Downtown Capital LLC

Petition for Waiver or Suspension of the Visual Light Transmittance Standard in HAR § 15-217-55(k)(2)











NOTE: Fire Alarm System approval apples to design and specifications as apples to maintain and auditions as apples to maintain and audition as a apples to maintain and audition as a apples to maintain and audition as a apple to maintain as a apple to	APPROVED	KAKAAKO WORKFORCE HC SUBCHAPTER 4 OF 2011 MAUKA PLAN AN 801 SOUTH STREET HONOLULU, HAWAII
For Matters and States	JOB SITE COPY TO 194 4 A 2012-11-1042 + 1070 HCDA 40 11/4/17 HCDA 4/5/10 15 4/5/10 Sol South Street	KAZU YATO, AIA & ASSOCIATES,INC.

"Approved as to the requirements of the Mauka and/or Makai area Plans and Rules" – 8.6.13

Downtown Capital LLC 215 N. King Street, Suite 1000 Honolulu, Hawaii 96817 Phone (808) 526-2027 Fax (808) 526-2066

March 23, 2015

Anthony J.H. Ching Executive Director Hawaii Community Development Authority 547 Queen Street Honolulu, Hawai'i 96813

> Re: Minor Change to Permit Application for Development Permit No. KAK 12-109

Dear Director Ching,

On behalf of Downtown Capital LLC, this letter requests a minor change to our Application for Development Permit No. KAK-109 (Permit) to conform the Application to the approved and installed windows for the project.

The Permit was approved on December 5, 2012. Following the approval of the Permit, various ministerial approvals were granted in favor the project, including a final building permit. Construction of the project has been completed, and all of the windows for the project have been installed.

As described in the Application, 801 South St is not an entirely glass building. 67% of the building exterior is a solid hard surface. 20% of the building exterior is glass panels and doors setback four feet from the building face on lanais with a roof overhang. The remaining 13% of the building exterior is glass windows. None of the exterior surfaces are highly reflective and the windows and doors provide natural ventilation and light to every room in each apartment unit.

As stated in the Mauka Area Rules, the "visible light transmission level for windows" located above the ground floor is to be 50% or greater. Although our Application did not note the visible light transmission level for the windows, the windows installed on the project were described in our Application and approved by HCDA. Attached is the additional information for the Application that includes the methodology and calculation of the visible light transmission level for windows at 50.50%

Since the Permit was approved with the windows and has been relied upon, we request a conforming minor change to the Application to reflect, and thereby approve, the "visible light transmission level of the windows" for the installed windows as set forth herein. The Executive Director may approve the minor change under HAR § 15-217-90. The change does not seek to

Calculation of the Visible Light Transmission Level of Sliding Lanai Doors

The sliding lanai doors consist of three lites; two fixed and one operable. When the operable lite is in the open position it decreases the visible light transmittance of the lite that is covered. The calculation to determine the visible light transmission of the sliding window is as follows:

Term Definitions: W_1 = Width of first fixed lite W_0 = Width of operable lite W_2 = Width of second fixed lite H=Height of window T_{vis} = Visible light transmittance of window glazing $T_{Stiding}$ =Visible light transmission of effective sliding window $A_{Stiding}$ =Total effective area of sliding window



Computation:

 $((W_1^* + W_0 + W_2)^* H) = A_{Sliding}$

$$\frac{((W_1*H)*(\ T_{vis}*\ T_{vis})) + ((W_0*H)*\ T_0) + ((W_2*H)*\ T_{vis})}{A_{Sliding}} \ = T_{Sliding}$$

Calculation of the Total Visible Light Transmission Level of Windows

The total visible light transmittance of windows for the Project is calculated by taking the combined visible light transmission of both sliding and awning windows together.

Term Definition:

A_{Sliding}=Total effective area of sliding window A_{Awning}=Total effective area of awning window T_{Sliding}=Visible light transmission of effective sliding window surface T_{Windows}=Visible light transmission of windows

Computation:

$$\frac{(T_{Sliding} * A_{Sliding}) + (T_{Awning} * A_{Awning})}{(A_{Sliding} + A_{Awning})} = T_{Windows}$$

Calculation of the Visible Light Transmission Level of Awning Windows

The awning windows consist of two types of window lites, fixed and operable. The components that are factored into the calculation are the Visible Light Transmittance of the window glazing and the visible light transmittance of the opening created by opening the awning style operable lite. The calculation to determine the visible light transmission level of the sliding window is as follows:

Term Definition: W_A = Width of awning window H=Height of window O_T =Opening size at top of lite when window is open O_B =Opening size at bottom of lite when window is open T_{vis} = Visible light transmittance of window glazing T_o = Visible light transmittance of opening with no glazing T_{Awning} =Visible light transmission of effective awning window surface A_{Awning} =Total effective area of awning window $T_{Windows}$ =Visible light transmission of windows



Computations:

 $(W_A*H)+(W_A*O_T)+(W_A*O_B)+((H*O_B)/2)+((H*O_B)/2) = A_{Awning}$

$$\frac{((W_A*H)^* T_{vis}) + ((W_A*O_T)^* T_0) + ((W_A*O_B)^* T_0) + (((H^*O_B)/2)^* T_0) + (((H^*O_B)/2)^* T_0)}{A_{Awning}} = T_{Awning}$$

Ex. 4 (calculations by Dredging)

HAR § 15-217-55 Architectural design.

(k) Windows:

(1) Highly-reflective, mirrored, and opaque **window glazing** are prohibited;

(2) Window glazing shall be transparent with clear or limited UV tint so as to provide views out of and into the building. Visible light transmission level of windows on the ground floor shall be seventy per cent or greater and on all other floors the visible light transmission level shall be fifty per cent or greater;

(3) For floors one through ten, all principal building windows shall be operable;

(4) Vinyl **window frames** are prohibited, except for Figures BT.1 to BT.3, dated September 2011, made a part of this chapter, and attached at the end of this chapter;

(5) Pop-in muntins are prohibited below the third floor; and

(6) Window grilles are prohibited except at window openings to podium parking or on building elevations facing alleys.

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Calvert G. Chipchase Direct Line: (808) 521-9220 Direct Fax: (808) 540-5021 E-mail: cchipchase@cades.com

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April 2, 2015

BY HAND DELIVERY

Director Anthony Ching Hawai'i Community Development Authority 547 Queen Street Honolulu, Hawai'i 96813

Re: Development Permit No. KAK 12-109; Petition for Waiver of Hawai'i Administrative Rule § 15-217-55(k)(2)

Dear Director Ching:

I represent Downtown Capital LLC in connection with Development Permit No. KAK 12-109 (the "Permit"). The Hawai'i Community Development Authority ("HCDA") approved the Permit on December 5, 2012. Following approval of the Permit, Downtown Capital received the project's grading, foundation, superstructure and building permits, all of which were reviewed and approved by HCDA before they were issued.

In accordance with the Permit and the subsequent approvals, Downtown Capital constructed the project on Tax Map Key No. (1) 2-1-047-003 (the "**Property**"). Downtown Capital completed construction on March 20, 2015. Buyers for the project will begin preclosing on April 11, 2015.

Even though the project has been constructed as authorized by the building permit and other approvals, HCDA has requested confirmation that the windows installed on the project conform to Hawai'i Administrative Rule ("HAR") § 15-217-55(k)(2). Section 15-217-55(k)(2) provides in relevant part as follows:

k) Windows:

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EXHIBIT 9

Cades Schutte Building 1000 Bishop Street, Suite 1200 Honolulu, Hawaii 96813 Tel: 800.521-9200 Fax: 808.521-9210 www.edes.com Kona Office 75-170 Hualalai Boad, Suite B-303 Kailua Kona, Hawaii 56740 Tel: 808.329-5811 Fax: 808.326-1175 Maui Office 444 Hana Highway, Suite 204 Kahulul, Hawali 96732 Tel: 808.871-6016 Fax: 808.871-6017

BY HAND DELIVERY

ector Anthony Ching wai'i Community Development Authority / Queen Street nolulu, Hawai'i 96813 Re: Development Permit No. KAK 12-109; Petition for Waiver of Hawai'i Administrative Rule § 15-217-55(k)(2) **Director Anthony Ching** Hawai'i Community Development Authority 547 Queen Street Honolulu, Hawai'i 96813

Dear Director Ching:

I represent Downtown Capital LLC in connection with Development Permit No.

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Ex. 9 at 1 (4/2/15 letter)

Time is of the essence. The project has been completed. More than 600 buyers are preparing to sign loan documents and deposit funds to close on their units. We need to resolve the question with respect to the windows so that HCDA will approve the certificate of occupancy for the project.

If HCDA has concluded that the windows installed on the project are inconsistent with section 15-217-55(k)(2), Downtown Capital petitions for a waiver of the rule pursuant to HAR § 15-15-219-98(b). Section 15-15-219-98(b) authorizes the authority to waive any of the provisions of HCDA's administrative rules. As part of this petition, Downtown Capital provides the following information:

Ex. 9 at 2 (4/2/15 letter)

Downtown Capital LLC 215 N. King Street, Suite 1000 Honolulu, Hawaii 96817 Phone (808) 526-2027 Fax (808) 526-2066

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HAWAII COMMENTY DEVELORMENT AUTHORITY

April 9, 2015

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Anthony J.H. Ching Executive Director Hawaii Community Development Authority 547 Queen Street Honolulu, Hawai'i 96813

Re: HCDA Development Permit No. KAK 12-109

Dear Director Ching:

Development Permit No. KAK 12-109 (Permit) regarding 801 South St (Project) was approved by HCDA on December 5, 2014. Following the approval of the Permit, various ministerial approvals were granted by HCDA in favor of the Project, including a final building permit. We are pleased to inform you that construction of the Project was completed on March 20, 2015. Over 600 buyers will begin pre-closing on April 11, 2015. Each buyer has made the cash and financing arrangements for the closing. Buyers are scheduled to begin move in on June 1, 2015. Most buyers have made arrangements to vacate their existing rentals and are excited about becoming new homeowners.

HAR § 15-217-55(k)(2) provides in part that "[v]isible light transmission level of windows on the ground floor shall be seventy per cent or greater and on all other floors the visible light transmission level shall be fifty per cent or greater." It has been suggested that this language might have applicability to buildings like the Project. We do not believe that such an application of the rule would be consistent with its intent and objective.

As described in the Permit Application, the Project is not a glass-enveloped building. Nearly 67% of the building exterior is a solid hard surface. Almost 20% of the building exterior is comprised of glass panels and doors that are set back four feet from the face of the building on lanais with a roof overhang. The remaining 13% of the building exterior is glass windows. None of the exterior surfaces are highly reflective and the windows and doors open and provide natural ventilation and light to every room in each apartment unit.

To dispel any doubts regarding the proper interpretation of HAR § 15-217-55(k)(2), we urge HCDA to undertake a review of the rule to clarify its application. In the hope of assisting HCDA in its review, this letter offers our observations and suggestions in that regard.

HCDA may suspend enforcement of HAR § 15-217-55(k)(2) pending determination of whether the rule should be amended or repealed.

HCDA's express power:

HAR § 15-219-98 provides:

(a) Every petition for a waiver of any of the provisions of the administrative rules of HCDA's community development districts shall be in writing, signed by the petitioner, and submitted to the authority for approval.

- (b) Every petition shall state:
- The name, address, and telephone number of the petitioner and the petitioner's legal counsel, if any, which shall be updated by the petition at all times;
- (2) The specific provision of the administrative rules of HCDA's community development districts for which petitioner seeks a waiver;
- (3) The effect of the strict application of the provision for which petitioner seeks a waiver;
- (4) The reasons why the petitioner seeks to avoid the strict application of the provision for which petitioner seeks a waiver;
- (5) An alternate plan or other means by which the spirit and intent of the provision for which petitioner seeks a waiver can be accomplished other than the strict application of the provision;

* * *

(e) No waiver shall be granted by the authority unless the petition and supporting information demonstrate that:

- Granting the waiver will not endanger the health, safety, or welfare of the subject community development district; and
- (2) There is either an alternate means for which the spirit and intent of the provision for which petitioner seeks a waiver can be accomplished or the waiver of the strict application of the provision is in the best interest of the subject community development district.
- Under this rule:
 - A petition only needs to identify the "rules" to be suspended, the "effect" of the rules and an alternate plan by which the spirit and intent of the rules can be accomplished.

EXHIBIT 15

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

STATE OF HAWAI'I

In re Downtown Capital LLC's

DEVELOPMENT PERMIT NO. KAK 12-109

Petition Appealing August 19, 2015 Notice of Violation for the Project under Development Permit No. KAK 12-109 for 801 South Street (State Tax Map Key No. (1) 2-1-047-003) Issued by Hawaii Community Development Authority on December 5, 2012

DECLARATION OF RYAN HARADA

DECLARATION OF RYAN HARADA

I, RYAN HARADA, declare of my own personal knowledge as follows:

1. Through Workforce Kakaako LLC, I am a principal of Downtown Capital,

LLC ("Downtown Capital").

In re Downtown Capital LLC's

Petition Appealing August 19,

2. Downtown Capital is the owner and developer of the residential workforce

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

STATE OF HAWAI'I

housing project at 801 South Street (the "Project").

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

STATE OF HAWAI'I

In re Downtown Capital LLC's

DEVELOPMENT PERMIT NO. KAK 12-109 DECLARATION OF VITO GALATI

Petition Appealing August 19, 2015 Notice of Violation for the Project under Development Permit No. KAK 12-109 for 801 South Street (State Tax Map Key No. (1) 2-1-047-003) Issued by Hawaii Community Development Authority on December 5, 2012

DECLARATION OF VITO GALATI

I, VITO GALATI, declare of my own personal knowledge as follows:

1. Through Workforce Kakaako LLC, I am a principal of Downtown Capital,

LLC ("Downtown Capital").

2. Downtown Capital is the owner and developer of the residential workforce

housing project at 801 South Street (the "Project").

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

STATE OF HAWAI'I

In re Downtown Capital LLC's

Petition Appealing August 19, 2015 Notice of Violation for the Project under Development Permit No. KAK 12-109 for 801 South Street (State Tax Map Key No. (1) 2-1-047-003) Issued by Hawaii Community Development Authority on December 5, 2012

DEVELOPMENT PERMIT NO. KAK 12-109

DECLARATION OF COLBERT MATSUMOTO

DECLARATION OF COLBERT MATSUMOTO

I, COLBERT MATSUMOTO, declare of my own personal knowledge as follows:

1. Through South Street Towers LLC, I am a principal of Downtown Capital,

LLC ("Downtown Capital").

2. Downtown Capital is the owner and developer of the residential workforce

housing project at 801 South Street (the "Project").

DECLARATION OF MARSHALL HUNG

I, MARSHALL HUNG, declare of my own personal knowledge as follows:

1. Through Workforce Kakaako LLC, I am a principal of Downtown Capital,

LLC ("Downtown Capital").

2. Downtown Capital is the owner and developer of the residential workforce

housing project at 801 South Street (the "Project").

Exs. 11-14

DEVELOPMENT PERMIT NO. KAK 12-109

DECLARATION OF MARSHALL HUNG

2015 Notice of Violation for the Project under Development Permit No. KAK 12-109 for 801 South Street (State Tax Map Key No. (1) 2-1-047-003) Issued by Hawaii Community Development Authority on December 5, 2012

7/22/15 Transcript in OliverMcMillan

- Q [Member Bassett] Previous testimony stated some kind of happy balance, this nice range where **ultimate VLT**. Do you have any range that you would say is an **ideal VLT range**?
- A [HCDA Consultant Patrick Yen] From what I've read, a lot -- like kind of like **an industry standard, you could say is a range between maybe 20 and up to 40 percent.**

MR. NEUPANE: So at that time, HCDA staff just took the consultant's recommendation that **50 percent VLT** is reasonable, can be made, and, excuse me, **it will address the external reflectivity**, heat island as well as the dark look of buildings. MR. NEUPANE: Yes, Chair Whalen. The consultants are here, and they have prepared a graph of VLT versus reflectance based on over a hundred different glass with the manufacturers that was mentioned, Viracon and the same three manufacturers. So I just wanted to provide that information to the board. And just to summarize the results, basically, it says that, you know, mathematically, it shows that there is no correlation between the two data points.

MR. NEUPANE: If you look at the glazing data, then it shows that you can have a product that has a very low VLT, but has low reflectivity too. 7/22/15 Staff Report in OliverMcMillan

"In a residential building, a high VLT glazing may cause **privacy issues**."

7/22/15 Transcript in OliverMcMillan

- Q [Vice Chair Scott] . . . [W]hat is the advantage to the public to have a higher VLT? You're talking about the public that's outside the building. I know from the inside of the building, obviously, you don't want to be living in a fishbowlwhere everyone can be looking in.
- A [Keith Chan] Right.

HCDA Consultant Report in OliverMcMillan

[H]igher VLT glazing typically results in **lower energy efficiency** in a building. If sustainability and environmental consideration are priorities, lower energy consumption by a building may be more desirable than its transparency. This means that **lower VLT values may be more desirable**. 7/22/15 Transcript in OliverMcMillan

- Q [Vice Chair Scott] If you impose a higher VLT, you're going to end up having a much -- much more difficult time keeping the environment in the apartment comfortable.
- A [Daniel Nishikawa] Correct.

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

STATE OF HAWAI'I

In re Downtown Capital LLC's

DEVELOPMENT PERMIT NO. KAK 12-109

Petition for Waiver or Suspension of the Visible Light Transmittance Standard in HAR § 15-217-55(k)(2) for the Project under Development Permit No. KAK 12-109 for 801 South Street (State Tax Map Key No. (1) 2-1-047-003) Issued by Hawaii Community Development Authority on December 5, 2012 DECLARATION OF SCOTT CODY

DECLARATION OF SCOTT CODY

I, SCOTT CODY, declare of my own personal knowledge as follows:

 I am a Preconstruction Project Manager with Hawaiian Dredging Construction Company, Inc. ("HDCC"), and I have been with HDCC since February 2013.

2. I earned my Bachelors of Science from Rochester Institute of Technology, majoring in Industrial Engineering, Construction Management, and Economics. I earned my Masters of Business Administration from Rochester Institute of Technology - Saunders College of Business, with a Management and Leadership Concentration.

 Prior to my current position, I worked as a Project Engineer for LeChase Construction from June 2010 to January 2013 and as a Construction Engineer for HDCC from March 2008 to September 2009.

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

STATE OF HAWAI'I

In re Downtown Capital LLC's

DEVELOPMENT PERMIT NO. KAK 12-109

DECLARATION OF MICHAEL BAULIG

Petition for Waiver or Suspension of the Visible Light Transmittance Standard in HAR § 15-217-55(k)(2) for the Project under Development Permit No. KAK 12-109 for 801 South Street (State Tax Map Key No. (1) 2-1-047-003) Issued by Hawaii Community Development Authority on December 5, 2012

DECLARATION OF MICHAEL BAULIG

I, MICHAEL BAULIG, declare of my own personal knowledge as follows:

 I am a Project Manager and Senior Estimator with Kalu Glass Company, Inc. ("Kalu"), and I have been with Kalu since 1997.

2. I have worked in the window and glass industry for 40 years.

 Kalu is a subcontractor for the residential workforce housing project at 801 South Street, Building A (the "Project"). Kalu installed the windows on the Project. I worked on the Project in my capacity as Senior Estimator with Kalu.

4. I make this declaration in support of Downtown Capital LLC's ("Downtown Capital") Petition for Waiver or Suspension of the Visible Light Transmittance ("VLT") Standard in HAR § 15-217-55(k)(2), filed August 5, 2015 (the "Waiver Petition"), with the Hawaii Community Development Authority ("HCDA").

EXHIBIT 24

EXHIBIT 23











ASSOCIATION OF APARTMENT OWNERS OF 801 SOUTH ST

Resolution Regarding Waiver Petition Adopted at a Meeting of the Board of Directors held September 28, 2015

WHEREAS, HCDA has asserted that applying VLT standard to the Building would require the removal and replacement of all of the windows located above the ground floor in the Building; and

WHEREAS, the Association's Board of Directors has determined that the waiver or suspension contemplated by the Waiver Petition is in the best interests of the Association and its members; NOW, THEREFORE, BE IT

RESOLVED, the Association hereby respectfully requests that HCDA grant the Waiver Petition for the reasons set forth in the Waiver Petition and because:

1. Residents do not want people outside of the Building to be able to look into their units. Any increase in views into the units would create privacy concerns for residents.

2. The Association has not received any complaint from any owner or resident about being unable to see out of the Building.

3. The Association has not received any complaint regarding the reflectance of the glass used on the Building. The Association does not perceive the window glass to be highly reflective.

4. The Association has not received any complaint that the window glass creates a heat island around the Building. The Association does not perceive the window glass to create a heat island around the Building.

5. Because the lanai doors and the windows are operable, residents may open their doors and windows to adjust the amount of light coming in to the units and to keep the units cool using less air conditioning and electricity.

7. Over 1,000 residents have already moved into the Building. It would be unfairly prejudicial, highly disruptive and impracticable to require that all glass windows and lanai doors be removed and replaced in the Building's 635 units.

ADOPTED – ASSOCIATION OF APARTMENT OWNERS OF 801 SOUTH ST



Secretary



Downtown Capital LLC

Petition for Waiver or Suspension of the Visual Light Transmittance Standard in HAR § 15-217-55(k)(2)





