by another party. In the event of a dispute arising out of this Agreement, the prevailing party in any Proceeding shall be entitled to recovery its costs and expenses and reasonable attorneys' fees, including such costs and expenses on appeal.

13.2 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a)

delivered by hand, (b) sent by telecopier (with written confirmation of receipt), (c) sent by certified mail, return receipt requested, or (d) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Seller: James B. Nicholson, Trustee
P.O. Box 15696
Honolulu, Hawaii 96830

Telephone No.: (808) 590-2157
Facsimile No.: (808) 595-3177

Copy to: Jerrold K. Guben, Esq.
Reinwald O'Connor & Playdon LLP
Pacific Guardian Center, Makai Tower
733 Bishop Street, 24th Floor
Honolulu, Hawaii 96813

Telephone No.: (808) 524-8350
Facsimile No.: (808) 531-8628

Buyer: _____

Attention: _____

Telephone No. () _____
Facsimile No.: () _____

Copy to: _____

Telephone No.: () _____
Facsimile No.: () _____

13.3 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the United States Bankruptcy Court for the District of Hawaii, or in any courts of the State of Hawaii, City and County of Honolulu, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Hawaii, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

13.4 Further Assurances. The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other

documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement, the transfer, conveyance and assignment of the Property, and the documents referred to in this Agreement. The obligation of this *Section 13.4* shall survive the Closing until the discharge of Seller as trustee of the Bankruptcy Case.

13.5 Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

13.6 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

13.7 Construction. This Agreement and any certificates or documents delivered pursuant to this Agreement will be construed without regard to which party drafted the document or any particular provision therein.

13.8 Assignments, Successors, and No Third-Party Rights. Neither party may assign any of its rights under this Agreement without the prior consent of the other parties, except that Buyer may assign any of its rights under this Agreement to any affiliate of Buyer and upon such assignment, all references herein to Buyer shall refer to such assignee. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and assigns except as otherwise expressly provided in this Agreement.

13.9 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

13.10 Section Headings, Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

13.11 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

13.12 Governing Law. This Agreement will be governed by federal bankruptcy law, and the laws of the State of Hawaii without regard to conflicts of laws principles.

13.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signatures are on next page.]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

_____, a

JAMES B. NICHOLSON, as Trustee
aforesaid

By _____

Its

Seller

By _____

Its

Attachments

- Exhibit 3.1** Title Report
- Exhibit 4.2(a)** Limited Warranty Deed
- Exhibit 4.2(b)** Bill of Sale
- Exhibit 4.2(c)** Agreement re Infrastructure
- Exhibit 4.2(d)** Connection Agreement
- Exhibit 4.2(e)** Limited Warranty Deed (HRT)
- Exhibit 4.2(f)** Assignment of Declarant's Rights
- Exhibit 9.5** Title Report (School Site)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

Case No. 03-01279

Chapter 7

In re:

Halekua Development Corporation
2024 NORTH KING STREET, #209
HONOLULU, HI 96819

Social Security No.:

Employer's Tax I.D. No.:
99-0251647

NOTICE OF ENTRY OF ORDER OR JUDGMENT

NOTICE IS HEREBY GIVEN that on the date indicated below this court entered on the docket of the above-entitled case the following order or judgment:

Order Granting Motion to Approve Sale of Real Property Free and Clear of Liens (Related Doc # [179]). (Attachments: # (1) Exhibits A-B# (2) Exhibit C# (3) Exhibit D# (4) Exhibits E-F). Date of Entry: 10/2/2006. (JN,)

The original order or judgment is on file at the Clerk's Office of this court. The document may be viewed at the bankruptcy court and is available for viewing on the Internet by using Pacer for a fee. Information on the PACER system can be found on the court's web page: www.hib.uscourts.gov

Date: October 2, 2006

Address of the Bankruptcy Clerk's Office:
1132 Bishop Street
Suite 250L
Honolulu, HI 96813

Clerk of the Bankruptcy Court:

Michael B. Dowling

Telephone number: (808) 522-8100