

SUCCESSOR MEMORANDUM OF UNDERSTANDING

This SUCCESSOR MEMORANDUM OF UNDERSTANDING (this “**SMOU**”) is made as of this ___ day of October, 2014 (the “**Effective Date**”) by and between the **STATE OF HAWAII**, by its Director of Transportation (“**DOT**”), the **ALOHA TOWER DEVELOPMENT CORPORATION**, a public body corporate and politic, public instrumentality, and agency of the State of Hawaii, whose business address is 869 Punchbowl, Honolulu, Hawaii 96813 (“**ATDC**”) and **HAWAII LIFESTYLE RETAIL PROPERTIES LLC**, a Hawaii limited liability company, whose business address is 1164 Bishop Street, 8th Floor, Honolulu, Hawaii 96813 (“**HLRP**”). DOT and ATDC may sometimes hereinafter be referred to collectively as the “**State**”.

RECITALS:

A. **WHEREAS**, pursuant to Executive Order No. 3542 (“**Order**”), DOT has the operating and management jurisdiction of those certain parcels of land (including certain submerged portions thereof) located in the vicinity of the historic Aloha Tower (“**Aloha Tower**”) of the City and County of Honolulu, generally known as Piers 5 through 11 of Honolulu Harbor, more particularly described in the Order and subsequent amendments thereto and amendments to Chapter 206J, Hawaii Revised Statutes (“**HRS**”), identified and hereinafter referred to as the “**Aloha Tower Complex**”;

B. **WHEREAS**, ATDC was established in 1981 to redevelop the Aloha Tower Complex. The Aloha Tower Complex is part of a master plan created as a stimulus for economic activities on the ocean-front State lands within Honolulu Harbor and to achieve economic growth by balancing community and tourism development, enhancing the beauty of the waterfront, better serving the maritime users, and providing public access to the ocean and transforming the area to a “people place”;

C. **WHEREAS**, DOT and ATDC entered into that certain indenture of lease dated September 29, 1993, wherein DOT demised and leased to ATDC all of the leasehold interest in and to part of the Aloha Tower Complex (the “**Aloha Tower Ground Lease**”) to allow ATDC to redevelop the area in question as allowed by applicable law;

D. **WHEREAS**, ATDC entered into that certain Marketplace Project Component Lease dated September 29, 1993, with Aloha Tower Associates Piers 7, 8 and 9 Limited Partnership (“**ATA**”), as amended by that certain First Amendment to Marketplace Project Component Lease dated March 31, 1998, and as further amended by that certain Second Amendment of Marketplace Lease; Second Amendment of Marketplace Pier 10 Space Lease; and Second Amendment of Parking License Agreement dated May 6, 2013 (as so amended, the “**Marketplace Lease**”) whereby ATA leased from ATDC those portions of the Aloha Tower Complex more specifically set forth therein, including the retail buildings located on Piers 8 and 9 currently known as “Aloha Tower Marketplace” (“**ATM**”);

E. **WHEREAS**, ATDC and ATA entered into that certain Marketplace Pier 10 Space Lease dated September 29, 1993, which has a lease term that expires concurrently with the Marketplace Lease. The Marketplace Pier 10 Space Lease was subsequently amended by the First Amendment to Marketplace Pier 10 Space Lease dated February 29, 2012 and was further amended by the Second Amendment thereof (as so amended, the “**Pier 10 Space Lease**”). The space thereby demised is referred to hereinafter as the “**Pier 10 Space**”;

F. **WHEREAS**, ATDC and ATA also entered into a Parking License Agreement dated September 29, 1993, as amended by First Amendment to and Memorandum of Parking License Agreement dated June 29, 2010, and as further amended by the Second Amendment thereof (as so amended, the “**Parking License**”) covering the areas identified therein as Pier 10-11 Shed, Irwin Park, Piers 5-6, including Ala Moana Mini (sometimes collectively referred to as the “**Parking Areas**”);

G. **WHEREAS**, DOT and ATA entered into various agreements affecting the maintenance and management of operational areas within ATM, including, but not limited to the Marketplace – DOT Capital Improvements, Maintenance, Operations And Security Agreement (“**CIMOSA**”), dated September 29, 1993;

H. **WHEREAS**, by mesne assignments, AHI ALOHA ASSOCIATES, LLC, a Delaware limited liability company (“**AHI**”) became the holder of the leasehold interest to those portions of the Aloha Tower Complex demised under the Marketplace Lease, the Pier 10 Space Lease and the Parking License;

I. **WHEREAS**, DOT and AHI entered into the following agreements affecting the maintenance and management of operational areas with the ATM: the Agreement Relating to Aloha Tower Pier Repairs, dated June 29, 2010, and the Agreement Relating to Aloha Tower Utilities, dated June 29, 2010 (the CIMOSA and the agreements referenced within this recital shall hereinafter collectively be referred to as the “**DOT Agreements**”);

J. **WHEREAS**, the Marketplace Lease, Pier 10 Space Lease, Parking License and the DOT Agreements are hereinafter referred to as the “**Marketplace Rights**”;

K. **WHEREAS**, AHI, as Seller, and HLRP, as Buyer, entered into that certain Purchase and Sale Agreement dated as of April 11, 2011, as amended, for the sale and purchase of the Marketplace Rights;

L. **WHEREAS**, by written consent dated July 13, 2011, ATDC consented to the transfer of the Marketplace Rights to HLRP. The Marketplace Rights were assigned by AHI to HLRP by Instruments of Conveyance dated December 30, 2011 and April 27, 2012;

M. **WHEREAS**, pursuant to the redevelopment guidelines set forth in Chapter 206J, HRS, as amended, and subchapters 6, 7 and 8, Title 19, Subtitle 7, Chapter 170, Sections 19-170-51 through 19-170-149, Hawaii Administrative Rules (collectively

“**Aloha Tower Guidelines**”), HLRP initially proposed, under the terms of the Memorandum of Understanding between the State and HLRP dated December 15, 2011 (the “**Original MOU**”), to redevelop the waterfront land consistent with the goals for the Aloha Tower Complex, and with additional, specific goals to rebrand the entire downtown Honolulu waterfront, create a mixed use district, allow for new mixed uses, create boardwalks and outside waterfront eateries, and expand services for maritime users along Piers 7-9;

N. **WHEREAS**, under the terms of the Original MOU, HLRP was obligated to make good faith efforts to complete certain Required Improvements (as defined therein) by December 31, 2012, as a condition precedent to the issuance by ATDC of New ATDC Lease (as defined therein). The renovation of the ATM and the Required Improvements required that the administrative rules of ATDC be modernized and more flexible to include residential and educational uses in addition to traditional commercial and restaurant uses. In recognition and furtherance thereto, in 2013, the Department of Business, Economic Development and Tourism commenced the process to repeal the administrative rules of ATDC under Title 15, Subtitle 5, Chapter 26, and the Department of Transportation commenced the process to adopt the administrative rules of ATDC under Title 19, Subtitle 7, Chapter 170, Hawaii Administrative Rules (“ATDC Rules”). The said repeal and adoption, respectively, were effective on May 5, 2013. HLRP further made good faith efforts to complete the Required Improvements, consistent with the ATDC Rules, by applying for and obtaining \$120,000,000 in State Special Purpose Revenue Bonds pursuant to Act 305, Session Laws of Hawaii, 2012 Regular Session; a portion of which was designated for use in the repair and renovation of the ATM;

O. **WHEREAS**, ATDC has approved an amendment to the Aloha Tower Project Area Plan to incorporate and address uses as permitted by the ATDC Rules (as so amended, the “**Project Area Plan**”).

P. **WHEREAS**, HLRP has entered into an understanding with its tenant, Hawai'i Pacific University (“**HPU**”), to convert the upper floors of the ATM into residential lofts for use by students and faculty of HPU as well as to utilize other spaces in Piers 8, 9 and 10, consistent with the Project Area Plan and the ATDC Rules, for educational purposes consistent with HPU's role as an institution of higher education; and

Q. **WHEREAS**, by the agreements set forth below, the parties hereto desire to memorialize their current understandings with respect to the various aspects of the parties' expectations in wake of the many changes between the time that the Original MOU was executed and the present day.

AGREEMENT

NOW THEREFORE, in consideration of the promises, covenants and agreements contained herein, DOT, ATDC and HLRP agree as follows:

I. HLRP.

1. HLRP Improvements. HLRP, or through its tenant and parent, HPU, shall expend not less than FORTY MILLION and NO/100 Dollars (\$40,000,000.00) to renovate, modernize and revitalize Piers 8, 9, and 10 to create student and faculty residences and various university spaces, including a learning commons, dining hall, meeting and lecture rooms, as well as community gathering spaces, in addition to ongoing commercial retail and restaurant uses (the “**HLRP Improvements**”). HLRP, or through its tenant and parent, HPU, shall use good faith efforts to complete the HLRP Improvements on or before December 31, 2015.

II. ATDC.

1. Marketplace Lease Renewal. ATDC and HLRP agree to consider renewing the existing Marketplace Lease, the Pier 10 Space Lease and the Parking License (together the “Renewed Leases”) for a term of 65 years from the effective date of the renewal (the “Lease Effective Date”), to update the legal description of the Aloha Tower Complex, and to update the terms by deleting provisions no longer applicable. ATDC and HLRP agree that any such renewal or option to extend shall incorporate a rent structure which takes into account the new uses of the leased premises.
2. Construction Period Rent. ATDC and HLRP agree that notwithstanding anything in the Marketplace Lease to the contrary, rent under the Marketplace Lease during the Construction Period, defined hereinbelow, shall be as follows:

Construction Period Rent. In consideration of the construction of the HLRP improvements, rent as set forth in the Marketplace Lease shall be retroactively abated commencing on July 1, 2014, for a period of 12 months, until June 30, 2015 (the “Construction Period”).
3. Terms of Renewed Leases to Control. If the Renewed Leases are issued, to the extent the terms or conditions under any existing Marketplace Documents are inconsistent with the terms of the Renewed Leases, the terms of the Renewed Leases shall control.

III. Further Agreements.

1. Amendment of CIMOSA. As soon as practical, the CIMOSA shall be analyzed by DOT, ATDC and HLRP and to the extent terms and concepts in the CIMOSA are no longer applicable to the HLRP Improvements, the parties agree to expeditiously work in good faith to amend the CIMOSA so that it reflects the current status of the Aloha Tower Complex and sets

forth obligations and rights in a manner that is mutually agreeable to the parties.

2. Passenger/Cruise Ship Operations Regarding Piers 10 and 11. HLRP and DOT agree to mutually cooperate to reduce congestion at Piers 10 and 11 by adopting reasonable guidelines relating to managing the operations at ATM and passenger/cruise ship moorings (also known as “**Boat Days**”) at the same time. HLRP agrees to comply with existing operating and parking restrictions during Boat Days. Pier 2 is currently the primary berthing for passenger/cruise ships.

3. Aloha Tower Drive.

HLRP agrees to be responsible for coordinating with the State, ATDC and/or other applicable governmental agency to analyze whether a redesign or reconfiguration of Aloha Tower Drive may be necessary to enhance traffic flow. HLRP agrees to pay for all reasonable costs associated with a mutually agreeable redesign and/or reconfiguration of Aloha Tower Drive necessitated by its use of the ATM.

4. Nondisturbance Agreements. DOT agrees: (a) to provide an NDA to HLRP upon issuance of any Renewed Leases (including any restatement thereof as contemplated by this SMOU) and thereafter to such mortgagees of HLRP as may request the same, and (b) to provide an NDA to any Major Tenant of the ATM that requires it upon execution of a lease by such Major Tenant and to any mortgagee of such Major Tenant upon request by such mortgagee. A “**Major Tenant**” means a tenant that holds a lease for at least 5,000 square feet of space in the ATM. Similarly, upon execution of a lease by a Major Tenant (whether before or after the issuance of any Renewed Leases), ATDC agrees to provide an NDA to such Major Tenant and to any mortgagee of such Major Tenant upon request by such mortgagee. As used herein, “**NDA**” means a nondisturbance and attornment agreement similar to the nondisturbance and attornment agreement applicable to the Marketplace Lease dated September 29, 1993 recorded as Document No. 93-161410.

IV. Miscellaneous.

1. Cooperation in Zoning and Permitting. DOT, ATDC and HLRP agree to cooperate in good faith to process any necessary zoning, permit and development approvals consistent with the intent of this SMOU, provided that HLRP complies with all laws and regulations. Notwithstanding the foregoing, DOT and ATDC shall have no obligation to expend monies or make any appearances in furtherance of such processing of zoning, permitting and development approvals except as otherwise required by the multijurisdictional requirements of the ATM.

2. Compliance with Laws. HLRP shall comply with all Federal, State, county and other laws, ordinances, rules and regulations including without limitation all ATDC Rules, building codes requirements, and any environmental reviews under any applicable Federal or State law, statute and regulation, and obtain all necessary permits and approvals, that may be required for the HLRP Improvements, at HLRP's sole cost.
3. Binding. Upon execution of this SMOU by the parties, this SMOU shall become binding and enforceable in accordance with its terms. Except as specifically set forth herein, the rights and obligations of each party named in this SMOU shall bind and inure to the benefit of each party and their respective successors and assigns.
4. HLRP's Right to Assign. HLRP shall not assign, transfer (including by sale of assets, sale or transfer of membership interest in HLRP, merger, consolidation, or operation of law), pledge or hypothecate any of its rights or obligations under this SMOU to any other person or entity without the prior written consent of ATDC (and/or DOT where applicable), which consent ATDC (or DOT as applicable) may grant or withhold in its (their) sole discretion, and any such assignment without such consent shall be null and void *ab initio*.
5. Authority. Each party warrants and represents to the other that the individual executing this SMOU on behalf of the respective parties are authorized to do so.
6. Entire Agreement. This SMOU embodies the entire agreement of the parties and supersedes any other agreements and understandings with respect to the subject matter hereof that may have existed between the parties.
7. Counterparts. The parties hereto agree that this SMOU may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding on all of the parties hereto, notwithstanding that all parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, delivery of this SMOU, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.
8. Interpretation/Construction. The parties agree that no party shall be deemed to be the drafter of this SMOU and further that in the event that this SMOU is ever construed by a court of law, such court shall not construe this SMOU or any provision of the same against any party as the drafter of the SMOU.

9. Remedies. If any party to this SMOU fails to fulfill or perform any of its obligations hereunder, the non-defaulting parties shall be entitled to all remedies available at law or in equity, including damages, specific performance and injunctive relief.
10. Governing Laws. This SMOU shall be governed and construed in accordance with the laws of the State of Hawaii.
11. Amendments. This SMOU shall not be modified except by an instrument in writing signed by all of the parties hereto.
12. HLRP's Payment Obligations. The parties hereto agree that in consideration of the ATDC undertaking to issue any Renewed Leases, HLRP shall pay to DOT the sum of One Million Seven Hundred Fifty Thousand and no/100 Dollars (\$1,750,000.00) on or before December 31, 2021, to satisfy AHI's obligation under that certain Agreement Regarding Aloha Tower Piers Repair dated June 29, 2010. This obligation is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators and successors and assigns. For the purposes hereof, any successor "Marketplace Lessee" shall succeed to HLRP's obligations hereunder. HLRP agrees to execute and record a memorandum of this payment obligation against HLRP's leasehold interest at the Bureau of Conveyances of the State of Hawaii and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii.
13. Waiver, Release and Indemnity. HLRP acknowledges and agrees that it is proceeding with the HLRP Improvements at its own risk, with full knowledge of the risk factors associated with development. HLRP has represented that it has incurred substantial costs in pursuing this opportunity, and that it will incur substantial additional costs in pursuing the HLRP Improvements. HLRP agrees that ATDC, DOT and/or the State shall in no way be deemed liable or responsible for payment or reimbursement of any of such costs and expenses, including, but not limited to, costs and expenses incurred by, through, or under HLRP, including any contractors, consultants, advisors, or others in any way associated with the HLRP Improvements and/or the development thereof, and HLRP does hereby waive, release, indemnify, and forever hold ATDC, DOT and the State harmless from and against any and all claims made for such payment or reimbursement.
14. Force Majeure. If HLRP's performance of any obligation or condition hereunder (other than the payment of money) is delayed as the result of a Force Majeure event, the time or times for performance of such obligation or condition will be extended for the period of the delay. "**Force Majeure**" means events that cause delays in the performance of HLRP's obligations or satisfaction of a condition under this SMOU, due to causes beyond

HLRP's control, including, but not restricted to: acts of God or of the public enemy; fires; floods; tidal waves; freight embargoes; earthquakes; unusually severe weather; delays of contractors or subcontractors due to any of these causes; the unanticipated presence of hazardous materials or other concealed conditions that would materially and adversely impair HLRP's ability to perform its obligations or satisfy a condition hereunder; archeological finds; discovery of the presence or habitat of a threatened, candidate or endangered species protected by the Federal Endangered Species Act; strikes, and substantial interruption of work because of labor disputes; and inability to obtain materials or reasonably acceptable substitute materials (provided that HLRP has ordered such materials on a timely basis and the acts or omissions of HLRP are not otherwise at fault for such inability to obtain materials); and delays in obtaining required governmental permits and/or approvals.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED AS TO FORM:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

Marjorie A.Lau, Esq.
Deputy Attorney General

By: _____
Its Director of Transportation

APPROVED AS TO FORM:

ALOHA TOWER DEVELOPMENT
CORPORATION

Gregg J. Kinkley, Esq.
Deputy Attorney General

By: _____
Randy Grune
Acting Chief Executive Officer and
member

APPROVED AS TO FORM:

HAWAII LIFESTYLE RETAIL
PROPERTIES LLC,
a Hawaii limited liability company

_____, **Esq.**
Attorney for HLRP

By: _____
Janet Kloenhamer
Its Manager

By: _____
Scott Hayashi
Its Manager