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STATE OF HAWAII  
LAND USE COMMISSION

Attorneys for Halekua Development Corporation

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A76-418
	)	
of	)	MOTION OF HALEKUA DEVELOPMENT
	)	CORPORATION REQUESTING LAND USE
HALEKUA DEVELOPMENT	)	COMMISSION APPROVAL OF TRANSFER
CORPORATION, a Hawaii corporation	)	OF OWNERSHIP OF HDC PROPERTY;
	)	CERTIFICATE OF SERVICE
To Amend the Agricultural Land Use District	)	
Boundary into the Urban Land Use District	)	
for Approximately 503.886 Acres of Land	)	
Situated at Waikele and Hoaeae, Ewa, Island	)	
of Oahu, City and County of Honolulu, State	)	
of Hawaii, TMK: 9-4-02: por of 1 and portion	)	
of 52	)	

MOTION OF  
HALEKUA DEVELOPMENT CORPORATION REQUESTING LAND USE  
COMMISSION APPROVAL OF TRANSFER OF OWNERSHIP OF PROPERTY

HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation (“*HDC*”) in compliance with condition number 21 imposed by the Land Use Commission of the State of Hawaii (the “*Commission*”) pursuant to the 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*”), as amended and restated by Amended Findings of Fact, Conclusions of Law and Decision and Order dated October 1, 1996, Docket No. A92-683 of the Land Use Commission of the State of Hawaii (the Original Decision and Order as amended by this document is herein called the “*Amended Decision and Order*”), in connection with the reclassification from Agricultural to Urban of approximately 503.886 acres located at Waikele and Hoaeae, Ewa, Island of Oahu, City and County of Honolulu, State of Hawaii (the “*Royal Kunia Phase 2 Property*”) does hereby request the approval of the Commission to the transfer of ownership of a portion of the Royal Kunia Phase 2 Property known as the HDC Property (as described below) to HALEKUA-KUNIA, LLC, a Delaware limited liability company, authorized to do business in the State of Hawaii.

MOTION TO APPROVE TRANSFER OF OWNERSHIP OF THE HDC PROPERTY

## BACKGROUND FOR REQUEST

As reported to the Commission in that certain Interim Status Report filed on February 20, 2007, HDC only retains title and the accompanying property rights to approximately 161 acres encompassed by Parcels 2, 3 and 4 (the "**HDC Property**") on April 25, 2003 as the Commission was preparing to hold its hearing on that certain Order to Show Cause issued by the Commission on February 26, 2003. HDC filed a bankruptcy petition with U.S. Bankruptcy Court of the District of Hawaii and pursuant to the automatic stay under federal bankruptcy laws the hearing on the Order to Show Cause was suspended indefinitely. The HDC Property has remained within the jurisdiction of the federal bankruptcy court since that time. However, pursuant to the Bankruptcy Court Order re Sale of Real Property Free and Clear of Liens filed in the Bankruptcy Case (as hereinafter defined) filed on October 2, 2006, and the Purchase and Sale Agreement entered into pursuant thereto, HDC will be redeeming (reacquiring) 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 HDC Development Corporation, Case No. 03-01279 (the "**Bankruptcy Case**"). Closing of the reacquisition of the HDC Property is scheduled for February 28, 2007 with no extension of the closing date being feasible as it is under auspices of the U.S. Bankruptcy Court.

The redemption of the HDC Property so that it can be removed from the Bankruptcy Case is being financed by CMR Mortgage Fund LLC, and its affiliated and participating lenders (the "**Lending Group**"), under that certain Amended and Restated Commitment Letter and Related Loan Documents dated as of February 15, 2007. Pursuant to the Amended and Restated Commitment Letter and Related Loan Documents, a loan in the principal amount of \$100.0 million will be made to HDC to fund the payment of all amounts to be paid pursuant to the terms of the Purchase and Sale Agreement approved in the Bankruptcy Case which payments, among others, will enable HDC to complete the transfer of the School Site as contemplated in the Amended Decision and Order, to proceed with the planning and design of the off-site infrastructure for the state agricultural park, and to move forward with planning and design work for the Royal Kunia Phase II residential subdivision which will lead to the future satisfaction of other outstanding conditions as set forth in the Amended Decision and Order. In this regard, please be advised that the Lender providing the financing to HDC to redeem the HDC Property from the Trustee and take the HDC Property out of bankruptcy has established a predevelopment reserve in the amount of \$3.6 million under the Loan for the purpose of funding certain planning, design and associated work intended to address and move forward the satisfaction of the conditions under the Amended Decision and Order and the Rezoning Ordinances with the City and County of Honolulu to the point of being able to apply for initial building permits. HDC reasonably believes that this predevelopment reserve within the loan account is sufficient for these purposes.

However, one of the other conditions imposed by the Lending Group in connection with its provision of the financing required to allow HDC to redeem the HDC Property from the Trustee and to fund certain predevelopment expenses as set forth above have is that HDC transfer the HDC Property to a special purpose, bankruptcy remote entity which will be owned 100% by HDC.

Condition No. 21 of the Amended and Restated Decision and Order provides in pertinent part as follows:

*"21. In reliance upon Petitioner's representation that it will develop the Project on his own and in its entirety, the Petitioner shall obtain the prior approval from*

## MOTION TO APPROVE TRANSFER OF OWNERSHIP OF THE HDC PROPERTY

*the Land Use Commission before it can sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property or Project covered by the approved Petition.*

*Petitioner shall request the prior approval from the Land Use Commission to alter the ownership interest in the Property or Project by filing a motion to request approval to alter ownership interest and supporting affidavits that will provide relevant information, including without limitation (1) the name(s) and address(es) of the prospective owner(s) or real party(ies) in interest; (2) the reason for the alteration of ownership interest; (3) any information related to any proposed change in the representations made by Petitioner to the Commission and in its Petition filed pursuant to section 15-15-50, Hawai'i Administrative Rules, including without limitation any information pertaining to the financial capabilities of the prospective owner(s) to proceed with the Project as set forth in section 15-15-50(8); and, (4) a written acknowledgement and affirmation of the prospective owner(s) that the prospective owner(s) shall comply with all of the conditions in this Order."*

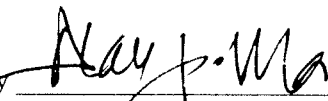
In conformity with Condition #21 HDC hereby requests approval of the Commission for the transfer of the HDC Property to this special purpose, bankruptcy remote entity to be called HALEKUA-KUNIA, LLC, a Delaware limited liability company, authorized to do business in the State of Hawaii, in accordance with the requirements set forth in the in the Loan Agreement to be entered into by HDC and the Lending Group in connection with the redemption of the HDC Property from the Trustee as set forth above.

HDC will file with the Commission a recorded copy of the deed transferring the HDC Property to HALEKUA-KUNIA, LLC within ten (10) business days after the recordation of that deed in the Bureau of Conveyances of the State of Hawaii.

Dated: February 20, 2007.

Respectfully submitted,

STUBENBERG & DURRETT LLP

By   
Alan J. Ma

Attorneys for HDC Development Corporation

MOTION TO APPROVE TRANSFER OF OWNERSHIP OF THE HDC PROPERTY

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served on the following parties via U.S. mail, First Class postage prepaid and e-mail, unless otherwise indicated:

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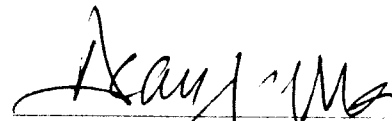
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DATED: Honolulu, Hawaii, February 20, 2007.

  
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