

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
OFFICE OF SCHOOL FACILITIES AND SUPPORT SERVICES  
Honolulu, Hawaii 96813

March 9, 2012

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

OAHU

Approval in Principle for Acquisition of Privately Owned Lands  
for Educational Purposes at Honouliuli, Ewa, City & County of  
Honolulu, Island of Oahu; Tax Map Key: (1) 9-1-016:158.

APPLICANT AGENCY:

Department of Education (DOE)

PRIVATE LANDOWNER:

D.R. Horton - Schuler Homes, LLC, a Delaware limited liability  
company, dba D.R. Horton-Schuler Division whose business and  
mailing address is 650 Iwilei Road, Suite 209, Honolulu, Hawaii  
96817.

LEGAL REFERENCE:

Sections 107-10, 171-11, 171-30, and 302A-1601, Hawaii Revised  
Statutes, as amended.

LOCATION:

Privately-owned lands of D.R. Horton - Schuler Homes, LLC  
(Horton) situated at Honouliuli, Ewa, Oahu, identified by Tax Map  
Key: (1) 9-1-16:158, as shown on the attached map labeled Exhibit  
A.

AREA:

12.349 acres, more or less.

ZONING:

State Land Use District: Urban

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County of Honolulu CZO: A-1; Low density apartment

CURRENT USE:

Vacant and unimproved with various access and utility easements.

CONSIDERATION:

None. Private landowner is providing the subject lands at no cost to the State.

PURPOSE:

For educational purposes. Parcel will become the campus of a new elementary school in the Mehana Project.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board involves the approval in principle of a *gratis* land dedication that does not require the use of State funds. Therefore, since this action is an approval in principle and a donation of unimproved land would not trigger the requirements of Chapter 343, HRS, an environmental assessment is not required. However, inasmuch as Chapter 343 environmental requirements apply to Applicant's intended use of the lands, Applicant shall be responsible for compliance with Chapter 343, HRS, as amended, before any such use can occur.

APPLICANT REQUIREMENTS:

The landowner shall be required to:

- 1) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at landowner's own cost;
- 2) Obtain a title report for the privately-owned property at landowner's own cost and subject to review and approval by the Department;
- 3) Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards

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required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

REMARKS:

The DOE is requesting that the Board of Land and Natural Resources (BLNR) approve in principle the acquisition of real property from a private landowner, D. R. Horton - Schuler Homes, LLC. After acquisition, the property is intended to be set aside by executive order to the DOE for the development of a new elementary school campus to service residents in the landowner's Mehana development project.

Pursuant to State Land Use Commission Docket No. A87-613<sup>1</sup> and City and County of Honolulu Ordinance No. 04-46<sup>2</sup>, an Education Contribution Agreement (Agreement) was executed on May 18, 2005, between DOE, Horton, and the Estate of James Campbell, Deceased. The Agreement was amended on September 20, 2007, and December 9, 2009. The Agreement and amendments are attached hereto as Exhibit B. BLNR and the Department of Land and Natural Resources did not review nor were parties to the Agreement or subsequent amendments.

In the Agreement, as amended, Horton was to provide 12.46 acres of land, more or less, to the State of Hawaii as an educational payment to satisfy the DOE's fair-share requirement pursuant to section 302A-1601, as amended, and as provided in State Land Use Commission Docket No. A87-613 and City and County of Honolulu Ordinance No. 04-46. The parcel under consideration will serve as

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<sup>1</sup> *Whereas Findings of Fact, Conclusions of Law and Decision and Order, dated September 23, 1988, reclassified approximately 890 acres of land at Honouliuli, Ewa, Oahu, from the Agriculture District to Urban District, Increment II of the same docket orders the Petitioner to "contribute to the development and/or construction of school facilities on an equitable pro-rata basis as a result of the development of the Property, as determined by and to the satisfaction of the Department of Education (DOE). Agreement by DOE on the level of funding and participation shall be obtained prior to Petitioner applying for county zoning."*

<sup>2</sup> *On December 13, 1993 City and County of Honolulu approved Ordinance No. 04-46 amending a portion of Zoning Map No. 12, Ewa Beach-Iroquois Point, Ordinance No. 86-114. Condition No. 7 of Ordinance No. 04-46 requires the Declarant to "contribute to the development, funding, and/or construction of school facilities, on a fair-share basis, as determined by and to the satisfaction of the State Department of Education (also referred to as "DOE"). Terms of the contribution agreement shall be agreed upon in writing by the Declarant and the DOE, prior to obtaining building permits."*

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the main parcel for the school site. The proposed acquisition is for 12.349 acres. The balance of the land required by the Agreement will be transferred at a later date, which will be a parcel adjacent to the school site that will serve as a driveway to the school.

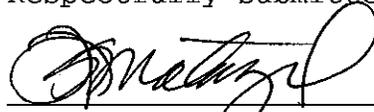
This proposed elementary school development project was approved as a capital improvement project by the Board of Education at its meeting on October 9, 2008. Funding for design and construction has been appropriated by the Hawaii State Legislature through Act 162, SLH 2009 (\$3,520,000) and Act 164, SLH 2011 (\$40,000,000).

Upon the DOE's completion of all appropriate due diligence for this acquisition, the DOE shall report all findings to the BLNR and request final approval.

RECOMMENDATION: That the Board:

1. Approve in principle the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
  - A. The terms and conditions of a Warranty Deed;
  - B. Review and approval by the Department of the Attorney General;
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



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Kathryn S. Matayoshi  
Superintendent  
Department of Education

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Educational Purposes, TMK (1) 9-1-016:158

APPROVED FOR SUBMITTAL:

*will for* William J. Aila Jr.  
William J. Aila Jr., Chairperson



Exhibit B

SECOND AMENDMENT TO  
EDUCATIONAL CONTRIBUTION AGREEMENT FOR  
KAPOLEI PARKWAY RESIDENTIAL ("MEHANA")

This Second Amendment, made this 9<sup>th</sup> day of December, 2009, by and between D.R. HORTON-SCHULER HOMES, LLC, a Delaware limited liability company, hereafter referred to as "HORTON," whose mailing address is 828 Fort Street Mall, 4th Floor, Honolulu, Hawaii 96813; the JAMES CAMPBELL COMPANY LLC, hereafter referred to as "CAMPBELL," and whose mailing address is 1001 Kamokila Boulevard, Kapolei, Hawaii 96707; and the State of Hawai'i DEPARTMENT OF EDUCATION, hereinafter referred to as the "DOE," whose mailing address is Department of Education, Facilities Development Branch, 809 8th Avenue, Honolulu, Hawaii 96816.

WITNESSETH

Whereas, HORTON, the Estate of James Campbell, Deceased (the "ESTATE") and the DOE entered into that certain Educational Contribution Agreement for Kapolei Parkway Residential ("Mehana"), made as of May 18, 2005 (referred to herein as the "Agreement"), pursuant to which HORTON and ESTATE agreed to certain land contributions for the expansion and development of new elementary school facilities;

Whereas, the ESTATE assigned all of its right, title and interest in the Agreement to CAMPBELL on January 22, 2007;

Whereas, a First Amendment to Educational Contribution Agreement for Kapolei Parkway Residential ("Mehana"), made as of September 20, 2007 (referred to herein as the "First Amendment"), was entered into by HORTON, CAMPBELL, and the DOE, amending the Agreement; and

Whereas, it is in the best interests of HORTON, CAMPBELL, and the DOE to (1) amend the First Amendment regarding the date of the conveyance of title to the School Site to the State of Hawai'i, and (2) amend the Agreement regarding certain terms of said conveyance.

NOW THEREFORE, HORTON, CAMPBELL, and DOE agree as follows:

1. Section 5. of the First Amendment, which amends Section 2.o. of the Agreement, is hereby amended by repealing

the first sentence of the first paragraph of Section 2.o. and replacing it with the following sentence:

*Provided that the School Site has been appropriately subdivided, it shall be conveyed to the State of Hawai'i upon the completion of subdivision infrastructure systems as described in Section 2.d. of this Agreement and no later than July 1, 2010.*

2. The entire paragraph under Section 2.c. of the Agreement shall be repealed and replaced with the following:

*Use of the School Site shall be limited to public school and ancillary school recreational uses and community gatherings, regardless of the zoning of the land, unless, after the school is constructed and in operation, the School Site is sold under the terms provided in Hawaii Revised Statutes, section 302A-1608 and any amendments thereto. Appropriate covenants shall be contained within the deed to the State of Hawai'i. If construction funds for this School Site are not released by the State Department of Budget and Finance within eight (8) years of the date of conveyance of the School Site to the State of Hawai'i, the DOE will recommend to the Board of Land and Natural Resources ("Land Board") that the School Site be returned to HORTON and, if the return is approved by the Land Board, HORTON agrees to pay to the DOE for deposit into the appropriate DOE trust fund, the amount of \$1.2 million (one million two-hundred thousand dollars). The payment of said \$1.2 million shall constitute full consideration to the DOE for the land contribution credits utilized by HORTON-ESTATE.*

3. All other provisions of the First Amendment and the Agreement shall remain in full force and effect as written.

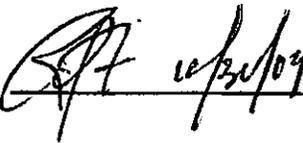
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

D.R. HORTON-SCHULER HOMES, LLC,  
a Delaware limited liability company,  
dba D.R. Horton-Schuler Division

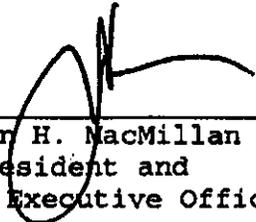
By VERTICAL CONSTRUCTION CORPORATION  
a Delaware corporation  
Its Manager

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

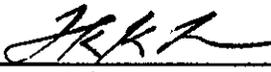
APPROVED AS TO FORM:

  
\_\_\_\_\_  
10/20/09

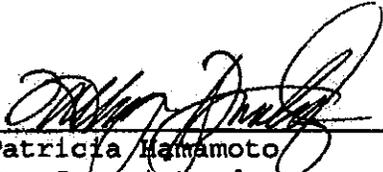
JAMES CAMPBELL COMPANY, LLC, a Delaware  
limited liability company

By   
\_\_\_\_\_  
Stephen H. MacMillan  
Its President and  
Chief Executive Officer

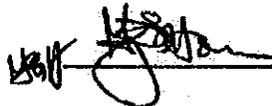
APPROVED AS TO FORM:  
CARLSMITH BALL LLP

  
\_\_\_\_\_  
10/05/2009

STATE OF HAWAI'I  
DEPARTMENT OF EDUCATION

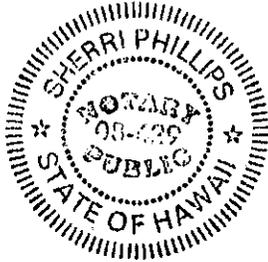
By   
\_\_\_\_\_  
Patricia Hamamoto  
Its Superintendent

APPROVED AS TO FORM:

  
\_\_\_\_\_  
10/20/09

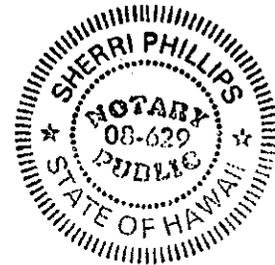
STATE OF HAWAI'I )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 17<sup>th</sup> day of NOVEMBER, 2009,  
before me personally appeared MICHAEL T. JONES, to me personally  
known, who, being by me duly sworn or affirmed, did say that  
such person executed the foregoing instrument as the free act  
and deed of such person, and if applicable in the capacity  
shown, having been duly authorized to execute such instrument in  
such capacity.



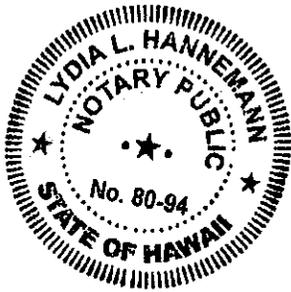
Sherrill Phillips  
Notary Public, State of Hawai'i  
Print Name: SHERRILL PHILLIPS  
My commission expires: DECEMBER 28, 2012

Date of Doc: Undated at time of notarization	# Pages: 6
Name of Notary: Sherri Phillips	Notes:
Doc. Description: Second Amendment to Educational Contribution Agreement	
	(stamp or seal)
<i>Sherri Phillip</i>	11-17-09
Notary Signature	Date
First Circuit, State of Hawai'i	
<b>NOTARY CERTIFICATION</b>	



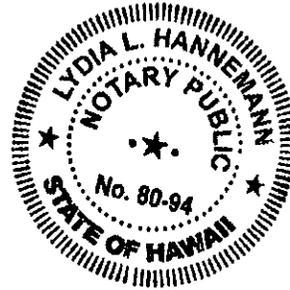
STATE OF HAWAI'I )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 11th day of November, 2009,  
before me personally appeared STEPHEN H. MACMILLAN, to me  
personally known, who, being by me duly sworn or affirmed, did  
say that such person executed the foregoing instrument as the  
free act and deed of such person, and if applicable in the  
capacity shown, having been duly authorized to execute such  
instrument in such capacity.



Lydia L. Hannemann  
Notary Public, State of Hawai'i  
Print Name: Lydia L. Hannemann  
My commission expires: February 11, 2012

*updated at*  
Doc Date notarization # Pages: 6  
Lydia L. Hannemann First Circuit  
Doc Description: Second Amendment To  
Educational Contribution Agreement  
Lydia L. Hannemann 11/11/2009  
Notary Signature Date  
NOTARY CERTIFICATION



STATE OF HAWAI'I )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 9th day of December, 2009,  
before me personally appeared <sup>Kathryn S. Matayoshi</sup> ~~PATRICIA HAMAMOTO~~ to me personally  
known, who, being by me duly sworn or affirmed, did say that  
such person executed the foregoing instrument as the free act  
and deed of such person, and if applicable in the capacity  
shown, having been duly authorized to execute such instrument in  
such capacity.

Undated at  
Des. Date: time of notary # Pages: 7  
Notary Name: Sharon K.M. Tong 1<sup>st</sup> Circuit  
Doc. Description: Amendment to Educational  
Contribution Agreement - Mehana Proj.  
Sharon K.M. Tong 12-9-2009  
Notary Signature Date

NOTARY CERTIFICATION

Sharon K.M. Tong  
Notary Public, State of Hawai'i  
Print Name: Sharon K.M. Tong  
My commission expires: 11-27-2010

LS.

LS.

**FIRST AMENDMENT TO  
EDUCATIONAL CONTRIBUTION AGREEMENT FOR  
KAPOLEI PARKWAY RESIDENTIAL ("MEHANA")**

This First Amendment ("Amendment"), made this 20th day of September, 2007, by and between D.R. HORTON-SCHULER HOMES, LLC a Delaware limited liability company, hereinafter referred to as "HORTON," whose mailing address is 828 Fort Street Mall, 4<sup>th</sup> Floor, Honolulu, Hawaii 96813; The JAMES CAMPBELL COMPANY LLC, hereinafter referred to as "CAMPBELL," and whose mailing address is 1001 Kamokila Boulevard, Kapolei, Hawaii 96707; and the State of Hawaii DEPARTMENT OF EDUCATION, hereinafter referred to as the "DOE," whose mailing address is Department of Education, Facilities Development Branch, 809 8<sup>th</sup> Avenue, Honolulu, Hawaii, 96816.

WITNESSETH

Whereas, HORTON, the Estate of James Campbell, Deceased (the "ESTATE") and the DOE entered into that certain Educational Contribution Agreement For the Kapolei Parkway Residential Project (Mehana) (the "Agreement") made as of May 18, 2005 pursuant to which HORTON AND ESTATE agreed to certain land contributions for the expansion and development of new elementary school facilities;

Whereas, the ESTATE assigned all of its right, title and interest in the Agreement to CAMPBELL on January 22, 2007;

Whereas, Condition No. 14 contained in the Decision and Order of the State Land Use Commission in Docket No. A87-613, dated June 17, 1993; and Condition No. 7 contained in the Unilateral Agreement attached to Ordinance No. 04-46, require an agreement with DOE on the level of funding and participation for school facilities; and

Whereas, HORTON and/or its successors and assigns shall develop an estimated 1,150 residential units within MEHANA; and

Whereas, HORTON and/or its successors and assigns shall provide a 12-acre elementary school site in MEHANA; and

Whereas, it is beneficial to HORTON, CAMPBELL and the DOE to update the amount of land to be conveyed and timing of the provision of infrastructure systems and that conveyance of the school site:

NOW THEREFORE, HORTON, CAMPBELL AND DOE agree to amend the Agreement as follows:

1. The lead-in paragraph to Section 2 is hereby repealed and replaced with the following:

*2. HORTON Land Contribution. HORTON shall dedicate a total of 12.46 acres (two adjacent parcels collectively called "School Site") to the State of Hawai'i as shown on Figure 1 to this Amendment.*

2. The first paragraph of Section 2.a is hereby repealed and replaced with the following:

*a. The HORTON-CAMPBELL actual land contribution requirement for Mehana, based upon 266 single-family units (@ 0.00899 acres each) and 884 multi-family units (@ 0.00356 acres each), is 5.53838 acres. The balance of this excess land contribution is 6.92162 acres, of which 6.46162 acres shall belong to CAMPBELL and 0.46000 acres shall belong to HORTON. The remaining credits may be utilized by CAMPBELL, HORTON, or their respective designees for another project to satisfy a DOE land contribution requirement. The credit for CAMPBELL's or HORTON's fair-share land contribution shall be based on 0.00899 acres per single-family unit and 0.00356 acres per multi-family unit.*

3. The first sentence of the second paragraph of Section 2.a is hereby repealed and replaced with the following:

*Use of credits by CAMPBELL and HORTON or their designees shall be done with the prior written notice to the DOE and must be for a project located within the Kapolei High School Complex.*

The remainder of Section 2.a is unchanged and remains in full force.

4. Section 2.d. is hereby repealed and replaced with the following:

*d. HORTON shall commit to the completion of the following subdivision infrastructure systems (up to the property line of the School Site) prior to the receipt of the Certificate of Occupancy for the first residential unit at MEHANA and no later than July 1, 2009, subject to Section 2.o. below.*

*(1) Potable water distribution systems for irrigation, domestic, and fire flow needs;*

*(2) Non-potable water distribution system, if required, for irrigation;*

- (3) *Sewage collector, treatment and disposal systems;*
- (4) *Drainage collector and disposal systems;*
- (5) *Access roadway systems sufficient for bus and vehicular traffic per appendix A to the Subdivision Street Standards published by the Department of Planning and Permitting of the City and County of Honolulu adopted December 1, 2000 and effective June 1, 2001*
- (6) *Electrical, telephone, CATV and any other standard subdivision telecommunication distribution systems.*

5. Section 2.o. is hereby repealed and replaced with the following:

- o. *Provided that the School Site has been appropriately subdivided, it shall be conveyed to the State of Hawai'i upon the completion of subdivision infrastructure systems as described in Section 2.d. of this Agreement and no later than July 1, 2009. The parties recognize that HORTON is required to make several improvements to the site, as indicated in the paragraph below.*

*While it is the objective of HORTON to improve the School Site prior to the conveyance date, the DOE recognizes that HORTON needs to apply for applicable civil construction permits and approvals from various state and city agencies, the review period for which is not under the control of HORTON and could delay the performance of HORTON with respect to such improvements. Nonetheless, HORTON will use reasonable best efforts to complete the improvements prior to the start of the construction of the school, to have those improvements appropriately bonded and to provide evidence to DOE of Horton's efforts to perform as intended. In any event, the improvements listed in Section 2.d., shall be completed prior to the receipt of the Certificate of Occupancy for the first residential unit at MEHANA and no later than July 1, 2009, unless extended upon the (i) request by HORTON and (ii) subsequent approval by DOE.*

6. Save and except as expressly amended herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

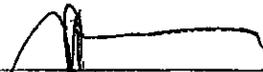
D.R. HORTON-SCHULER HOMES, LLC,  
a Delaware limited liability company,  
dba D.R. Horton-Schuler Division

By VERTICAL CONSTRUCTION CORPORATION,  
a Delaware Corporation  
Its Manager

By   
Michael Jones  
Division President of the Hawaii Division

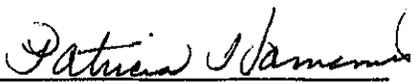
Date: 9/26/07

JAMES CAMPBELL COMPANY, LLC, a Delaware limited liability company

By   
Stephen H. MacMillan  
its President and Chief Executive Officer

Approved as to Form  
CARLSMITH BALL LLP  
By 

DEPARTMENT OF EDUCATION

By   
Patricia Hamamoto  
Its Superintendent

Date: 11.8.07

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

On this 8th day of November, 2007, before me personally appeared Patricia Hamamoto, Superintendent of the State of Hawai'i DEPARTMENT OF EDUCATION, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

L.S.

Sharon K.M. Tong Sharon K.M. Tong  
Notary Public, State of Hawai'i  
My commission expires: Nov 27, 2010

STATE OF HAWAII )  
City and )  
COUNTY OF Honolulu ) ss.

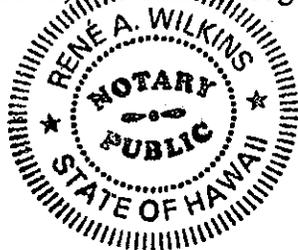
On this 20th day of September, 2007, before me personally appeared Stephen H. MacMillan, President/CEO of JAMES CAMPBELL COMPANY LLC, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

LS

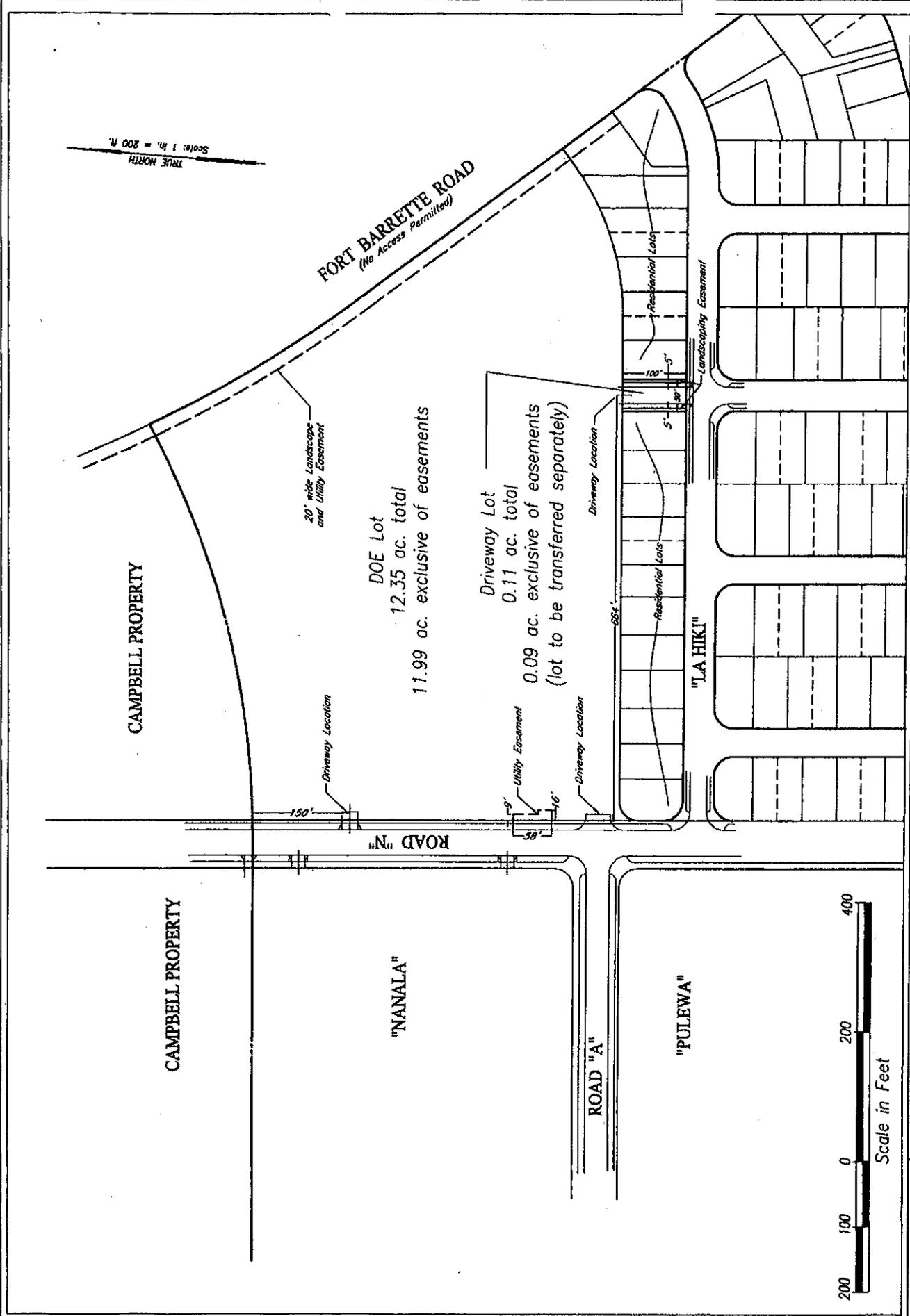
Lydia L. Hannemann  
Notary Public, State of Hawai'i  
My commission expires: Feb. 11, 2008  
Lydia L. Hannemann

STATE OF HAWAII )  
City of )  
COUNTY OF HONOLULU ) ss.

On this 20th day of SEPTEMBER, 2007, before me personally appeared Michael T. Jones, Division President of DR HORTON-SCHULER HOMES, LLC, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.



René A. Wilkins René A. Wilkins  
Notary Public, State of Hawai'i  
My commission expires: MAR 30 2011



<p>CADD: 011-02          SCALE: NOT TO SCALE          DATE: October 30, 2007</p>	<p><b>Bills Engineering Inc.</b>          Civil/Environmental Engineering          1124 Fort Street Mall, Suite 200          Honolulu, HI 96813</p>	<p><b>MEHANA AT KAPOLEI</b>          EWA, OAHU, HAWAII</p> <p>Proposed DOE Lot</p>	<p><b>FIGURE</b>  <b>1</b></p>
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Agreement No. A02008800

Education Contribution Agreement for  
KAPOLEI PARKWAY RESIDENTIAL ("MEHANA")

THIS INDENTURE, is made this 18th day of May, 2005 by and between D.R. HORTON – SCHULER HOMES, LLC, a Delaware limited liability company, whose principal place of business and mailing address is 828 Fort Street Mall, 4<sup>th</sup> Floor, Honolulu, Hawaii 96813 or its designee, successors and assigns (hereinafter "HORTON"); The ESTATE OF JAMES CAMPBELL, DECEASED, whose principal place of business and mailing address is 1001 Kamokila Boulevard, Kapolei, Hawaii 96707 or its designee, successors and assigns (hereinafter "ESTATE") and the State of Hawai'i DEPARTMENT OF EDUCATION, hereinafter referred to as "DOE," whose mailing address is Department of Education, Facilities and Support Services Branch, 809 8<sup>th</sup> Avenue, Honolulu, Hawai'i 96816.

WHEREAS, HORTON is proposing to become the owner and developer of that certain parcel of land comprised of approximately 134 acres, which is presently owned by the ESTATE and identified as Tax Map Key Numbers 9-1-16: portions of 1, 122, and 123 and 124, and more particularly described in Exhibit A (the "Updated and Preliminary Land Use Plan" prepared by Helber, Hastert and Fee, Planners and dated August 19, 2004), and known as "MEHANA".

WHEREAS Condition No. 14 contained in the Decision and Order of the State Land Use Commission in Docket No. A87-613 dated June 17, 1993 and Condition No. 7 contained in the Unilateral Agreement attached to Ordinance No. 04-46, require that an Agreement with DOE on the level of funding and participation for school facilities must be obtained.

WHEREAS HORTON-ESTATE and the DOE agree that this Agreement satisfies for Mehana all DOE Fair-Share requirements and the requirements under Conditions No. 14 and No. 7 referenced immediately above.

WHEREAS HORTON-ESTATE and DOE mutually agree that the effectiveness of this Agreement is subject to: the acquisition of MEHANA by HORTON.

WHEREAS, MEHANA is (i) anticipated but not required to contain approximately 1,150 residential housing units in the entire project and (ii) will also generate excess land contribution credits for the ESTATE..

NOW THEREFORE, HORTON, the ESTATE and DOE agree as follows:

1. HORTON's Cash Contribution. Based upon the proposed Land Utilization Schedule of 266 single family units and 884 multi-family units HORTON would contribute a total of One Million Five Hundred Fifty-Seven Thousand Two Hundred and Fifty-Four Dollars (\$1,557,254.00) to DOE.

a. The Cash Contribution shall either (i) be paid out of Escrow or (ii) at HORTON'S option be paid by HORTON in increments of 50 units, said payment(s) to be made within 30 days following the closing of the 50<sup>th</sup> unit of each increment and made payable to the "State of Hawai'i, Department of Education" in accordance with the following schedule:

i. Two Thousand Five Hundred Forty-One Dollars (\$2,541.00) payable for each single family unit within the project.

ii. Nine Hundred Ninety-Seven Dollars (\$997.00) payable for each multi-family unit within the project.

iii. For the purposes of determining a Fair-Share contribution, a single family unit is the primary residence on a site, or two similar size units with a shared roof or common walls, otherwise called a duplex. A multi-family unit is three or more units that share

common walls or roof. An accessory residential unit, or ohana unit, shares the same site with a primary residence but is smaller in square footage. Ohana or accessory units can be attached to the primary residence or free standing. Accessory units are considered the same as multi-family units.

- b. An escalation factor shall be applied to the balance of the Cash Contribution that remains to be paid every thirty-six (36) months after December 31, 2004, the last day of the month in which MEHANA received County residential zoning classification. The escalation factor shall be based on the Over-the-Year Percent Change in the Annual Average Honolulu Area Consumer Price Index for All Items for All Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics of the United States Department of Labor. The Annual Average CPI-U for the year the parcel is zoned is used as the base year. Cash Contributions will be adjusted by the amount the most recent Annual Average CPI-U has increased or decreased over the base year.
- c. HORTON-ESTATE and the DOE recognize that the first dwelling unit at Mehana is anticipated for delivery sometime in 2008 while the delivery of the last unit is expected beyond 2015. There is a likelihood that the final project density and subsequent determination of single-family and multi-family units will change over time and, consequently, the final Cash Contribution (as set above) and Land Contribution (as set below) will be modified according to their formulas.

- 2. HORTON-ESTATE Land Contribution. Either HORTON or the ESTATE shall dedicate 12.0 acres, ("School Site") to the State of Hawai'i.

- a. The HORTON-ESTATE actual land contribution requirement for Mehana, based upon 266 single family units (@ .00899 acres each) and 884 multi-family units (@ .00356 acres each), is 5.53838 acres. The balance of the excess land contribution, which is 6.46162 acres, shall belong to the ESTATE, and the remaining credits may be utilized by the ESTATE or its designated assignee for another project to satisfy a fair-share land contribution requirement. The credit for the ESTATE's fair-share land contribution shall be based on .00899 acres per multi-family unit and .00356 acres per single family unit.

Use of the credits by the ESTATE or its designated assignee shall be done with the prior written notice to the DOE and must be for a project located within the Kapolei High School complex. The Complex is defined as the area currently being served by the following schools: Barbers Point Elementary, Kapolei Elementary, Makakilo Elementary, Mauka Lani Elementary, Kapolei Middle and Kapolei High School. HORTON and the ESTATE shall be responsible for reporting to the DOE, at least annually, on the status of any credit utilized by either HORTON or the ESTATE for the purpose of insuring that the land credits utilized do not exceed the credits available for the land contributed. All parties hereto agree that the credits shall be determined by the actual count of residential unit types which may vary from the unit count set out in Paragraph 2.a. above and the annual report shall contain the latest information available as to the number of units produced within the past year(s) and the anticipated number of units remaining to be produced and the allocation of the credits as between HORTON and the ESTATE.

- b. The location of the School Site shall be as shown on Exhibit A attached hereto.

- c. Use of the School Site shall be limited to public school and ancillary school recreational uses and community gatherings, regardless of the zoning of the land, and appropriate covenants restricting such use to school purposes shall be contained within the deed. In any event, if the DOE does not issue a notice to proceed for a school construction contract in the eight (8) years following the conveyance of the school site, then it shall convey the School Site by Warranty Deed to HORTON, who shall pay the State of Hawaii the amount of \$1.2 million at the date of transfer. The payment of said \$1.2 million shall constitute full consideration to the DOE for the land contribution credits utilized by HORTON-ESTATE, and this Section 2.c shall expire.
- d. HORTON shall commit to the completion of the following subdivision infrastructure systems (up to the property line of the School Site) prior to the start of construction of the school:
- (1) Potable water distribution systems for irrigation, domestic, and fire flow needs;
  - (2) Non-potable water distribution system, if required, for irrigation;
  - (3) Sewage collector, treatment and disposal systems;
  - (4) Drainage collector and disposal systems;
  - (5) Access roadway systems sufficient for bus and vehicular traffic per appendix A to the Subdivision Street Standards published by the Department of Planning and Permitting of the City and County of Honolulu adopted December 1, 2000 and effective June 1, 2001
  - (6) Electrical, telephone, CATV and any other standard subdivision telecommunication distribution systems.
- e. The ESTATE shall provide at no cost to the State of Hawai'i adequate water and sewer allocations and HORTON the service stub-outs for sewer, water and the other services listed above prior to the start of construction

of the school. Allocation in this case means source development, storage and transmission charges to provide the following:

- (1) Subdivision water system allocations based on up to 60 gallons per person, per day, for up to 950 persons for domestic use plus 4,000 gallons per day per acre for irrigation purposes.
  - (2) Subdivision water system capacity of 2,000 gallons per minute for a 2-hour duration (with residual critical pressure of 20 psi at the fire hydrants), as required for fire flow requirements, with related reservoir storage capacity.
  - (3) Average sewage flow allocations based on 25 gallons per person, per day, for up to 950 persons plus 1,250 gallons per acre per day for wet weather infiltration/inflow or plus 2,750 gallons per acre per day for wet weather if the sewer line is laid below the normal ground water table.
  - (4) Actual allocations and size of utility lines with appropriate stub-outs located at the property line for potable and non-potable water, sewer, drainage, power, telephone and CATV shall be reported with the conveyance documents.
- f. HORTON-ESTATE shall conduct a title search of the School Site at no cost to the State of Hawai`i.
- g. HORTON-ESTATE may be required to clear title, encumbrances or liens as required by DOE or the State Department of Land and Natural Resources (DLNR), prior to dedication and at no cost to the State of Hawai`i.
- h. HORTON-ESTATE shall be responsible for the subdivision of the School Site at no cost to the State of Hawai`i, including Land Court recordation, if applicable.
- i. HORTON shall provide a soils report with a minimum of two (2) borings and documentation for any fill laid on the site, prior to conveying land to the State of Hawai`i or the start of construction.

- j. HORTON-ESTATE shall, prior to dedication, conduct a Phase I Environmental Site Assessment for the School Site. The study shall satisfy the requirements of the State Department of Health (DOH). Two copies of the study shall be provided to DOE. If the Phase I ESA identifies the potential for hazardous material release or the presence of naturally occurring hazardous materials, HORTON-ESTATE shall pay DLNR to conduct a Phase II Environmental Site Assessment for the School Site, at no cost to the State of Hawai'i. HORTON-ESTATE shall also pay for any and all abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State DOH, all at no cost to the State of Hawai'i.
  
- k. The School Site shall not contain any known historical or archaeological sites. HORTON-ESTATE shall be responsible for verifying such state with the DLNR-State Historic Preservation Division (SHPD) and/or provide appropriate mitigation measures that are acceptable to the SHPD and the DOE.
  
- l. The School Site shall have a minimum of two vehicular access points.
  
- m. HORTON, after the School Site has been filled, shall provide a topographic map of the School Site at 2-foot elevation contours.
  
- n. HORTON-ESTATE shall provide a metes and bounds description and map of the School Site in accordance with the subdivision process.
  
- o. Provided that the School Site has been appropriately subdivided, it shall be conveyed to the State of Hawai'i on July 3, 2007. The parties recognize

that HORTON is required to make several improvements to the site prior to the commencement of school construction, according to Section 2.d of this Agreement.

While it is the objective of HORTON to improve the School Site prior to the conveyance date, the DOE recognizes that HORTON needs to apply for applicable civil construction permits and approvals from various state and city agencies, the review period for which is not under the control of HORTON and could delay the performance of HORTON with respect to such improvements. Nonetheless, HORTON will use reasonable best efforts to complete the improvements prior to the start of the construction of the school, to have those improvements appropriately bonded and to provide evidence to DOE of HORTON's efforts to perform as intended. In any event, the improvements listed in Section 2.d, shall be completed prior to the start of construction on the first residential unit at MEHANA.

- p. Conveyance of the School Site shall be via Warranty Deed in a form approved by the Department of the Attorney General, Land/Transportation Division and the DLNR. The standard boilerplate Warranty Deed form, as may be amended from time to time, has been provided to HORTON-ESTATE. Said Warranty Deed shall contain appropriate language restricting the use of the School Site as provided in Section 2.c.
- q. As applicable, the School Site shall be exempt from MEHANA's Declaration of Covenants, Conditions and Restrictions, association rules, design committee rules and subdivision design guidelines.
- s. If requested by DOE, and if HORTON shall have obtained title to the School Site, HORTON shall grant a right-of-entry to the State of Hawai'i and its consultants for preliminary data gathering (archaeological, soil

testing, topographic surveys, etc.) and construction on the School Site prior to the transfer of title. Terms of the right-of-entry would be based on a written right-of-entry between HORTON and the State of Hawai'i. In this event, the State will obtain appropriate insurance coverage and provide full indemnities to HORTON.

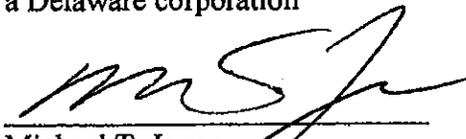
t. HORTON-ESTATE recognizes that the State's acquisition and disposition of private property is subject to approval by the Board of Land and Natural Resources.

3. This Agreement shall be binding upon HORTON-ESTATE and upon the DOE and their successors in interest, if any.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement the day and year first above written.

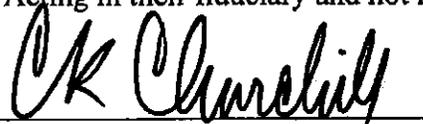
By D.R. HORTON - SCHULER HOMES, LLC,  
a Delaware limited liability company,  
dba D.R. Horton-Schuler Division

By VERTICAL CONSTRUCTION CORPORATION,  
a Delaware corporation

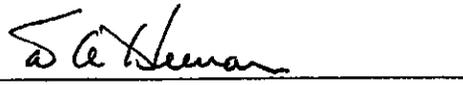
By   
Michael T. Jones  
Its Hawaii Division President

Date: MAY 2, 2007

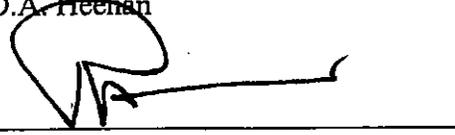
By TRUSTEES UNDER THE WILL AND OF THE  
ESTATE OF JAMES CAMPBELL, DECEASED,  
Acting in their fiduciary and not in their individual Capacities

  
C.R. Churchill

Date: May 18, 2005

  
D.A. Heenan

Date: May 18, 2005

  
Richard W. Gushman II

Date: May 18, 2005

  
Ronald J. Zlatoper

Date: May 18, 2005

DEPARTMENT OF EDUCATION

By *Patricia Hamamoto*  
Patricia Hamamoto  
Its Superintendent

Date: 6/22/05

Approved as to form:

By *Kameko Tsuchiyama*  
Deputy Attorney General  
State of Hawai'i

Date: 4/12/05

(EDITED by DOE 5/28/04  
Amended by DHI 7/12/04  
Amended by DOE 11/23/04  
Amended by DHI 12/14/04  
Amended by DOE 2/11/05)

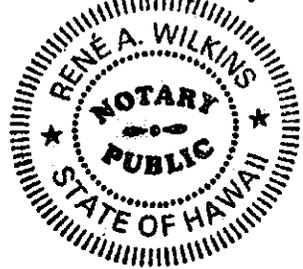
STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU ) ss.

On this 22<sup>nd</sup> day of June, 2005, before me personally appeared Clayton J. Fijic, Superintendent of the State of Hawai'i DEPARTMENT OF EDUCATION, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[Signature]  
Notary Public, State of Hawai'i  
LAWIAFOA  
My commission expires: 8-27-2008

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

On this 2ND day of MAY, 2005, before me personally appeared Michael T. Jones, Division President, to me personally known who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacity.



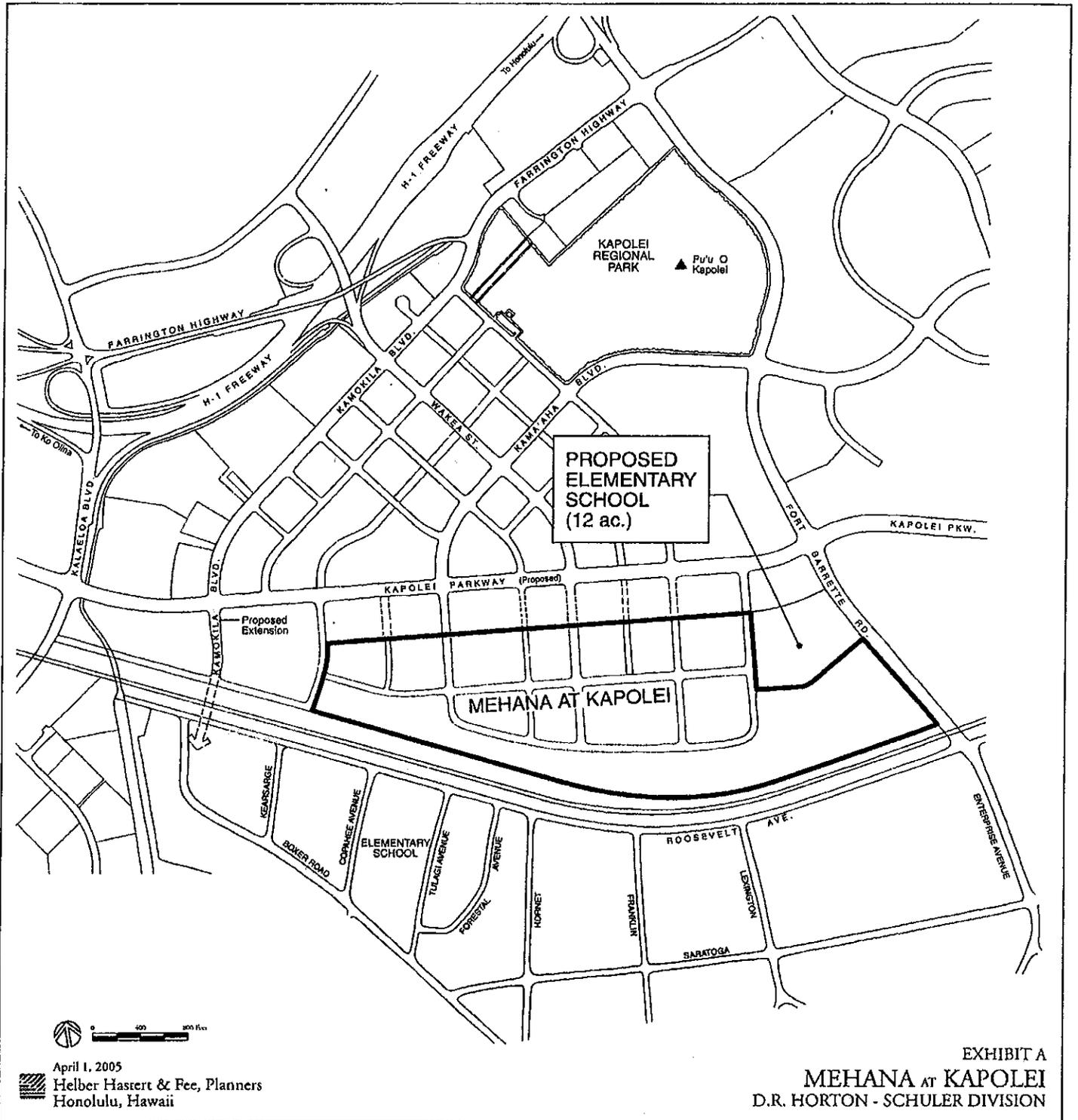
[Signature]  
Notary Public, State of Hawai'i  
René A. Wilkins  
My commission expires: MAR 30 2007

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

On this 18th day of May, 2005, before me personally appeared C. R. Churchill, D. A. Heenan, Richard W. Gushman, II, and Ronald J. Zlatoper, Trustees Under the Will and of The Estate of James Campbell, Deceased, to me known to be the persons described in and who severally executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed as such Trustees.

LS

Lydia L. Hannemann  
Printed Name: Lydia L. Hannemann  
Notary Public, State of Hawaii  
My commission expires: Feb. 11, 2008



April 1, 2005  
 Helber Hastert & Fee, Planners  
 Honolulu, Hawaii

EXHIBIT A  
 MEHANA AT KAPOLEI  
 D.R. HORTON - SCHULER DIVISION