



SCHOOL SITE AGREEMENT

THIS SCHOOL SITE AGREEMENT (the “*Agreement*”) is made as of this 6th day of March, 2007, by and among the STATE OF HAWAII, by and through its Department of Education (“*DOE*”), HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation (“*HDC*”), and RKES, LLC, a Hawaii limited liability company (“*RKES*”).

RECITALS:

A. Pursuant to Findings of Fact, Conclusions of Law, and Decision and Order dated December 9, 1993, TMK 9-4-002: por of 1 and 52, Docket No. A92-683 of the Land Use Commission of the State of Hawaii (the “*Original Decision and Order*”), and Amended Finding of Fact, Conclusions of Law and Decision and Order dated October 1, 1996, Docket No. 92-683 of the Land Use Commission of the State of Hawaii (the Original Decision and Order as amended by this documents is herein called the “*Amended Decision and Order*”), the Land Use Commission of the State of Hawaii (“*LUC*”) upon the petition of HDC reclassified from Agricultural to Urban approximately 504 acres located at Kunia, City and County of Honolulu, State of Hawaii (the “*Royal Kunia Phase 2 Lands*”).

B. Pursuant to Ordinance No. 95-08 (1995) (“A Bill for an Ordinance to Rezone Land Situated at Waipio, Ewa, Oahu, Hawaii Amending Portion of Zoning Map No. 9, Waipio (Crestview), Ordinance No. 86-111”), the City and County of Honolulu (the “*City*”) approved the rezoning of Increment 1 of the Royal Kunia Phase 2 Lands (the “*1995 Rezoning Ordinance*”) and required the recordation of that certain Unilateral Agreement and Declaration of Conditional Zoning, dated March 6, 1995, recorded in the Bureau as Document No. 95-030454, which imposes certain development conditions on Increment 1 of the Royal Kunia Phase 2 Lands (the “*1995 Unilateral Agreement*”).

C. Pursuant to Ordinance No. 97-12 (1997) (“A Bill for an Ordinance to Rezone Land Situated at Waipio, Ewa, Oahu, Hawaii Amending Portion of Zoning Map No. 9, Ordinance No. 86-111”), the City approved the rezoning of Increment 2 of the Royal Kunia Phase 2 Lands (the “*1997 Rezoning Ordinance*”), and required the recordation of that certain Unilateral Agreement and Declaration of Conditional Zoning, dated April 9, 1997, recorded in the Bureau as Document No. 97-047601, which imposes certain development conditions on Increment 1 of the Royal Kunia Phase 2 Lands (the “*1997 Unilateral Agreement*”).

D. At the time of the reclassification and the rezoning all of the Royal Kunia Phase 2 Lands were to be developed by HDC. However, since entry of the Amended Decision and Order, the 1995 Rezoning Ordinance and the 1997 Rezoning Ordinance, HDC only holds title and the accompanying development rights to 161 acres of the reclassified lands identified by Tax Map Key No. (1) 9-4-002: 071(the “*HDC Property*”).

E. Pursuant to Condition No. 6 of the Amended Decision and Order, Condition No. 3 of the 1995 Rezoning Ordinance, and Condition No. 4 of the 1997 Rezoning Ordinance, HDC agreed to contribute to the development, funding, and/or construction of school facilities on a pro rata basis as a result of the development on the Royal Kunia Phase 2 Lands, as determined by and to the satisfaction of the Department of Education. As a result of these conditions, HDC and

DOE negotiated a letter agreement dated September 26, 1996, a true and correct copy of which is attached hereto as Exhibit 1, which set forth the agreement between the parties as to the land and monetary contributions which would satisfy DOE requirements for the entirety of the Royal Kunia Phase 2 Lands which included, among other matters, (1) the dedication of approximately 12 acres of real property to DOE for a school site (the “*land dedication component*”) and (2) the agreement to make an incremental cash contribution in the total amount of \$500,000 in five (5) installments (the “*cash contribution component*”).

F. In 2002 HDC completed the subdivision necessary to create the 12-acre school site, being 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), identified by Tax Map Key No. (1) 9-4-002: 079 (the “*School Site*”) but DOE was unable to accept title to the School Site at that time due to the fact that the School Site was encumbered by several liens. Pursuant to the letter agreement date June 21, 2002, a true and correct copy of which is attached hereto as Exhibit 2, DOE agreed that the land dedication component of HDC’s fair-share contribution for school facilities could be satisfied by HDC transferring the School Site to RKES on behalf of DOE and that RKES would then assist in clearing in clearing title to, and constructing a school facility on, the School Site. This modified agreement was reconfirmed by DOE in a letter agreement dated December 19, 2002, a true and correct copy of which is attached hereto as Exhibit 3.

G. Pursuant to the letter agreements dated June 21, 2002 and December 19, 2002, HDC did transfer and convey an undivided 75.721% interest in the School Site to RKES by Deed dated January 7, 2003, recorded as Document No. 2003-002585. The remaining undivided 24.279% is held by HRT Ltd., a Hawaii corporation.

H. Pursuant to the agreements reached between HDC and HRT in that certain Bankruptcy Court Order re Sale of Real Property Free and Clear of Liens (the “*Order*”) filed in the Bankruptcy Case (as hereinafter defined) and the Purchase and Sale Agreement dated October ___, 2006 (the “*Purchase and Sale Agreement*”) entered into by HDC pursuant to which HDC will be purchasing the HDC Property from the Chapter 7 trustee appointed in the bankruptcy case (“*Trustee*”) pending in the United States Bankruptcy Court for the District of Hawaii entitled In re Halekua Development Corporation, Case No. 03-01279 (the “*Bankruptcy Case*”), HRT will transfer and convey to HDC the undivided 24.279% held by HRT in and to the School Site.

I. The parties hereto now wish to affirm and reconfirm that (1) the transfer of the remaining undivided 24.279% of the School Site currently held by HRT to RKES will satisfy the land dedication component of DOE’s fair share requirement under the Amended Decision and Order, (2) RKES shall use the School Site solely for purposes of an elementary school, and (3) the manner and method of payment by HDC of the cash contribution component of DOE’s fair share requirement in compliance with the terms set forth in the letter agreements, and (4) if RKES fails to construct an elementary school on the School Site pursuant to its separate agreement with DOE, that the cash contribution component of DOE’s fair share requirement shall be increased to compensate DOE for the cost of purchasing the School Site from RKES at a price equal to the costs incurred by RKES to clear title to the School Site, plus any other costs DOE may incur to clear title to the School Site.

NOW, THEREFORE, in consideration of the Recitals set forth above and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged the parties hereto covenant and agree as follows:

1. Transfer of Balance of Ownership Interest in School Site to RKES. Upon the closing of the acquisition of the HDC Property from the Trustee pursuant to the Order and Purchase and Sale Agreement, HDC will transfer and convey the remaining undivided 24.279% interest in to the School Site which is acquired from HRT to RKES. DOE hereby confirms that the transfer of the remaining undivided 24.279% of the School Site to RKES by HDC will satisfy the land dedication component of DOE's fair share requirement under the Amended Decision and Order. Upon confirmation of recordation of the deed transferring the remaining 24.279% interest in the School Site to RKES, DOE will provide HDC with a letter confirming satisfaction of the land dedication portion of the fair-share contribution condition set forth in Condition No. 6 of the Amended Decision and Order, Condition #3 of the 1995 Rezoning Ordinance, and Condition No. 4 of the 1997 Rezoning Ordinance.

2. School Site Free and Clear of Unacceptable Liens and Encumbrances. Pursuant to the closing of the acquisition of the HDC Property from the Trustee pursuant to the Order and Purchase and Sale Agreement, the unacceptable liens and encumbrances affecting the School Site will be removed and upon recordation of the deed from HDC of the remaining 24.279% interest in and to the School pursuant to paragraph 1 above, RKES shall own 100% of the School Site, free and clear of any liens or encumbrances unacceptable to DOE.

3. Schools Site Restricted to Use for Elementary School and Related Facilities. The parties hereto confirm that the transfer of the School Site to RKES shall be subject to the express and continuing restriction that the School Site may be occupied and used solely for purposes of an elementary school and related facilities to be operated by DOE and for no other purpose.

4. Construction of School and Related Facilities by RKES. DOE and RKES have or intend to enter into a separate agreement under the terms of which RKES shall design, develop and construct an elementary school and related facilities on the School Site in accordance with plans approved by DOE and in accordance with the terms of the separate agreement between DOE and RKES.

5. Dedication of School Site to DOE. If RKES designs, develops, and constructs an elementary school in accordance with terms of the separate agreement between DOE and RKES, then RKES shall dedicate and convey to DOE the School Site and all related facilities, improvements and equipment situated thereon, free and clear of monetary liens and encumbrances, at no cost to DOE as to the value of the land comprising the School Site, but subject to the payment by DOE to RKES of the agreed upon amounts as set forth in the separate agreement between DOE and RKES for the design, permitting and construction of the elementary school and related facilities.

6. Cash Contribution Component of Fair-Share Contribution. HDC and DOE reconfirm that HDC shall make an incremental cash contribution to DOE in the total sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) payable in five (5) installments of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) each

and which installments shall be due and payable upon the closing of (i) the 1,000th unit, (ii) the 1,250th unit, (iii) the 1,500th unit, (iv) the 1,750th unit, and (v) the last unit, constructed on the Royal Kunia Phase 2 Lands. An escalation factor shall be applied to the balance of the Cash Contribution that remains to be paid every thirty-six (36) months after the date of this signed agreement. 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 prior to the year the agreement is signed 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. Notwithstanding anything to the contrary in this paragraph 6, should any developer within the Royal Kunia Phase 2 Lands (other than HDC) construct and close on any number of units having the effect of causing the total number of closed units within the Royal Kunia Phase 2 Lands exceeding the number of residential units triggering the obligation to pay and remit a cash contribution installment hereunder, HDC shall not be in default for failing to make such installment payment then due, until and unless DOE has provided not less than sixty (60) days prior written notice to HDC that: (a) the applicable unit threshold has been exceeded, and (b) the installment is now due and payable to DOE.

7. Failure of RKES to Construct School Facilities; Failure of DOE and RKES to Enter into Agreement. If RKES fails to construct an elementary school and related facilities on the School Site pursuant to the separate agreement with DOE, or due to RKES and DOE failing to reach agreement on the terms of the separate agreement for the design and construction of the school, then, and in either such event, the cash contribution component, as described above for DOE's fair share requirement applicable to the Royal Kunia Phase 2 Lands, shall be increased to compensate DOE for the cost (if any) of purchasing the School Site from RKES at a price equal to the costs incurred by RKES to clear title to the School Site, plus any other costs DOE may incur to clear title to the School Site.

8. No Adverse Effect on RKES. The parties hereto agree that the terms and conditions contained in this Agreement relating to RKES merely confirm any existing rights and obligations of RKES and do not in any manner increase the obligations of RKES or adversely affect any rights which RKES currently has or holds in connection with the matters stated herein.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

10. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Hawaii.

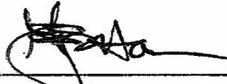
11. Counterparts. This Agreement may be executed in two or more counterparts, and shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of DOE, HDC and RKES, although it shall not be necessary that any single counterpart is signed by or on behalf of all parties. All such counterparts shall be deemed to constitute but one and the same instrument. Duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

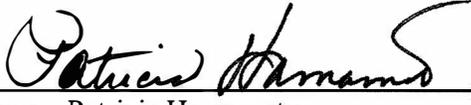
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

DOE:

STATE OF HAWAII, by and through its
Department of Education

Approved as to Form and Content:

By  _____
Deputy Attorney General

By  _____
Name: Patricia Hamamoto
Title: Superintendent

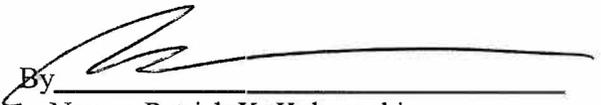
HDC:

HALEKUA DEVELOPMENT CORPORATION
a Hawaii corporation

By  _____
Name: Herbert K. Horita
Title: President

RKES:

RKES, LLC
a Hawaii limited liability company

By  _____
Name: Patrick K. Kobayashi
Title: Manager *PKA* *3/06/07*



Halekua Development Corporation

2024 N. Moku Dr. • Honolulu, Hawaii 96819 • Telephone (808) 526-4241 • Telecopier (808) 526-7244

September 26, 1996

Mr. Lester Chuck
Facilities and Support Service Branch
Department of Education
State of Hawaii
809 8th Avenue
Honolulu, Hawaii 96815

Re: Agreement with Department of Education

Dear Lester:

This letter is being sent to acknowledge our mutual agreement on the contributions that will be required to satisfy all of the Department of Education's requirements for the entire Royal Kunia Phase II project.

We are in agreement on the following terms:

- Halekua will dedicate 12 acres of land within the Royal Kunia Phase II project to the DOE;
- Halekua will make an incremental cash contribution in the total sum of \$500,000, payable in five equal installments and due at the closing of the 1,000th unit, the 1,250th unit, the 1,500th unit, the 1,750th unit, and the last unit of the project.
- An escalation factor will be applied to the balance of the cash contribution that remains to be paid after the 1,400th unit is closed, based on the change in the Consumer Price Index for Honolulu beginning with the 1,401st unit.
- The above terms will satisfy the DOE requirements for the Royal Kunia Phase II project, and DOE will notify the City that the developer and the DOE have agreed upon terms.

Our attorney, Jan Sullivan, is in the process of drafting a formal agreement that will be forwarded to your office for review and approval by the Attorney General's office.

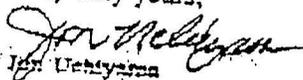
Please counter-sign this letter to acknowledge acceptance of the above mentioned terms and conditions as agreed to between the DOE and Halekua.

Halekua Development Corporation

Mr. Lester Chuck
September 26, 1996
Page 2

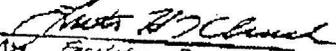
Thank you for your time and attention to this matter.
If you have any questions please call me at 848-2272.

Very truly yours,


Jan Uchiyama

ACKNOWLEDGED AND AGREED:

STATE OF HAWAII
Department of Education

By 
Peter H. O'Connell
Facilities Director

J-961031

BENJAMIN J. CAYLOR
GOVERNOR



PATRICIA HAMANOTO
DEPUTY SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2380
HONOLULU, HAWAII 96810

OFFICE OF THE SUPERINTENDENT

June 21, 2002

Mr. Herbert K. Horita
Halekua Development Corporation
2024 North King Street
Honolulu, Hawaii 96819

Dear Mr. Horita:

Subject: Royal Kunia Elementary School – Transfer of Land

The Department of Education (DOE) understands that final subdivision approval has been granted for the Royal Kunia Apartment Subdivision, TMK No. (1) 9-4-002-071, located at Hoaeae and Waikole, District of Ewa, City and County of Honolulu, State of Hawaii. We further understand that Halekua Development Corporation (Halekua) is prepared to transfer the 12-acre parcel designated as Lot 3 of the subdivision, to DOE pursuant to the fair-share condition set forth in the Unilateral Agreement and Declaration for Conditional Zoning dated March 6, 1995 and the Unilateral Agreement and Declaration for Conditional Zoning dated April 9, 1997 (collectively, the "Declaration"), and the September 26, 1996 letter of agreement between DOE and Halekua (see enclosure). The agreement specifies that Halekua will dedicate 12 acres plus make incremental cash contributions totaling \$500,000.

DOE is unable to accept title to the site due to the fact that it is subject to several liens and encumbrances.

As an alternative, Royal Kunia School, LLC (RKS), a Hawaii limited liability company, has agreed to accept title to the 12-acre site on behalf of DOE and to assist in clearing title and constructing a school on the site. RKS has agreed that the site will be used solely for the purpose of constructing the school.

This letter will confirm that if the site is transferred to RKS and title to the site is cleared of the existing liens and encumbrances, the land dedication component of DOE's fair-share requirement will be deemed satisfied. At that point, DOE will issue a letter to Halekua confirming satisfaction of the condition.

Mr. Herbert K. Horita
Page 2
June 21, 2002

Note that the cash contribution component of DOE's fair-share requirement will still need to be satisfied per the terms set forth in the September 26, 1996 letter of agreement.

If RKS does not develop a school on the site, DOE intends to purchase the site from RKS at a cost equal to the costs incurred by RKS to clear title. In this event, the cash portion of your fair-share contribution will be increased to compensate DOE for the cost of purchasing the site and any other costs incurred to clear title to the site. Note that the cash contribution is not an upfront payment, but rather a per-unit or incremental payment paid out of esorow as units in Royal Kunia Phase II close.

We request your concurrence on the provisions set forth above. Should you concur, please indicate by signing below and returning this letter to our office.

We further request that the 12-acre site be transferred to RKS as quickly as possible so that we may commence with the development of this much needed elementary school.

If you have any questions, please call Mr. Sanford Beppu of the Facilities and Support Services Branch at 733-4862.

Thank you.

Very truly yours,



Patricia Hamamoto
Superintendent

PH:hy

Enclosure

cc: A. Suga, OBS

I, Herbert K. Horita, concur with the provisions set forth in this letter.

Concur/Do Not Concur (Circle One)



Date: 11/

Cinda Lingle
GOVERNOR

PATRICK
SUTHERLAND



RECEIVED THE BRANCH
DEC 21 11 00 AM '02

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2260
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

December 19, 2002

Mr. Herbert K. Horita
Halekua Development Corporation
2024 North King Street
Honolulu, Hawaii 96819

Dear Mr. Horita:

Subject: Royal Kunia Elementary School - Transfer of Land

The Department of Education (DOE) understands that Halekua Development Corporation (Halekua) is prepared to transfer the 12-acre Royal Kunia Elementary School site pursuant to the fair-share condition set forth in the Unilateral Agreement and Declaration for Conditional Zoning dated March 6, 1995 and the Unilateral Agreement and Declaration for Conditional Zoning dated April 9, 1997.

The transfer is also pursuant to the September 26, 1996 letter of agreement between DOE and Halekua (see enclosure). The agreement specifies that Halekua will dedicate 12 acres plus make incremental cash contributions totaling \$500,000.

The DOE is unable to accept title to the site due to the fact that it is subject to several liens and encumbrances. As an alternative, RKES, LLC has agreed to accept title to the 12-acre site on behalf of the DOE and to assist in clearing title and constructing a school on the site. RKES, LLC has agreed that the site will be used solely for the purpose of constructing the school.

This letter will confirm that if the site is transferred to RKES, LLC and title to the site is cleared of the existing liens and encumbrances, the land dedication component of DOE's fair-share requirement will be deemed satisfied. At that point, DOE will issue a letter to Halekua confirming satisfaction of the land portion of the condition.

Note that the cash contribution component of DOE's fair-share requirement will still need to be satisfied per the terms set forth in the September 26, 1996 letter of agreement.

Mr. Herbert K. Horita
Page 2
December 19, 2002

If RKES, LLC does not develop a school on the site, Halekua's land dedication requirement will remain unsatisfied until the property is dedicated at no cost to the State of Hawai'i.

We request your concurrence on the provisions set forth above. Should you concur, please indicate by signing below.

This letter of concurrence may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together will constitute but one and the same document.

If you have any questions, please call Mr. Sanford Beppu of the Facilities and Support Services Branch at 733-4862.

Thank you.

Very truly yours,



Patricia Hamamoto
Superintendent

PH:hy

Enclosure

cc: A. Suga, OBS

I, Herbert K. Horita, concur with the provisions set forth in this letter.

Concur Do Not Concur (Circle One)



Date: 12/20/02