

9558

Of Counsel
LAW OFFICES OF
REUBEN S. F. WONG

RECEIVED
FEB 22 2007
STATE OF HAWAII
LAND USE COMMISSION

REUBEN S. F. WONG 638-0
DELWYN H.W. WONG 7170-0
Suite 1006, Finance Factors Center
1164 Bishop Street
Honolulu, Hawaii 96813
Telephone No. 531-3526

Attorneys for HRT, LTD.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT)	
CORPORATION, a Hawaii)	MEMORANDUM IN OPPOSITION TO
corporation)	THE RECLASSIFICATION OF THE
)	PETITION AREA; EXHIBITS "A" - "B";
)	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)	
Ho'ae'ae, Ewa, Island of Oahu, City and)	
County of Honolulu, State of Hawaii,)	
Tax Map Key No: 9-4-02: por of 1 and)	
portion of 52)	
)	
)	

MEMORANDUM IN OPPOSITION TO
THE RECLASSIFICATION OF THE PETITION AREA

COMES NOW, HRT Realty, LLC, a party in interest, through its attorney Delwyn H.W. Wong, of the Law Offices of Reuben S.F. Wong and hereby submits its

Memorandum in Opposition To The Reclassification Of The Petition Area. HRT Realty, LLC (hereinafter referred to as "HRT") is a State of Maryland limited liability company and is the successor by merger to HRT Ltd. as of January 1, 2007.

1. Background Regarding Order to Show Cause.

On or about February 23, 2004, this Commission issued an Order to Show Cause against the Petitioner Halekua Development Corporation, ("HDC") directing the Petitioner to show cause why the petitioned area should not be reclassified to agriculture, because, among other things, HDC failed to convey 150 acres of land to the State of Hawaii, Department of Agriculture, for an Agricultural Park. However prior to that, in 1995, HDC had already sold 123 acres of Industrial Park land and about 13 acres of Apartment Zoned land to HRT and its related entity 300 Corporation for \$20 million. In order to avoid a reclassification of the entire petitioned area, HRT Realty, LLC, a division of The Harry and Jeanette Weinberg Foundation, Incorporated, paid \$5 million to the Robinson Trust who then owned 150 acres of land in order that the land could be conveyed to the State of Hawaii, Department of Agriculture, a copy of the Deed conveying the land is attached hereto as Exhibit "A".

Since the filing of the Order to Show Cause, HDC filed for bankruptcy, and the entire project has been stayed because of that proceeding. However, HRT obtained permission of the Bankruptcy Court to allow HRT to advance the \$5.0 million necessary to buy the Robinson Trust land for conveyance to the State of Hawaii. Upon the Bankruptcy Court's approval, the conveyance was made. Based upon the conveyance of

the Agricultural Park, HRT believes that a reclassification of the remaining petition area is unwarranted.

2. Development of the Project.

It appears that, at long last, many of the significant hurdles which impeded development of the project are about to be resolved in the Bankruptcy Court. In particular, the Bankruptcy Court recently ordered an auction of HDC's interest in the remaining petition area. At that auction there were two (2) bidders, Stanford Carr Development and HDC. The highest bidder was HDC with a winning bid of \$50.2 million. Closing is scheduled to occur on February 28, 2007. The Closing will have a positive impact on the development of the Project for the following reasons:

a. The Bankruptcy Court now has made clear through its Order that the 161 acres of land now held by HDC will be conveyed by the Trustee in Bankruptcy to the successful buyer free and clear of all liens and encumbrances.

b. All of the mortgages and secured claims totaling approximately \$48 million will be paid off if the contemplated sale is approved and the closing takes place. After paying the secured creditors, there will be approximately \$2 million in additional funds available for unsecured creditors and the costs and expenses of the Bankruptcy Court administration.

c. As part of a settlement agreement reached in the Bankruptcy Court proceedings, HRT has required that the successful bidder furnish a Performance Bond of \$10 million to ensure the Buyer's performance of certain infrastructure obligations which

are necessary for the development of the petition area, including for example, the construction of the major parkway road. See unexecuted Settlement Agreement between HRT and the Bankruptcy Trustee, James E. Nicholson, which has been submitted to the Bankruptcy Court, and is being circulated for signatures. Referenced in said Settlement Agreement is an Agreement Re Infrastructure which is also being circulated for signatures. The forms of both documents are attached hereto as Exhibit "B".

d. As part of a settlement agreement reached in the Bankruptcy Court proceedings, the successful bidder shall comply with all LUC conditions, including the affordable housing requirement and the construction of a school.

e. While there was initially some skepticism among the secured parties whether HDC should be allowed to bid at the auction, such concerns were allayed to the satisfaction of the Bankruptcy Court when HDC, through its Lender, deposited \$1 million in cash to qualify as a bidder.

f. Pursuant to the closing requirements established in the Bankruptcy Court, HDC, through its lender, has paid \$135,000 each time that it has requested an extension of the closing deadline. As referenced earlier, the final deadline to close is scheduled for February 28, 2007. The Bankruptcy Court has not approved any further extension in the closing date.

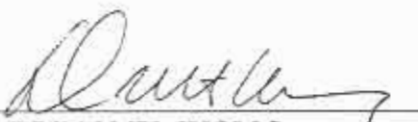
g. HDC's mortgage lender has indicated through a binding loan commitment agreement, which has been approved by the Bankruptcy Court, that it will

finance both the purchase of the land, and the development of the Project, including the required infrastructure.

3. Conclusion. In conclusion, HRT hereby opposes the reclassification of the petition area to its former agricultural land use classification.

Dated: Honolulu, Hawaii, February 22, 2007

Respectfully submitted



DELWYN H.W. WONG
Attorney for HRT Realty, LLC

NO



R-1073

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
FEB 27, 2004 09:30 AM

Doc No(s) 2004-040601



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$1.00

20 4/4 22

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL () PICK-UP (x)

MR REUBEN S. F. WONG
LAW OFFICES OF REUBEN S. F. WONG
220 S KING ST, STE 2288
HONOLULU, HI 96813

TG: 200324574-5
TGE: A3-101-2163
GLEN Y. AJIMINE

RS4

Total No. of Pages 12

LOD No.
7099

Tax Map Key No. ()

WARRANTY DEED WITH REVERSION

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the 23rd day of February, 2004,
HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation, whose address is 2024
North King Street, Suite 209, Honolulu, Hawaii 96819, hereinafter referred to as the "Grantor,"
for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), paid by the
STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151
Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Grantee," the receipt
whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee,
the Grantee's successors and assigns, that certain parcel of land situate at Kunia, Ewa, City and

EXHIBIT "A"

County of Honolulu, State of Hawaii, designated as "Lot A," containing an area of 150 00 acres, more particularly described in Exhibit "A" attached hereto and made a part hereof.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anywise appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances except as noted in said Exhibit "A".

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described land and premises, that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted in said Exhibit "A", and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND, the Grantee covenants that this purchase/gift of real property has had prior approval by the Attorney General pursuant to section 26-7 and section 107-10, Hawaii Revised Statutes as to legality and form, exceptions, and reservations.

The Property is hereby conveyed subject to the restriction that said Property shall only be used as an agricultural park or for the current or similar agricultural purposes, including diversified agriculture. In the event such Property is no longer used as an agricultural park or for the current or similar agricultural purposes, including diversified agriculture, said Property shall revert to the "Robinson Owners" in accordance with the respective interests as shown in Exhibit

"B" attached hereto and made a part hereof, provided, however, the restriction contained in this paragraph is not intended to apply and shall not apply because the Property, or any portion thereof, lies vacant or fallow. This restriction may only be removed by the "Robinson Owners" holding not less than 75% interest in the Property prior to this Conveyance consenting in writing to the removal of this restriction. For the purposes of this paragraph, the "Robinson Owners" and their respective interests in the Property are shown in Exhibit "B" attached hereto and made a part hereof. Such consent by the "Robinson Owners" may be withheld in the absolute discretion of the "Robinson Owners" and they may require the payment of monies for such consent.

The parties hereto agree that this instrument may be executed in counterparts and the separate signature pages taken together shall have the same effect as if all parties had executed this instrument at the same time and place.

IN WITNESS WHEREOF, HALEKUA DEVELOPMENT CORPORATION, the Grantor herein, has caused these presents to be executed this 19th day of FEBRUARY, 2004 and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this 20th day of February, 2004, both effective as of the day, month, and year first above written.

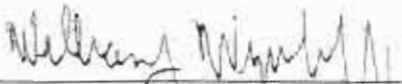
HALEKUA DEVELOPMENT CORPORATION,
a Hawaii corporation

Approved by the Board of
Land and Natural Resources
at its meeting(s) held on
8/22/03, Item D-22

By [Signature]
Its President

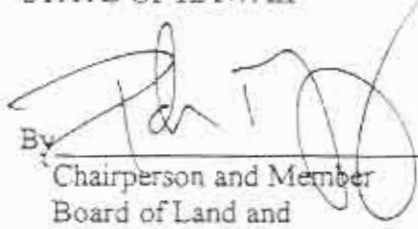
GRANTOR

APPROVED AS TO LEGALITY
AND FORM:


Deputy Attorney General

Dated: 2/19/04

STATE OF HAWAII


By _____
Chairperson and Member
Board of Land and
Natural Resources

em

GRANTEE

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS.

On this 19th day of February, 2004, before me appeared Herbert K. Horita, to me personally known, who, being by me duly sworn, did say that he is the President of HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation, and that the instrument was signed in behalf of the corporation by authority of its Board of Directors, and Herbert K. Horita acknowledged said instrument to be the free act and deed of the corporation.

W.S.

Joy K. Ihori
Notary Public, State of Hawaii

Joy K. Ihori
Print or type name of Notary

My commission expires: 7-8-05

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

On this 22nd day of February, 2004, before me personally appeared Peter T. Yang, to me personally known, who, being by me duly sworn, did say that he is the Director of the Department of Land & Natural Resources of the State of Hawaii, that the seal affixed to the foregoing instrument is the seal of the Department of Land & Natural Resources, and that the instrument was signed and sealed in behalf of the State of Hawaii and said Peter T. Yang acknowledged said instrument to be the free act and deed of the State of Hawaii

L.S.

Jade K. Kamai
Notary Public, State of Hawaii

Jade K. Kamai
Print or type Name of Notary

My commission expires: 3/10/07

Exhibit "A"

LOT A

Being portions of Royal Patent 4490,
Land Commission Award 10474,
Apana 9 to N. Namauu and Royal Patent 4486,
Apana 1, Mahele Award 4 to Luluhiwalani

Situated at Hoaeae and Waikele, Ewa, Oahu, Oahu, Hawaii

Beginning at the Southwest corner of this parcel of land, on the easterly side of Kunia Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "EWA CHURCH" being 6,396.95 feet North and 21,616.60 feet West, thence running by azimuths measured clockwise from True South.

1. 156° 16' 30" 1,528.99 feet along the easterly side of Kunia Road;
2. 235° 58' 37" 3,512.17 feet along the remainder of R. P. 4490, L. C. Aw. 10474, Apana 9 to N. Namauu;
3. 324° 44' 1,374.79 feet along the remainders of R. P. 4490, L. C. Aw. 10474, Apana 9 to N. Namauu and R. P. 4486, Apana 1, M. Aw. 4 to Luluhiwalani;
4. 54° 44' 19.35 feet along the remainder of R. P. 4486, Apana 1, M. Aw. 4 to Luluhiwalani;
5. 7° 16' 780.37 feet along the remainders of R. P. 4486, Apana 1, M. Aw. 4 to Luluhiwalani and R. P. 4490, L. C. Aw. 10474, Apana 9 to N. Namauu;
6. 52° 16' 566.11 feet along the remainder of R. P. 4490, L. C. Aw. 10474, Apana 9 to N. Namauu;

7. 66' 16' 30" 2,760.61 feet along the remainder of R. P. 4490, L. C. Aw. 10474, Apana 9 to N. Namaau to the point of beginning and containing an area of 150.000 acres, more or less.

BEING THE PREMISES CONVEYED BY WARRANTY DEED WITH REVERSION

GRANTOR : HRT, LTD., a Maryland corporation
GRANTEE : HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation
DATED : FEBRUARY 24, 2004
RECORDED : Document No. 2004-040600

SUBJECT HOWEVER, TO THE FOLLOWING:

1. Possible rollback or retroactive property taxes.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION

DATED : August 19, 1985
RECORDED : Liber 20142 Page 338

4. -AS TO THE PORTION HATCHED ON THE MAP ATTACHED HERETO.-

(A) GRANT

TO : HAWAIIAN ELECTRIC COMPANY, INC.

DATED : September 10, 1956
RECORDED : Liber 3381 Page 336
GRANTING : a right-of-way (25 feet wide) for powerline purposes

(B) Perpetual easements for electric transmission purposes in favor of HAWAIIAN ELECTRIC COMPANY, INC. acquired by Final Order of Condemnation dated August 9, 1979, filed in the Circuit Court of the First Circuit, Civil No. 50192, on September 4, 1979, recorded in Liber 13973 at Page 297, described as follows:

PART "A" - Portions of R. P. 4490, L. C. Aw. 10474, Ap. 9 to N. Namauu and R. P. 4486, Ap. 1, Mahele Award 4 to Luluhiwalani, the easement area described as follows:

Beginning at the southwest end of this easement on the northeast side of Kunia Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIPIO-UKA" being 12,623.35 feet south and 12,267.44 feet west and thence running by azimuths measured clockwise from true South:

1. 156° 15' 53" 101.64 feet along the northeast side of Kunia Road;
2. 235° 58' 6,612.43 feet along the remainder of R. P. 4490, L. C. Aw. 10474, Ap. 9 to N. Namauu and R. P. 4486, Ap. 1, Mahele Award 4 to Luluhiwalani;

Thence along the remainder of R. P. 4486, Ap. 1, Mahele Award 4 to Luluhiwalani on a curve to the right with a radius of 100.00 feet (on an azimuth of 85° 57' 56" from the radius point), the chord azimuth and distance being
3. 239° 01' 55" 178.31 feet;
4. 242° 05' 50" 344.53 feet along the remainder of R. P. 4486, Ap. 1, Mahele Award 4 to Luluhiwalani;
5. 249° 08' 177.48 feet along same to the south side of Old Railroad Right of Way;

Thence along the south side of Old Railroad Right of Way on a curve to the right with a radius of 1,501.40 feet, the chord azimuth and distance being
6. 313° 5' 59" 69.90 feet;

Thence along the south side of Old Railroad Right of Way on a curve to the right with a radius of 1,366.49 feet, the chord azimuth and distance being
7. 315° 31' 27.5" 12.29 feet;
8. 62° 05' 50" 545.96 feet along the remainder of R. P. 4486, Ap. 1, Mahele Award 4 to Luluhiwalani;

Thence along same on a curve to the right with a radius of 100.00 feet (on an azimuth of 272° 05' 56" from the radius of point), the chord azimuth and distance being

9. 59° 01' 55" 167.61 feet;
10. 55° 58' 6,630.60 feet along the remainder of R. P. 4486, Ap. 1, Mahele Award 4 to Luluhiwalani and R. P. 4490, L. C. Aw. 10474, Ap. 9 to N. Namaau to the point of beginning and containing an area of 742,870 square feet, more or less.

(C) Easement "14" (60 feet wide) for road and utility purposes as shown on survey map prepared by Roy T. Yama, dated June 21, 1985.

(D) Ditch as shown on Tax Map.

(E) DESIGNATION OF EASEMENT "11" (60 feet wide)

PURPOSE : road
SHOWN : on File Plan No. 2154

(F) DESIGNATION OF EASEMENT "14" (60 feet wide)

PURPOSE : road and utility
SHOWN : on File Plan No. 2154

5. -AS TO THE PORTION CROSS-HATCHED ON THE MAP ATTACHED HERETO:-

A 22 foot roadway setback line along Kunia Road, as shown on File Plan No. 2154.

6. Claims arising out of rights customarily and traditionally exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
8. Unrecorded license agreement in favor of Waikele Farms, Inc. dated May 20, 2003 and matters arising from or affecting the same.

9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : WARRANTY DEED WITH REVERSION

DATED : _____, 2004

RECORDED : Document No. 2004-_____

The foregoing includes, but is not limited to, matters relating to right of reversion and agricultural park.

EXHIBIT "B"

The undivided interests of the respective Grantors are as follows:

CAROLINE J. ROBINSON LLC, a Hawaii limited liability company -- an undivided .375261133 interest;

J. L. P. ROBINSON LLC, a Hawaii limited liability company -- an undivided .276563067 interest;

ALLAN ZAWTOCKI, WILLIAM RHETT TABER and WILLIAM W. PATY, Trustees under the Will and of the Estate of Mark Alexander Robinson, Deceased -- an undivided .292404933 interest;

ALLAN ZAWTOCKI, WILLIAM RHETT TABER and WILLIAM W. PATY, Trustees under that certain Deed of Trust executed by Mark Alexander Robinson and Mary Kapuahaulani Hart Robinson dated July 30, 1953 -- an undivided .035176867 interest;

WENDY BRANDT JOHNSON, as Trustee of that certain unrecorded Wendy Brandt Johnson Declaration of Trust dated December 16, 1987, a short form of which having been recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21484 at Page 769 -- an undivided .000119333 interest;

SUSAN BRANDT, as Trustee of that certain unrecorded Susan Brandt Declaration of Trust dated December 16, 1987, a short form of which having been recorded in said Bureau in Liber 21484 at Page 741 -- an undivided .000119333 interest;

REX BRANDT, as Trustee of that certain unrecorded Rex Brandt Declaration of Trust dated December 16, 1987, a short form of which having been recorded in said Bureau in Liber 21484 at Page 756 -- an undivided .000119333 interest;

DAVID NEVILLE ROBINSON, unmarried -- an undivided .000119333 interest;

NANCY ANN ROBINSON, unmarried -- an undivided .000119333 interest;

MICHAEL ANDREW ROBINSON, unmarried -- an undivided .000119333 interest; and

BANK OF HAWAII, a Hawaii corporation, as Trustee under that certain unrecorded Trust Agreement No. 90-01892 -- an undivided .019878002 interest.

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 REALTY, LLC**, a Maryland limited liability company ("**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) On January 1, 2007, HRT, LTD., a Maryland corporation, merged with and into HRT, and HRT received all property rights of HRT, LTD and all claims against HDC previously held by HRT, LTD. 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.

EXHIBIT "B"

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, LTD. 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 limited liability company duly organized, validly existing, and in good standing under the laws of the State of Maryland.

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 Waialae 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.
1164 Bishop Street, Suite 1006
Honolulu, Hawaii 96813

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

Jeffrey 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 REALTY, LLC, a Maryland limited
liability company

AW By *AW*
ALVIN AWAYA
Its: *President*

Attachments:

Exhibit A HDC/HRT Agreements

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.

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.

AGREEMENT RE INFRASTRUCTURE

THIS AGREEMENT RE INFRASTRUCTURE ("**Agreement**") is made as of _____, 2006 between _____, a _____ ("**Owner**"), and HRT REALTY, LLC, a Maryland limited liability company.

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 is the successor in interest to HRT, LTD., a Maryland Corporation. On January 1, 2007, HRT, LTD., a Maryland corporation, merged with and into HRT and HRT received all rights and all real property interests previously owned by of HRT, LTD.:

(c) 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**").

(d) 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**".

(e) 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**").

(f) 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.

EXHIBIT 4.2(c)

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

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

"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 Realty, LLC
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 REALTY, LLC, a Maryland
limited liability company

_____, a

RMV. By *[Signature]*
Its *President*

By _____
Its _____

HRT

Owner

Attachments:

- Exhibit A Phase II Map
- Exhibit 7.3 Bond
- Exhibit 11 Halekua Agreement

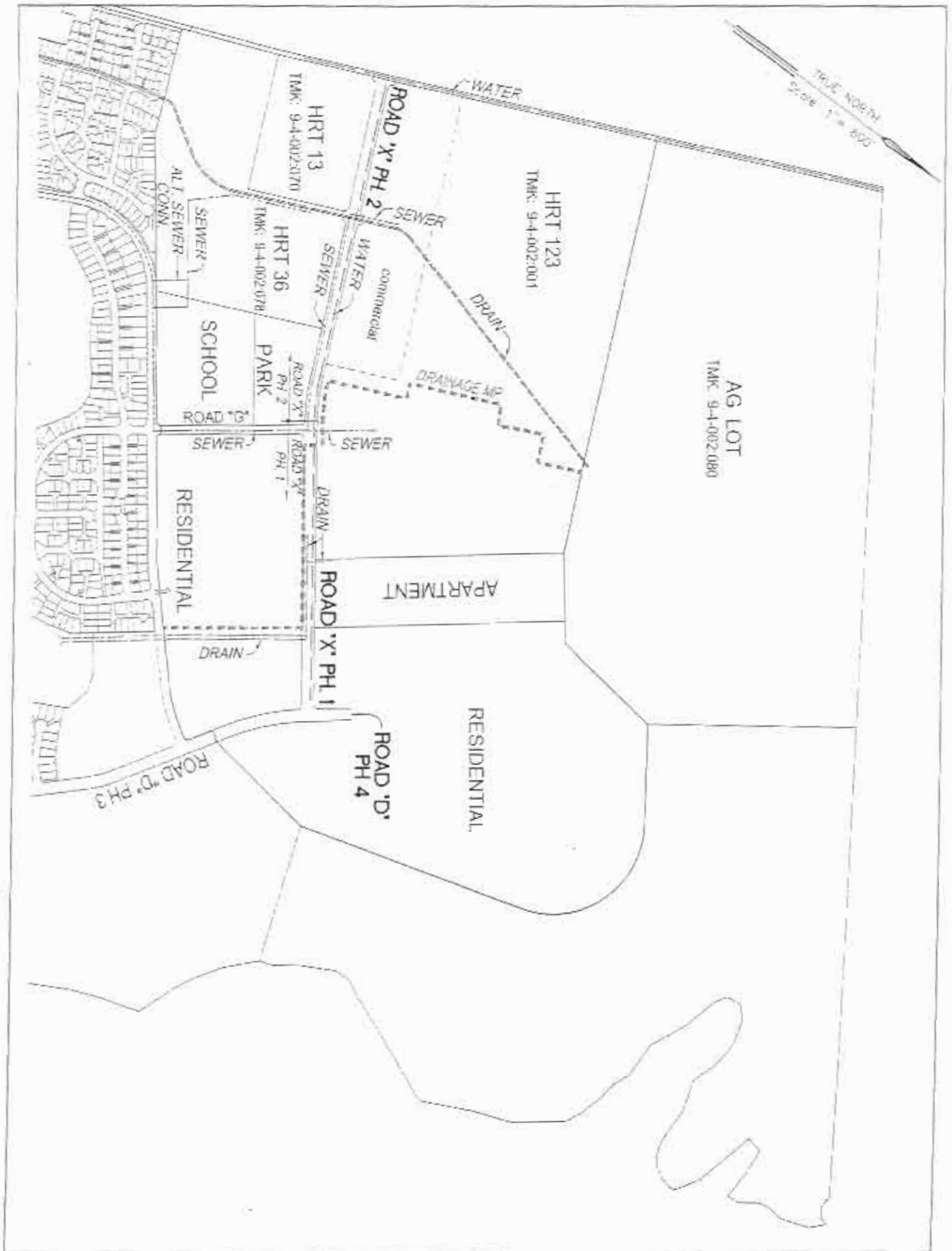
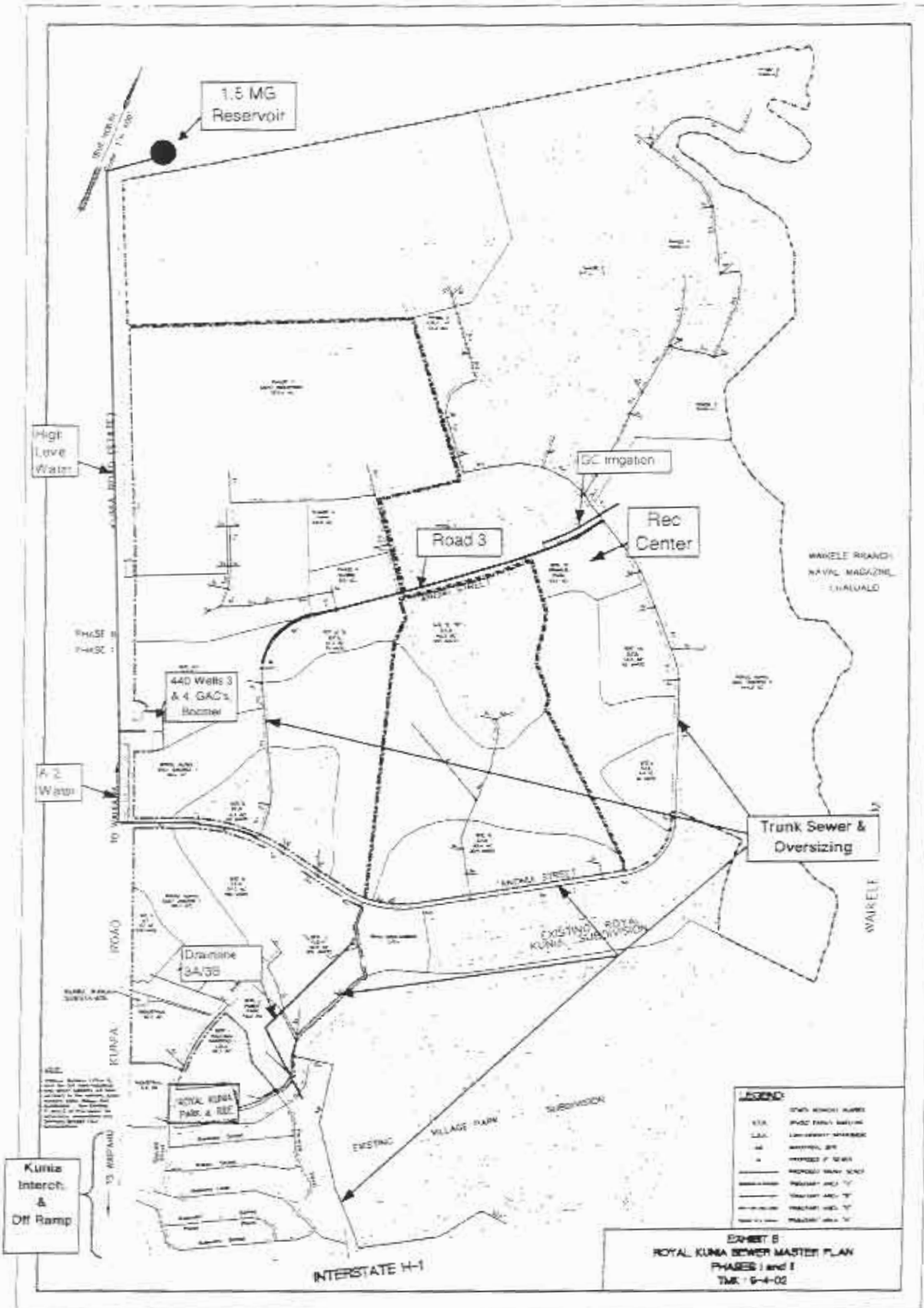


EXHIBIT "A"



1.5 MG Reservoir

High Leve Water

GC Irrigation

Road 3

Rec Center

WAIKALEI
NAVAL MAGAZINE
LUALUALO

440 Wells & 4 GAC's Roomer

Road 2

Trunk Sewer & Oversizing

Drainage 3A/3B

ROYAL KUNA Park & Rec

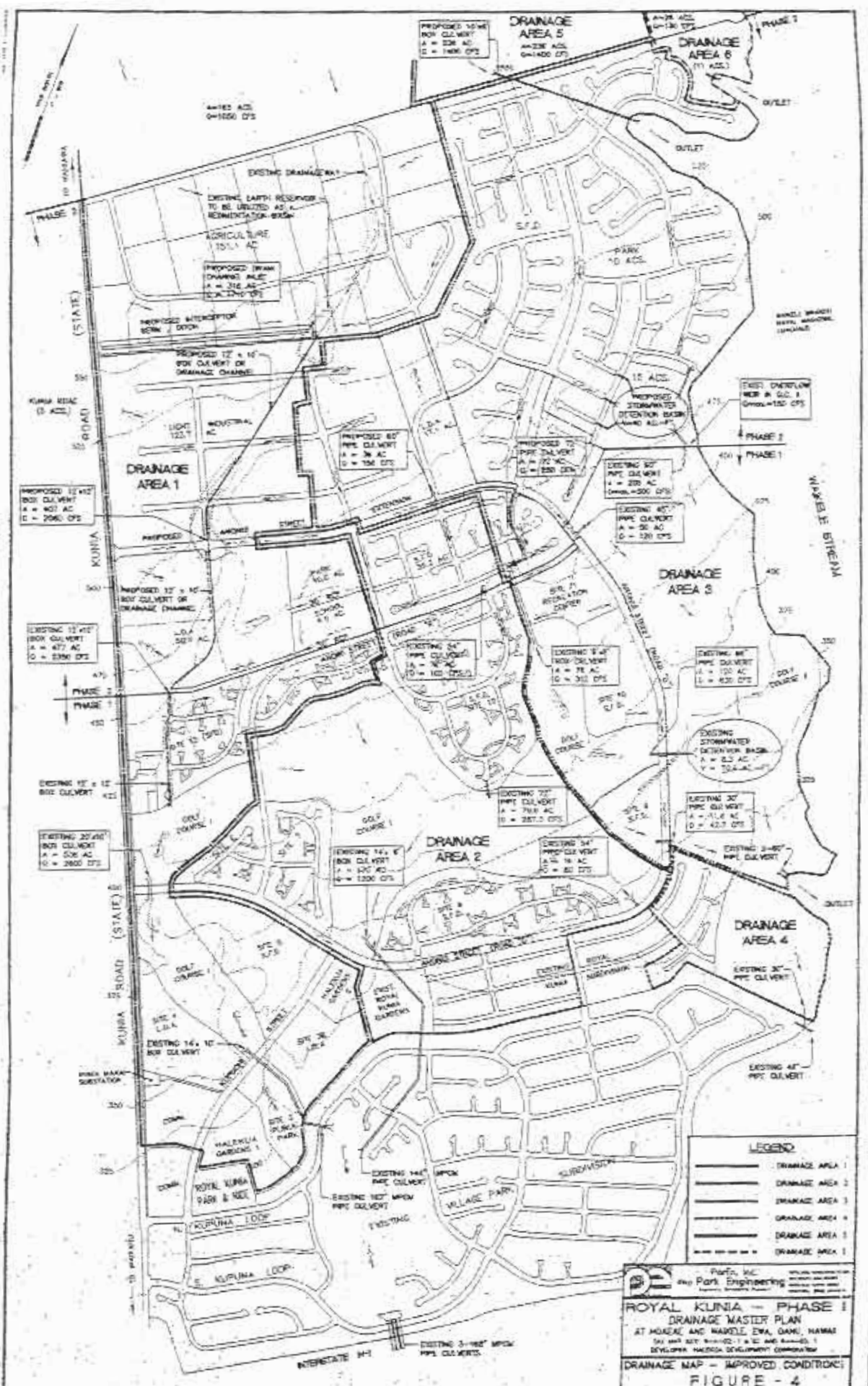
Kuni Interch. & Off Ramp

INTERSTATE H-1

LEGEND:

—	STAY IN-SITU
---	PROPOSED MAIN
---	PROPOSED BRANCH
---	PROPOSED OFF-BRANCH
---	PROPOSED OFF-BRANCH
---	PROPOSED OFF-BRANCH
---	PROPOSED OFF-BRANCH
---	PROPOSED OFF-BRANCH

EXHIBIT B
ROYAL KUNA SEWER MASTER PLAN
PHASES I and II
TMK: 6-4-02



PERFORMANCE BOND

THIS PERFORMANCE BOND ("Bond") is made as of _____, 2007 by _____, a _____ ("Surety") and _____, a _____ ("Principal") in favor of HRT REALTY, LLC, a Maryland limited liability company ("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 _____, 2007, 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

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 Realty, LLC
3660 Waialae Avenue, Suite 400
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 _____
its

By _____
its

Principal

Surety

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.

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.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A92-683
)
HALEKUA DEVELOPMENT)
CORPORATION, a Hawaii) CERTIFICATE OF SERVICE
corporation)
)
)
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)
Ho'ae'ae, Ewa, Island of Oahu, City and)
County of Honolulu, State of Hawaii,)
Tax Map Key No: 9-4-02; por of 1 and)
portion of 52)
)
)
)
_____)

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 electronic transmission:

MR. HENRY ENG, FAICP, DIRECTOR Department of Planning and Permitting	heng@honolulu.gov
ABE MITSUDA Office of Planning	amitsuda@dbedt.hawaii.gov
BRYAN C. YEE, ESQ. Department of Attorney General	bryan.c.yee@hawaii.gov
BRIAN K. KAU Department of Agriculture Agriculture Research Division	brian.k.kau@hawaii.gov

HEIDI MEEKER
Department of Planning
Facilities Development Branch

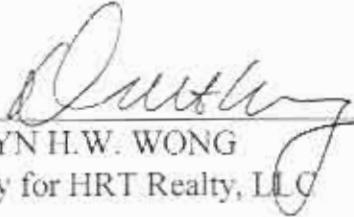
Heidi_Meeker@notes.k12.hi.us

JONATHAN S. DURRETT, ESQ.
Attorney for
Halekua Development Corporation

jdurrett@stutenbergdurrett.com

Dated: Honolulu, Hawaii,

February 22, 2007



DEL WYN H.W. WONG
Attorney for HRT Realty, LLC