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DOUBLE SYSTEM
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STATE OF HAWAII
OFFICE OF THE ASSISTANT REGISTRAR
RECORDED

September 30, 2021 8:51 AM

Doc No(s) T - 11595469-70 (2)
on Cert(s) 962256
Issuance of Cert(s)

Pkg 11875616 AMR

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,

/s/ LESLIE T. KOBATA
ASSISTANT REGISTRAR

Leslie T. Kobata

Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

September 30, 2021 8:51 AM

Doc No(s) A - 79430905-06 (2)

Pkg 11875616 OFC

/s/ LESLIE T. KOBATA
REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL [] PICK-UP [X]

Imanaka Asato, LLLC (OTI)
745 Fort Street, 17th Floor
Honolulu, HI 96813
Tel: (808) 521-9500

Tax Map Key Nos. (1) 2-3-016:002, :003

Total Pages 30

**JOINT DEVELOPMENT AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

THIS JOINT DEVELOPMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Agreement" or "Declaration and Agreement") is made this 24th day of September, 2021, by **JL AVALON CAPBRIDGE, LLC**, a Hawaii limited liability company ("**JL**"), whose address is 1440 Kapiolani Boulevard, Suite 1509, Honolulu, Hawaii 96814, and **MARUITO USA, INC.**, Hawaii corporation ("**Maruito**"), whose address is c/o Goodsill Anderson Quinn & Stifel LLP (Alan Fujimoto), 999 Bishop Street, Suite 1600, Honolulu, Hawaii 96813.

RECITALS

WHEREAS, JL is the owner of those certain parcels of land identified as Lots 35, 36 and 37, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court ("Land Court") of the State of Hawaii with Land Court Consolidation 45 of Hawaiian Land Company, Limited, which lots have been deregistered from the Land Court system pursuant to Hawaii Revised Statutes Section 501 Part II (the "JL Property"); and

WHEREAS, Maruito is the owner of those certain parcels of land identified as Lots 38, 39, 40, 41, 42, and 43, as shown on Map 1, filed in the Office with Land Court Consolidation 45 of Hawaiian Land Company, Limited (the "Maruito Property") (the

Maruito Property is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference); and

Whereas, the JL Property and the Maruito Property were jointly developed pursuant to a Conditional Use Permit ("CUP") for joint development issued by the City and County of Honolulu (i.e., Conditional Use Permit No. 87/CUP-81) and a joint development agreement ("Original JDA") (a copy of the CUP 87/CUP-81 is attached as Exhibit "D" and a copy of the Original JDA is attached as Exhibit "E"); and

WHEREAS, CUP No. 87/CUP-81 and the Original JDA allowed for the development of the Pacific Guardian Tower (i.e., an 18-story building with 142,512.76 square feet of floor area) on the Maruito Property based on the use of 34,901.76 of the density from the JL Property; and

WHEREAS, JL has consolidated the subdivision lots comprising the JL Property with other subdivision lots owned by JL, as shown in DPP Subdivision File No. 2020/SUB-153 (consolidation approved on January 8, 2021); and

WHEREAS, the lots that comprised the JL Property and the subdivision lots that they have been consolidated with are now designated as "Lot B" in DPP Subdivision File No. 2020/SUB-153. Lot B is more particularly described in Exhibit "B" hereto; and

WHEREAS, Lot B is adjacent to the Maruito Property; and

WHEREAS, Lot B and the Maruito Property are both located in the Ala Moana Transit-Oriented Development Special District, as defined by the City and County of Honolulu's ("City") Land Use Ordinance ("LUO"); and

WHEREAS, it is necessary to replace the Original JDA with this Agreement to allow for the use of development rights from Lot B for the Pacific Guardian Tower on the Maruito Property; and

WHEREAS, the formation of a new JDA allowing for the joint development of Lot B and the Maruito Property will ensure that the Pacific Guardian Tower complies with the development standards and requirements imposed by the LUO; and

WHEREAS, pursuant to LUO Sections 21-5.380 and 21-5.380A, the Parties propose to develop Lot B and the Maruito Property as one zoning lot, with the allocation of development rights shown in in Exhibit "C" hereto; and

WHEREAS, it is mutually beneficial and desirable for the Parties to jointly develop Lot B and the Maruito Property in order to comply with the LUO; and

WHEREAS, the public interest will be served by the Parties' compliance with the LUO, as enabled by this Agreement and the Conditional Use Permit for the same; and

WHEREAS, the Parties acknowledge and agree that the consideration that they have given and received under this Agreement is fair and adequate consideration to support the terms of this Agreement and the duties and obligations arising hereunder;

NOW, THEREFORE, in exchange for the mutual benefits arising from the joint development of Lot B and the Maruito Property and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant, declare, and agree as follows.

DEFINITIONS:

As used in this Agreement, the following terms shall have the meanings provided by the definitions set forth below. Although some of words that are defined below have been defined informally in the recitals to this Agreement, these informal definitions are only for the mutual convenience of the Parties in setting forth the background information giving rise to this Agreement. Any conflicts between the informal definitions contained in the recitals to this Agreement and the following definitions shall be resolved in favor of the definitions below.

1. "Agreement" means this Joint Development Agreement and Declaration of Restrictive Covenants and includes all of the exhibits (i.e., Exhibits "A" through "F") hereto.

2. "Bureau" means the State of Hawai'i Bureau of Conveyances.

3. "Condominium," "Condominium Property Regime" and "CPR" mean an interest in real estate created pursuant to HRS Chapter 514B, and any replacement or successor statute to the same.

4. "City" means the City and County of Honolulu and includes its duly authorized officers, agents, servants, employees, attorneys, consultants and independent contractors.

5. "CUP" means the conditional use permit issued by the Director to allow the joint development of Lot B and the Maruito Property pursuant to this Agreement.

6. "Declaration of Restrictive Covenants" or "DRC" means a clause in a deed or lease to real estate that limits what the owner of the real estate can do with the property, and, grants the City the right to enforce the negative restrictions imposed on the real estate.

7. "Department of Planning and Permitting" and "DPP" mean the City and County of Honolulu Department of Planning and Permitting and includes its duly authorized officers, agents, servants, employees, attorneys, consultants and independent contractors.

8. "Director" means the Director of DPP and h/her authorized representative.
9. "HRS" means the Hawaii Revised Statutes.
10. "JL" and "JL Avalon" mean JL Avalon Capbridge, LLC, a Hawaii limited liability company (DCCA File No. 165712 C5) and includes its Successors in Interest.
11. "Land Court" means the office of the Assistant Registrar of the Bureau of Conveyances, who is appointed pursuant to HRS § 502-1.
12. "Land Use Ordinance" and "LUO" mean Chapter 21 of the Revised Ordinances of Honolulu, 1990 (*as amended*), and any replacement or successor ordinance regarding the same subject matter therein.
13. "Lot B" means the certain real property identified as "Lot B" in DPP Subdivision File No. 2020/SUB-153. A copy of the map in Subdivision File No. 2020/SUB-153 showing "Lot B" is attached hereto as Exhibit "F".
14. "Maruito" means Maruito USA, Inc., a Hawaii corporation (DCCA File No. 82560 D1) and includes its Successors in Interest.
15. "Maruito Property" means those certain parcels of land identified as Lots 38, 39, 40, 41, 42, and 43, as shown on Map 1, filed in the Office with Land Court Consolidation 45 of Hawaiian Land Company, Limited. The Maruito Property is more particularly described in Exhibit "A" hereto, which is incorporated herein by this reference.
16. "Property" means and includes both Lot B and the Maruito Property, which are considered and treated as one and the same zoning lot under this Agreement and shall include all structures and improvements thereon.
17. "Successor" and "Successor in Interest" mean any person that claims an interest in the Property (i.e., Lot B and/or the Maruito Property) based the transfer of any legal interest in the Property from JL, Maruito, or a prior Successor in Interest to the same. For the purposes of this Agreement, and, notwithstanding any other provision to the contrary, "Successors" and "Successors in Interest" shall include, without limitation, "unit owners" of "condominium" property, as the same are defined by HRS § 514B-3.

AGREEMENT

1. Incorporation by reference. All of the above recitals in this Agreement are material to this Agreement and are hereby incorporated as material terms to this Agreement,

provided that any conflicts between the recital to this Agreement and the definitions herein shall be resolved in favor of the above definitions.

2. Purpose. This Agreement is made pursuant to LUO Sections 21-5.380 and 21-5.380A, which require the Parties to record this Agreement as a DRC against Lot B and the Maruito Property. The purpose of this is to assure the protection of the public interest as required by LUO Section 21-5.380(d) and to obligate the Parties to maintain a pattern of development that will comply with the LUO and other laws relating to the development and use of property.

3. Effect of Agreement. When this Declaration and Agreement becomes effective pursuant to Section 9, this Declaration and Agreement and the CUP for the same will cause the zoning lots comprising Lot B and the Maruito Property to be considered and treated as one and the same zoning lot. In addition, this Declaration and Agreement will supersede and replace the Original JDA, in its entirety.

a. Use and development of property. When this Agreement becomes effective, the Property shall be considered and treated as one and the same zoning lot so long as this Agreement remains in effect. During the effective term of this Agreement, the Property must be developed, used, and maintained in strict compliance with the LUO, at all times and in all respects.

b. Covenant running with the land. After this Agreement is duly approved by the City and recorded against Lot B and the Maruito Property in Bureau of conveyances and/or Land Court, as appropriate, this Agreement shall be effective as a declaration of restrictive covenants, binding upon the Parties to this Agreement and their Successors in Interest.

c. Restrictions on Use and Development. This Agreement shall obligate the Parties to maintain a pattern of land use and development that conforms to the requirements of the LUO. Disputes as to whether any existing or proposed development on Lot B or the Maruito Property will comply with the LUO shall be resolved by the Director.

d. Preconditions to permitting and development. A copy of this Agreement (including all exhibits hereto) shall be filed with any application or request seeking permits or approvals from the City or State of Hawai'i concerning the Property or improvements on the same. The Parties specifically understand and agree that any permits or approvals that are issued by the City or the State may be declared void and invalid, *ab initio* or

immediately revoked or suspended by the issuing entity based solely on the failure to include a complete copy of this Agreement with the related application or request.

e. Restrictions on Building Permits. No building permits may be issued for work or improvements on the Property until the requirements of Section 3.d of this Agreement have been fulfilled.

f. No Nonconforming Structures or Uses. Neither this Agreement nor the termination of this Agreement and/or the CUP for the same shall give rise to any nonconforming structures or nonconforming uses on the Property. The Parties specifically understand and agree that the Director may require the abatement and termination of any violations of applicable statutes, ordinances, administrative rules and/or permits without compensation to any persons claiming an interest in the Property or improvements thereon. Structures and land uses that are subject to such abatement will include, by way of example and without limitation, structures and land uses that encroach into required setbacks; structures and land uses that cross the boundaries of zoning or subdivision lots; structures and land uses that do not comply with applicable development standards or use restrictions; and structures and/or land uses that lack necessary permits.

g. Restriction on Condominium Property Regimes. The Maruito Property is not currently subject to a declaration of condominium property regime. Lot B is currently subject to a declaration of condominium property regime. JL, as the owner of Lot B shall amend and/or incorporate, and Maruito shall incorporate, if the Maruito Property, or any improvements on the same are submitted to a condominium property regime ("CPR") pursuant to Hawaii Revised Statutes Chapter 514B or any replacement or successor statute, the following:

i. The HRS Chapter 514B-32 declaration of condominium property regime shall:

A. Include a reservation of rights, pursuant to HRS § 514B-32(a)(12), that authorizes the Director to require modifications of the declaration or condominium map, without compensation to the association or unit owners, as necessary to ensure that the CPR complies with the LUO and other development-related codes and ordinances;

B. Clearly disclose any and all transfers of development rights from Lot B to the Maruito Property, and vice versa, existing at the time of the declaration;

C. State that upon termination of this Agreement, the Director may require the modification or abatement of any structures and/or land uses that do not comply with the LUO or other development-related codes or ordinances;

D. Include provisions that authorize the Director to serve individual CPR unit owners and their tenants with legal notices and process by sending a single copy of the relevant notice or legal process to the HRS Chapter 514B association for the CPR. To the maximum extent permitted by law, this provision will operate as a waiver of any personal service or individual notice requirements that would otherwise apply to CPR unit owners and/or their tenants;

E. State that structures and land uses that are enabled by this Agreement will not qualify or be recognized as nonconforming structures or uses upon termination of this Agreement; and

F. Authorize and require that the HRS Chapter 514B association for the CPR to execute and record a joinder to this Agreement (in a form and substance acceptable to the Director) which shall make the association and its members Parties to this Agreement as follows:

Pursuant to, and in accordance with, Sections _____ of the JOINT DEVELOPMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("JDA") recorded in the _____ as Document No. _____ on _____, the [AOAO] hereby acknowledges that it has received and reviewed a complete copy of the JDA and agrees that upon execution of this Joinder, the [AOAO] and its members shall become a parties to the Agreement and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the Agreement as though original parties thereto.

ii. The deeds and leases to CPR units must disclose this Agreement as an encumbrance on title and state that unit owners are parties to this Agreement.

iii. The developer's public report and HRS § 514B-54(a)(8) declaration must include:

A. A statement disclosing this Agreement;

B. A complete and accurate statement and any development rights that have been transferred from Lot B to the Maruito Property, and vice versa, pursuant to this Agreement and the CUP therefor; and

C. A statement disclosing any violations of the LUO and other development-related codes and ordinances that will result from the termination of this Agreement.

iv. Notwithstanding that all terms in this Agreement are intended to be effective as restrictive covenants on the Property, binding upon the Parties and their Successors in Interest, the HRS Chapter 514B associations for any CPRs on the property shall execute, on behalf of themselves and their members, a joinder to this Agreement and record the same in the Bureau or the Land Court, as appropriate.

4. Third Party Beneficiaries. The City is a third party beneficiary to this Agreement. There are no other express or intended third-party beneficiaries to this Agreement.

5. The City's Right to Enforce. As a third party beneficiary to this Agreement, the City shall have the right to enforce this Agreement against the Parties in the same manner provided for in Section 6 of this Agreement ("Enforcement by the Parties"). In addition to the foregoing, the terms of this Agreement shall be incorporated by reference into the CUP for this Agreement and enforceable as a violation of LUO § 21-2.150, in the manner provided in LUO §§ 21-2.150-1 and 21-2.150-2. The City shall also have the right to enforce this Agreement by any means deemed necessary or appropriate by Director, including, by way of example and without limitation, an appropriate action at law or in equity. If the Director is the prevailing party on one or more claims in an action to enforce this Agreement against any Party, the Director shall be entitled to recover reasonable legal fees and costs related to the prosecution of the action (e.g., attorney fees, court costs, and other costs related to the claim(s) prosecuted by the Director of the City) against the Party or Parties.

6. Enforcement by the Parties. The Parties to this Agreement may enforce this Agreement against other Parties to this Agreement by an action for breach of contract, specific performance, and/or declaratory and injunctive relief.

7. Modifications or Amendments. This Agreement shall not be changed, modified, terminated, or discharged, in whole or in part, except by an instrument in writing, signed by the parties hereto and approved by the Director, provided that changes to a Party's agent for service may be made in accordance with section 17 of this Agreement. The allocation of development rights set forth in Exhibit "C" may be amended by the Parties should additional development rights become available through a discretionary permit or amendment to the LUO, and each Party agrees to make any necessary applications for modification to the CUP and this Agreement to reflect such additional development rights.

8. Recordation required. This Agreement and any changes, modifications, or amendments to the same must be recorded in the Bureau or the Land Court, as appropriate (if any property is registered in both the and the Land Court, recordation shall be made in both the Bureau and the Land Court for that Property). Within thirty (30) days of the issuance of a CUP for this Agreement, the Parties shall cause a copy of this Agreement (inclusive of all exhibits hereto) to be recorded against the title to Lot B and the Maruito Property. A copy of the CUP authorizing this Agreement shall be attached to the Agreement at the time of recordation and copies of the recorded instruments shall be provided to the Director, promptly after recordation.

9. Effective Date. Both this Agreement and any duly approved changes, modifications, or amendments to the same shall take effect upon recordation in accordance with Section 8 of this Agreement.

10. Termination by the Parties. This Declaration and Agreement may only be terminated by the Parties with the written approval of the Director. The Director will not unreasonably withhold h/her consent to the termination of this Agreement, but may take any action reasonably necessary to protect the public interest, including, by way of example and without limitation, conditioning the termination of this Agreement on the Parties taking any actions reasonably necessary to maintain compliance with the LUO after termination of this Agreement or such actions as may be necessary to achieve compliance with the LUO within a reasonable time after the termination of this Agreement.

11. Method of Termination by Parties. The Parties to this Agreement may only seek the termination of this Agreement as follows. The Party wishing to terminate this Agreement must send a written Notice of Intent to Terminate to all other Parties to this Agreement. The Notice of Intent to Terminate must state the reasons for the Party's desire to terminate the Agreement and request the consent of the other Parties or a statement of their reasons for opposing termination, which must be sent to the requesting Party within thirty (30) days of their receipt of the Notice of intent to Terminate, which will be presumed to have occurred two (2) days after the mailing of the notice. After the deadline for responses to the Notice of Intent to Terminate has passed, the Party wishing to terminate this Declaration and Agreement shall then send a written request to the Director seeking h/her consent to the termination of this Agreement. The request for the Director's consent to the termination of this Agreement must include a statement of the reasons for termination; a summary of the positions of the other Parties on the proposed termination; a statement of any noncompliance with the LUO that may arise from the termination of the Agreement; and the requesting Party's proposed means of resolving such noncompliance. The Director shall respond to the request for the Director's consent in writing and state the reasons for approving or disapproving the termination of this

Agreement. In his/her response, the Director may also impose conditions on the termination, as reasonably necessary to ensure that compliance with the LUO will be maintained after termination or achieved in a timely manner after the same.

12. Termination by the Director. The Director may revoke the CUP authorizing this Agreement for good cause, at any time. After such revocation and notice of the same to the Parties, this Declaration and Agreement shall become null and void upon the Director's recordation of a Notice of CUP Revocation against Lot B and the Maruito Property in the Bureau or Land Court, as appropriate. The Parties to this Agreement consent, on behalf of themselves and their respective Successors in Interest, to the Director's recordation of a Notice of CUP Revocation against their respective properties.

13. Effect of Termination. Upon termination of this Agreement, Lot B and the Maruito Property shall be considered separate zoning lots. The fee owners of each zoning lot at the time of termination, together with their Successors in Interest (and anyone claiming an interest in the Property by, through, or under the same) shall be responsible for ensuring that all land uses and structures on their property comply with any and all applicable statutes, ordinances, administrative rules and permits.

14. Governing law. This Agreement shall be governed, construed, and enforced in accordance with the LUO and the laws of the State of Hawai'i. To the extent that there are questions regarding the appropriate interpretation of this Agreement, the CUP for this Agreement, or the meaning of the LUO as it relates to the Property or this Agreement, the opinion of the Director shall control.

15. Ambiguities. The language of this Agreement shall be interpreted in accordance with its fair meaning and in light of its purpose. Ambiguities in this Agreement, if any, shall be resolved by the Director in favor of the public interest, which shall include requiring strict compliance with the LUO and the CUP, as interpreted by the Director.

16. Actual notice required. Each Party to this Agreement and Declaration shall be required to disclose this Agreement to their prospective Successors in Interest and must provide a true, correct, and complete copy of this Agreement to their Successors in Interest prior to the execution of any leases, conveyance documents, or other instruments which assign or convey any interest in the Property to a Successor in Interest.

17. Agents for service. The Parties hereby designate the following local representatives as their respective agents for the service of legal notices and process on their behalf, as required by this Agreement:

For JL:

Name: JL Avalon Capbridge, LLC (Attn: Timothy Lee)
Address: 1440 Kapiolani Boulevard, Suite 1509
Honolulu, Hawaii 96814
Telephone: (808) 445-9080

For Maruito:

Name: Goodsill Anderson Quinn & Stifel LLP (Attn: Alan Fujimoto)
Address: 999 Bishop Street, Suite 1600,
Honolulu, Hawaii 96813
Telephone: (808) 547-5600


JL and Maruito shall have the right to change their respective agents for service of process by designating a local agent (i.e., one physically located on the island of Oahu) by doing both of the following: (i) recording, in the Bureau and/or the Land Court, as applicable, an instrument modifying the above information, which need to be signed only by the Party making the change, and (ii) promptly mailing a recorded copy of such instrument to the other Party and to the Director, by certified mail, with return receipt requested.

Other parties to this Agreement may also designate a local agent (i.e., one physically located on the island of Oahu) in the same manner as JL and Maruito, provided that the association for any CPR development(s) on the Property shall designate the agent authorized to receive the service of legal notices and process on behalf of the association and its members.

-- The remainder of this page is intentionally left blank; signature pages follow --

PARTIES

JL AVALON CAPBRIDGE, LLC,
a Hawaii limited liability company

By: 
Name: Timothy Lep
Its: Authorized Signor

MARUITO USA, INC.,
a Hawaii corporation

By: 

Name: Steve Samburo

Its: Authorized Agent

APPROVED:

Deputy Corporation Counsel

MARUITO USA, INC.,
a Hawaii corporation

By: _____
Name: _____
Its: _____

APPROVED:

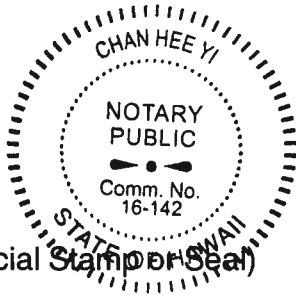


Deputy Corporation Counsel

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

SS:

On this 24th day of September, 2021, before me appeared Steve Sombbrero, to me personally known, who, being by me duly sworn, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)

CH Yi

Name: Chan Hee Yi
Notary Public, State of Hawaii

My commission expires: 4-10-2024

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Joint Development Agreement and Declaration of Restrictive Covenants

Doc. Date: _____ or Undated at time of notarization.

No. of Pages: 1930 CH Jurisdiction: First Circuit
(in which notarial act is performed)

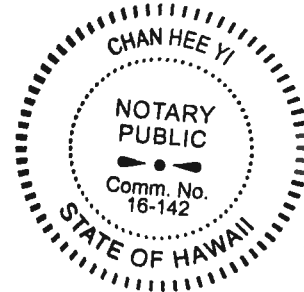
CH Yi

9-24-2021

Signature of Notary

Date of Notarization and Certification Statement

Chan Hee Yi

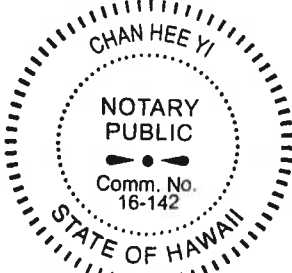


(Official Stamp or Seal)

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

SS:

On this 24th day of September, 2021, before me appeared Timothy Lee, to me personally known, who, being by me duly sworn, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)

Chan Hee Yi
Name: Chan Hee Yi
Notary Public, State of Hawaii

My commission expires: 4-10-2024

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Joint Development Agreement and Declaration of Restrictive Covenants

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Chan Hee Yi

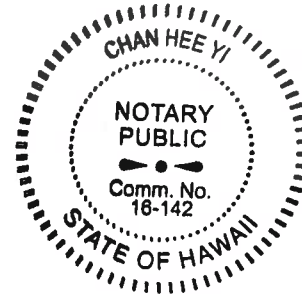
9-24-2021

Signature of Notary

Date of Notarization and Certification Statement

Chan Hee Yi

Printed Name of Notary



(Official Stamp or Seal)

EXHIBIT "A"

ALL of those certain parcels of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS: 38, area 5,000 square feet,
 39, area 5,000 square feet,
 40, area 5,000 square feet,
 41, area 5,000 square feet,
 42, area 5,000 square feet,
 43, area 5,746 square feet, more or less, as shown on Map 1, filed
in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land
Court Consolidation No. 45 of Hawaiian Land Company, Limited;

Being the land(s) described in Transfer Certificate of Title No. 962,256 issued to
Maruito USA, Inc., a Hawaii corporation.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : A & B PROPERTIES, INC., a Hawaii corporation

GRANTEE : MARUITO USA, INC., a Hawaii corporation

DATED : October 26, 2009

FILED : Land Court Document No. 3909708

END OF EXHIBIT "A"

EXHIBIT "B"

All of that certain parcel of land (being Lots 35 through 37, inclusive, as shown on Map 1 of Land Court Consolidation No. 45 of Hawaiian Land Company, Limited, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72270698, portion of Lot 31, as shown on Map 1 of Land Court Consolidation No. 45 of Hawaiian Land Company, Limited, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72270694, and Lots 32 through 34, inclusive, as shown on Map 1 of Land Court Consolidation No. 45 of Hawaiian Land Company, Limited, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No(s). A-72270695 through A-72270697, inclusive) situate, lying and being at Kalia, Waikiki, City and County of Honolulu, State of Hawaii, being LOT B as shown on Map dated November 10, 2020, approved by the Department of Planning and Permitting, City and County of Honolulu, DPP File No. 2020/SUB-153, on January 8, 2021, and thus bounded and described in AFFIDAVIT recorded as Document No. A-77130312 and as follows:

Beginning at the west corner of this parcel of land, the same being the south corner of Lot A, City and County of Honolulu, Department of Planning and Permitting File No. 2020/SUB-153, approved on January 8, 2021 and on the northeast side of Kapiolani Boulevard, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 6,740.90 feet South and 1,947.88 feet East and thence running by azimuths measured clockwise from true South:

1. 205° 20' 200.00 feet along Lot A, portions of Grant 1290 to Wm. Miller and Grant 2790 to L. Kamehameha, DPP File No. 2020/SUB-153;
2. 295° 20' 174.00 feet along Makaloa Street;
3. 25° 20' 200.00 feet along Lot 38, Land Court Consolidation 45;
4. 115° 20' 174.00 feet along Kapiolani Boulevard to the point of beginning and containing an area of 34,800 square feet.

SUBJECT, TO Easement A-1 for pedestrian, utility, and maintenance purposes, as shown on City and County of Honolulu, Department of Planning and Permitting File No. 2020/SUB-41, approved on October 2, 2020.

SUBJECT, ALSO, TO Easement E-1 for electrical purposes as shown on City and County of Honolulu, Department of Planning and Permitting File No. 2020/SUB-153, approved on January 8, 2021.

Beginning at the east corner of this easement, the same being the north corner of Lot 38, Land Court Consolidation 45 and on the southwest side of Malakole Street, the coordinates of said point of beginning referred to Government Survey Triangulation

Station "PUNCHBOWL" being 6,634.59 feet South and 2,190.73 feet East and thence running by azimuths measured clockwise from true South:

1. 25° 20' 100.00 feet along Lot 38, Land Court Consolidation 45;
2. 115° 20' 27.00 feet along the remainder of Lot B, portions of Grant 1290 to Wm. Miller and Grant 2790 to L. Kamehameha, DPP File No. 2020/SUB-153;
3. 205° 20' 100.00 feet along the remainder of Lot B, portions of Grant 1290 to Wm. Miller and Grant 2790 to L. Kamehameha, DPP File No. 2020/SUB-153;
4. 295° 20' 27.00 feet along Kapiolani Boulevard to the point of beginning and containing an area of 2,700 square feet.

END OF EXHIBIT "B"

EXHIBIT "C"

ALLOCATION OF DEVELOPMENT RIGHTS

	Lots A and B	Maruito Property	Total
Lot Area in sq. ft.	70,000	30,746	100,746
Permitted FAR	10.0 ¹	3.5	N/A
Total LUO (FAR * Lot Area)	700,000	107,611	807,611
Existing Building Area	0	142,512.76	142,512.76
Transfer of Development Rights	- 34,901.76 to Maruito Property from Lot B	+ 34,901.76 from Lot B	0
Final Assignment of Development Rights	665,098.24	142,512.76	807,611

¹ Pursuant to Resolution 18-248 and Special District Permit No. 2018/SDD-25.

EXHIBIT "D"

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF LAND UTILIZATION
889 South King Street, 7th Floor
Honolulu, Hawaii 96813

DLU MASTER APPLICATION NUMBER 89-106-110-010-0001
NOV 3 02

Additional data, drawing/plans, and fee requirements are listed on separate sheets attached to this application. Please refer to the "Instructions for Filing." PLEASE ASK FOR THESE INSTRUCTIONS.

All specified materials and fees must accompany this form; incomplete applications could delay processing. You are encouraged to consult with department staff in completing the application. Please call the appropriate phone number given in the "Instructions for Filing" sheet. Please print legibly or type the required information.

PERMIT REQUESTED (Check one or more as appropriate):

- Clusters:
- Agricultural Cluster
 - Cluster Housing
 - Country Cluster
 - Park Dedication
 - Plan Review Use
 - Planned Development-Housing
 - Shoreline Setback Variance
 - Site Plan Review
 - Special Management Area Permit/Assessment
 - State Special Use Permit
 - Subdivision
 - Sunlight Reflection
 - Variance from LUO Sec (s): _____
- Conditional Use Permits:
- Type 1
 - Type 2
 - Existing Use
 - Flood Hazard Variance
 - Site Development Plan
 - Special District: _____
(Indicate District)
 - Waiver (public uses/utilities)
 - Zero Lot Line
 - Zone Change, From _____ to _____
 - Zoning Adjustment, LUO Sec (s): _____

TAX MAP KEY(S): 2-3-16:3 and 2
LOT AREA: 30,746 square feet and 15,000 square feet
ZONING DISTRICT: BHK-3 STATE LAND USE DISTRICT: URBAN

STREET ADDRESS/LOCATION OF PROPERTY: 1440 KAPIOLANI BLVD.
1416/1420 KAPIOLANI BLVD.

RECORDED FEE OWNER:	APPLICANT:
Name <u>TOSEI SHOJI COMPANY, LTD.</u>	Name <u>TOSEI SHOJI COMPANY LTD.</u>
Mailing Address <u>820 HILILANI, SUITE 820</u>	Mailing Address <u>820 HILILANI, SUITE 820</u>
<u>HONOLULU, HI 96813</u>	<u>HONOLULU, HI 96813</u>
Phone Number <u>536-3771</u>	Phone Number <u>536-3771</u>
Signature <u>[Signature]</u>	Signature <u>[Signature]</u>

PRESENT USE OF PROPERTY/BUILDING: <u>EXISTING</u> <u>1 & 2 STORY COMMERCIAL STRUCTURES WITH PARKING</u>	AUTHORIZED AGENT/CONTACT PERSON:
	Name <u>HASEGAWA KOHUTEN</u>
	Mailing Address <u>820 HILILANI, SUITE 820</u>
	<u>HONOLULU, HI 96813</u>
PROJECT NAME (if any): <u>TOSEI OFFICE BUILDING</u>	Phone Number <u>536-3771</u>
	Signature <u>[Signature]</u>

PROJECT PROPOSAL (Briefly describe the proposed activity or project): SECTION 4.40-17 PROVIDES FOR JOINT DEVELOPMENT OF THE TWO PARCELS WHICH ARE NEEDED TO DEVELOP THE OFFICE BUILDING AS DESIGNED. THE NEW OFFICE BUILDING HAS 5 FLOORS OF PARKING AND 9 FLOORS OF OFFICES. THE EXISTING 2 STORY OFFICE/COMMERCIAL STRUCTURE TO REMAIN ON THE SMALLER PARCEL.

FOR DEPARTMENT USE ONLY

Submitted Fee Amount: \$ _____

Date Application Accepted: _____ Accepted By: _____

Date of Public Hearing: _____

Approved

Approved with conditions indicated below. see attached

Denied for reason(s) given below

Exempt project.

FILE NO. 891001-81

THIS COPY, WHEN SIGNED BELOW, IS NOTIFICATION OF THE ACTION TAKEN.

[Signature] ZAR chief 12/16/89

The above approval does not constitute approval of any other required permits, such as building permits.

DLU FORM 100-1 (REV. 8/89)

File No. : 87/CUP1-81
Project : Joint Development - Section 4.40-17
Applicant : Tosei Shoji Company Ltd.
Address : 1440, 1416, 1420 Kapiolani Boulevard
Tax Map Key : 2-3-16: 2 and 3

Approval, subject to the following conditions:

1. All lots or parcels identified in Exhibits A-1 and A-2 shall be considered to be one zoning lot.
2. The agreement shall be filed with the Bureau of Conveyances or the Registrar of the Land Court of Hawaii. Proof of such filing shall be in the form of a copy certified by the appropriate agency and shall be submitted to the Department of Land Utilization before any building/sign permit is issued.
3. This application has only been reviewed and approved pursuant to the provisions of Section 4.40-17, and development shall comply with all other provisions of the Land Use Ordinance.
4. Approval of the Conditional Use Permit shall not be construed as approval of any building/sign permit applications; such applications are reviewed separately and shall comply with applicable codes and regulations.
5. The Director of Land Utilization shall reserve the right to impose additional requirements if necessary to promote and protect the health, safety, and welfare of the people of the City and County of Honolulu.
6. Breach of any of the conditions above stated shall be cause for revocation of this Conditional Use Permit.

EXHIBIT "E"



JNK
DOUGLAS, NELSON QUINN & SMITH
1000 CHIEF & COOK BUILDING
SUITE 1400 414 OF THE PACIFIC
WASHINGTON, PENNSYLVANIA 15132
(412) 542-5100

80 JUN 19 PM 3 10

1524861
1524861
1524861

REFERENCE: 216693; 312193

CONDITIONAL USE PERMIT
JOINT DEVELOPMENT

RECORDATION REQUESTED BY:)
)
AFTER RECORDATION, RETURN TO:)
)
)
RETURN BY: MAIL () PICKUP ())

AGREEMENT FOR ISSUANCE OF CONDITIONAL USE PERMIT UNDER
SECTION 4.40-17 OF THE LAND USE ORDINANCE (LUO)

THIS INDENTURE, made this 21st day of November, 1987, by TOSEI SHOJI CO., LTD., Owner of those certain parcels of land described in Exhibits "A-1" and "A-2", attached hereto and made a part hereof, being hereinafter referred to as "Declarant."

W I T N E S S E T H :

WHEREAS, LUO Section 4.40-17 of the Land Use Ordinance (LUO) provides that if an owner or owners of adjacent lots believe that joint development of their property would result in more efficient use of their land, they may apply for a Conditional Use Permit to allow such development and to treat said lots as one for zoning purposes; and

WHEREAS, LUO Section 4.40-17 requires an applicant for a Conditional Use Permit to submit to the City an agreement

binding himself and his successors in title to maintain a proposed development so that conformity with applicable zoning regulations will be assured; and

WHEREAS, Declarant proposes to develop all those parcels of land described in Exhibits "A-1" and "A-2", attached hereto in accordance with the zoning regulations, in the belief that said proposed development would result in a more efficient use of said parcels; and

WHEREAS, Declarant desires to avail itself of the benefits of LUO Section 4.40-17, and hereby makes application for the issuance of a Conditional Use Permit pursuant thereto.

NOW, THEREFORE, Declarant hereby covenants and makes the following Declarations:

1. This agreement is made pursuant to and in compliance with the provisions of LUO Section 4.40-17, relating to joint development of two or more adjacent lots, the terms of which Section shall be effective when the Director of Land Utilization of the City and County of Honolulu approves development of those parcels of land described in Exhibits "A-1" and "A-2", and issues a Conditional Use Permit therefor.

2. Declarant agrees to develop in accord with all other provisions of the zoning regulations.

3. That Declarant agrees to file copies of this agreement and the attachments referred to herein each time the Declarant or its successors, or permitted assigns or agents, files an application for a building permit for any structure within the real property which is the subject of this agreement.

-2-

4. That Declarant agrees that all of said parcels of land described in Exhibits "A-1" and "A-2" shall at all times remain an integral part of said development.

5. That failure to develop substantially in accordance with said agreement and the zoning regulations shall constitute grounds for the City to revoke or suspend any building permits issued hereunder.

6. That failure to maintain the development in accordance with this agreement shall constitute grounds for the City to revoke or suspend the Conditional Use Permit issued pursuant to this agreement.


7. That the City and County of Honolulu, State of Hawaii, shall have the right to enforce this agreement and the conditions contained herein by appropriate action at law or suit in equity against Declarant and any persons claiming an interest in such property.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this agreement shall run with the land and shall bind, inure to the benefit of, and constitute notice to the respective successors, grantees, assignees, mortgagees, lienors, and any other person who claims an interest in such property, of the parties hereto.

Approved for legal form

Deputy Corporation Counsel

DECLARANT:
TOSEI SHOJI CO., LTD.

By 
Its President

SH/0599

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

On this 21st day of November, 1987, before me personally appeared MAKOTO YAMAGUCHI, to me known, who, being by me duly sworn, did say that he is the PRESIDENT of TOSEI SHOJI CO., LTD., a Japan corporation; that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said MAKOTO YAMAGUCHI acknowledged said instrument to be the free act and deed of said corporation.


Notary Public, State of Hawaii

My commission expires: Feb. 29, 1988 *

TOSEI SHOJI CO., LTD. is a Japan corporation duly authorized to do business in the State of Hawaii as a foreign corporation, and whose principal place of business and post office address is 4-5 Nihonbashi, Honcho, Chuo-ku, Tokyo, Japan and whose principal place of business and post office address in the State of Hawaii is 2270 Kalakaua Avenue, Suite 1401, Honolulu, Hawaii 96815.

EXHIBIT "A-1"

All of those certain parcels of land situate at the North corner of Keeaumoku Street and Kapiolani Boulevard, at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 38, area 5,000.0 square feet,
39, area 5,000.0 square feet,
40, area 5,000.0 square feet,
41, area 5,000.0 square feet,
42, area 5,000.0 square feet, and
43, area 5,746.0 square feet,

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 45 of Hawaiian Land Company, Limited.

BEING the same premises described in TRANSFER CERTIFICATE OF TITLE NO. 276,853.

2-11-14
7-7-14

EXHIBIT "A-2"

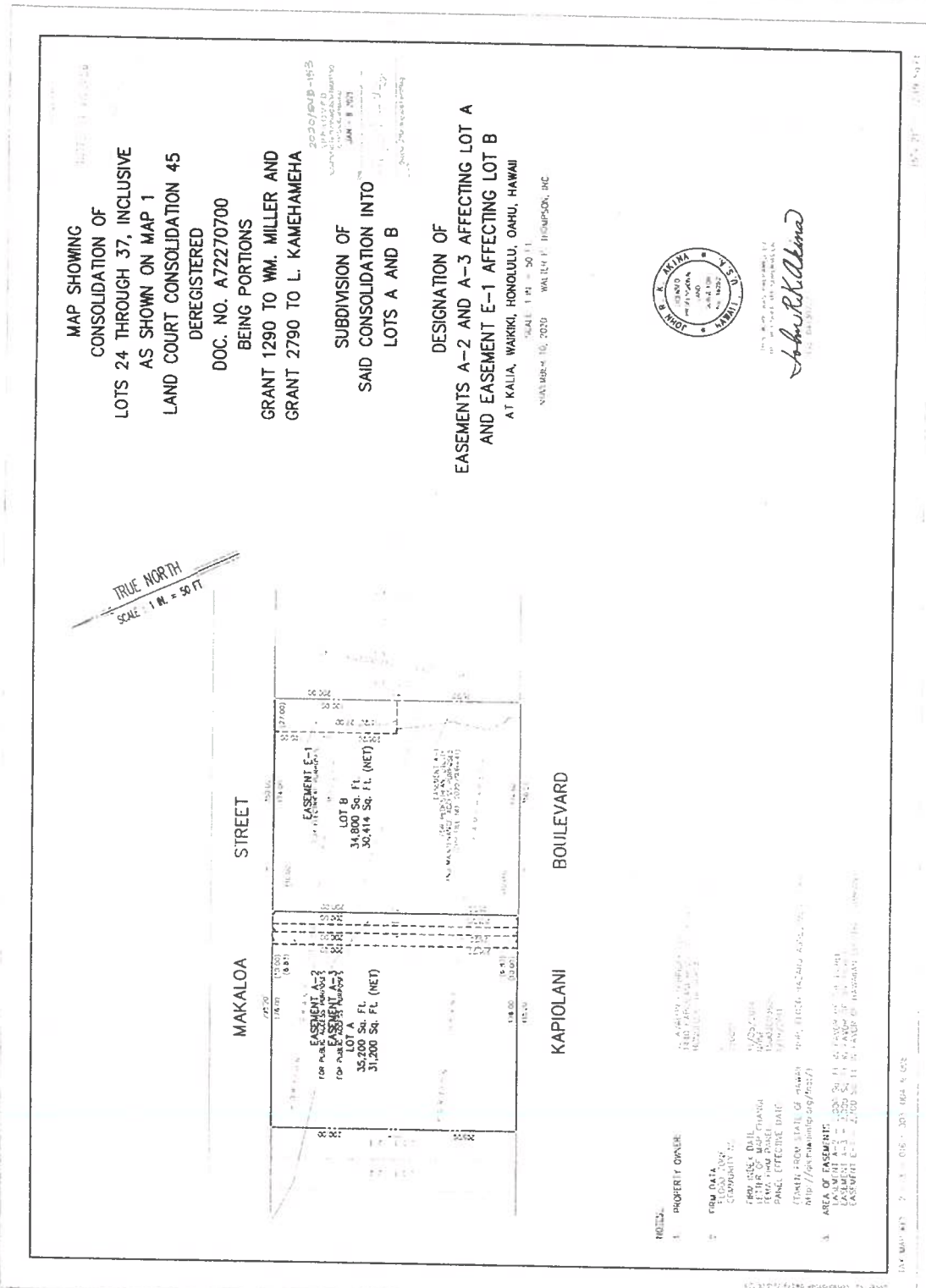
All of those certain parcels of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 35, area 5,000.0 square feet,
36, area 5,000.0 square feet, and
37, area 5,000.0 square feet,

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 45 of Hawaiian Land Company, Limited:

BEING all of the lands described in TRANSFER CERTIFICATE OF TITLE NO. 300,793.

EXHIBIT "F"



MAP SHOWING
CONSOLIDATION OF
LOTS 24 THROUGH 37, INCLUSIVE
AS SHOWN ON MAP 1
LAND COURT CONSOLIDATION 45
DEREGISTERED
DOC. NO. A72270700
BEING PORTIONS
GRANT 1290 TO WM. MILLER AND
GRANT 2790 TO L. KAMEHAMEHA

SUBDIVISION OF
SAID CONSOLIDATION INTO
LOTS A AND B

DESIGNATION OF
EASEMENTS A-2 AND A-3 AFFECTING LOT A
AND EASEMENT E-1 AFFECTING LOT B
AT KALIA, WAIKIKI, HONOLULU, OAHU, HAWAII

SCALE: 1 IN. = 50 FT.
NOVEMBER 16, 2010 WALTER F. THOMPSON, INC.



Walter F. Thompson
Civil Engineer
No. 1825

- NOTES:
1. PROPERTY OWNER: [illegible]
 2. FROM DATA: [illegible]
 3. AREA OF EASEMENT: [illegible]