

Shall the Authority Approve the Developer's Request for a One-Year Extension of Development Permit No. KAK 14-101 for the Mixed-Use Affordable Housing Project at 1025 Waimanu Street (Ola Ka 'Ilima), Previously Approved by the Hawaii Community Development Authority (HCDA) on January 21, 2015?

Staff Report
October 5, 2016

Background: The Hawaii Community Development Authority (HCDA) approved a Development Permit for the 1025 Waimanu Street project (Project) on January 21, 2015. A copy of the Findings of Fact, Conclusion of Law, Decision and Order is provided as Exhibit A. The Project proposes to provide 84 units, including a mix of one-, two- and three-bedroom floor plans, as a 100% affordable rental targeting low-income groups between 30% and 60% Area Median Income.

Section 15-217-87 of the Mauka Area Rules provides for effective approval periods of permits issued by the HCDA. Section 15-217-87(b) provides that development permits shall have an effective approval period of two years. Section 15-217-87(d) provides that the HCDA may issue up to two extensions of development permits where each extension can be up to one year. If Artspace Projects, Inc. (Developer) submits a foundation permit application for the Project to the City and County of Honolulu, Department of Planning and Permitting (DPP) and subsequently has the foundation permit approved by the HCDA, an extension of the Development Permit would not be necessary. For the Project, the approval period of the Development Permit expires on January 21, 2017. The Developer of the Project anticipates being able to submit a foundation permit application to DPP in October 2016 and to receive HCDA's approval before the end of the approval period. However, the Developer is proactively requesting an extension of one year for the Development Permit of the Project. The Developer's request for extension of their Development Permit is provided as Exhibit B.

Discussion: The Developer has been working diligently on several aspects of the Project since obtaining the Development Permit from the HCDA, including securing additional financing, design development, and other pre-construction work. The Developer's Project updates is provided as Exhibit C.

As noted in both the Development Permit extension request letter and the Project update, there has been over \$54 million in committed funds assembled from various private, philanthropic, and public sources – including \$1.2 million in HOME funds in 2015, and in 2016 an additional \$4.4 million Affordable Housing Funds, \$27 million in Low-Income Housing Tax Credits, and \$7.75 million in Rental Housing Revolving Funds.

The Developer has maintained an on-going Right of Entry to the site since April 2011, for the purposes of site study work including archaeological, geological, etc. (see Exhibit D, Revocable Right of Entry 2-16). The Project site is currently being operated as parking, under a revocable permit with a parking vendor, entered into on January 17, 2016 (see Exhibit E, Revocable Permit 15-07).

Staff believes that the Developer has been working diligently towards meeting all the requirements of the Development Permit, addressing critical design issues presented by a challenging site along two unimproved streets, as well as assembling financing for the Project.

Recommendation: Staff recommends that the Authority approve the Developer's request for a one-year extension of Development Permit No. KAK 14-101 for the mixed-use affordable housing project at 1025 Waimanu Street (Ola Ka 'Ilima), previously approved by the Hawaii Community Development Authority (HCDA) on January 21, 2015.

Attachments: Exhibit A – Findings of Fact, Conclusion of Law, Decision and Order
 Exhibit B – Letter from Carlsmith Ball LLP, dated August 15, 2016
 Exhibit C – October 2016 Project Update
 Exhibit D – Revocable Right of Entry 2-16
 Exhibit E – Revocable Permit 15-07

ORDER
OF THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Application of)	APPLICATION NO. KAK 14-101
)	
Artspace Projects, Inc.,)	
)	
Applicant)	
)	
)	
for a Development Permit)	
)	
_____)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

On September 12, 2014, Artspace Projects, Inc. (“Artspace”) submitted an application for a development permit (“Application”) pursuant to Act 61, Session Laws of Hawaii 2014 (“Act 61”), Chapter 206E of the Hawaii Revised Statutes (“HRS”), and Chapters 15-217 and 15-219 of the Hawaii Administrative Rules (“HAR”) for a proposed mixed-use building to contain 84 affordable housing units to be made available to households earning at or below sixty percent (60%) of the Area Median Income (“AMI”), a ground floor commercial space and related improvements, to be located at 1025 Waimanu Street, in a project to be known as Ola Ka ‘Ilima Artspace Lofts (“Project”). The property affected by this Application is located within the Kakaako Community Development District (“KCDD”) and includes the central area of the block bound by Waimanu Street, Kawaiahao Street, Kamakee Street and Cummins Street, further identified as Tax Map Key (“TMK”) No. (1) 2-3-003: 040 (the “Property”).

The Hawaii Community Development Authority (“HCDA” or the “Authority”), having heard and examined the testimony, evidence, and arguments of counsel, which were presented during the hearings, along with their respective pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

PROCEDURAL HISTORY

1. On September 12, 2014, Artspace submitted its Application for the proposed Development Permit.
2. On October 31, 2014, Artspace submitted a revised Application.
3. On November 3, 2014, the Application was deemed complete by the HCDA.
4. On November 7, 2014, the HCDA posted the Application on the HCDA website.
5. On November 8, 2014, the Notice of Public Hearings was published in the Honolulu Star-Advertiser.
6. The President of the Senate and Speaker of the House of Representatives were notified upon the posting of the hearing notice.
7. Associations of apartment owners of residential buildings in the KCDD adjacent to the Project, surrounding landowners and businesses, the Ala Moana/Kakaako Neighborhood Board, and the Kakaako Improvement Association were notified of the public hearings.
8. Various elected officials and State and County agencies were also notified of the public hearings.

9. Hearing notice was also provided to approximately 366 individuals and organizations that have shown interest in development in Kakaako in the past and who have requested that they be kept informed of development activities in the KCDD.

10. On November 15, 2014, Artspace provided notification by first-class United States mail, postage prepaid, to owners and lessees of record of real property located within a 300-foot radius of the perimeter of the proposed Project identified from the most current list available from the Real Property Assessment Division of the Department of Budget and Fiscal Services of the county in which the Project is located.

11. The said notification included, without limitation, (1) Project specifications; (2) requests for variance, exemption, or modification of a community development plan or the Authority's community development rules; and (3) procedures for intervention and a contested case hearing.

12. As set forth in the Notice of Public Hearings, the deadline to intervene was November 28, 2014. No motion for intervention was filed.

13. Comments regarding the Project were received from the following agencies:

- Department of Transportation Airports Division, November 28, 2014 correspondence;
- Department of Education ("DOE"), November 19, 2014 correspondence;
- Department of Land and Natural Resources ("DLNR") State Historic Preservation Division ("SHPD"), April 28, 2014 and September 29, 2014;
- Board of Water Supply ("BWS"), September 2, 2014 correspondence,

- Department of Transportation Services (“DTS”), December 8, 2014 correspondence;
- Department of Planning and Permitting (“DPP”), December 12, 2014 correspondence;
- Honolulu Authority for Rapid Transportation (“HART”), December 18, 2014 correspondence;
- BWS, December 18, 2014 correspondence; and
- Hawaii Housing Finance & Development Corporation (“HHFDC”) for Action, reviewed and approved by the HHFDC Executive Director on November 13, 2014.

14. On December 5, 2014, a pre-hearing conference was held at HCDA’s office at 461 Cooke Street, Honolulu, Hawaii 96813.

15. On December 5, 2014, the pre-hearing order was issued by the HCDA Executive Director.

16. On December 8, 2014, an inter-agency meeting was held at HCDA’s office at 461 Cooke Street, Honolulu, Hawaii 96813. No agencies, apart from the HCDA, attended the inter-agency meeting.

17. On December 10, 2014, Artspace submitted its witness list, exhibit list, and exhibits pursuant to the Pre-Hearing Order.

18. On December 17, 2014, a public hearing on the Application was held at HCDA’s office at 461 Cooke Street, Honolulu, Hawaii 96813 in order to allow Artspace to present the Project and to afford the public the opportunity to present testimony on the Project (hereinafter, “December 17, 2014 hearing”).

19. At the December 17, 2014 hearing, the Authority admitted into evidence the following exhibits, including written direct testimony, presented by Artspace:

Exhibit	Exhibit Description
1.	Artspace Ola Ka 'Ilima Lofts PowerPoint Presentation
2.	Resume of Gregory Handberg, Senior Vice President, Properties, Artspace Projects
3.	Resume of Heidi Z. Kurtze, Vice President, Property Development, Artspace Projects
4.	Resume of Cathryn Vandenbrink, Vice President, Properties, Artspace Projects
5.	Resume of Kevin Miyamura AIA, LEED-AP, Design Principal, Urban Works
6.	Resume of Jennifer Poepoe, RA, Project Architect, Urban Works
7.	Resume of Jami S. Hirota, P.E., LEED BD&C, Civil Engineer/Project Manager, Sam O. Hirota, Inc.
8.	Resume of Pete G. Pascua, P.E., Vice President, Wilson Okamoto Corporation
9.	Limited Warranty Deed, 2010-069763 to the HCDA
10.	Artspace Projects, Inc. - Ola Ka 'Ilima Artspace Lofts Act 61 (2014) Analysis Ex. A - Mauka Area Rules Conformance Matrix Ex. B - HAR §15-307-24 Ex. C - HHFDC For Action, 11/13/14 Ex. D - Resume of Kevin R. Carney, EAH Housing Ex. E - SHPD Confirmation Letter, 9/29/14 (includes SHPD determination letter of 4/28/14) Ex. F - Information re PA'I Foundation and Vicky Holt Takamine

Exhibit	Exhibit Description
11.	Affidavit of Gregory Handberg re mailing of notice of hearing Ex. A - Letter and Notice of Public Hearing Ex. B - List of Properties from City and County of Honolulu Real Property Assessment Division Ex. C - Copy of Post Office Receipt for Mailing Ex. D - Master Mailing List with "Return to Sender" Notations
12.	Written Direct Testimony of Kevin Miyamura
13.	Written Direct Testimony of Jami S. Hirota
14.	Written Direct Testimony of Pete G. Pascua
15.	Board of Water Supply Approval Letter Dated August 27, 2012
16.	City and County of Honolulu Sewer Connection Application, Approved on December 1, 2014
17.	State Department of Health Concurrence Letter dated June 24, 2014
18.	Resume of Abbey Mayer, President, Mayer & Associates Consulting, Inc.
19.	Extracted Pages from the Minutes of a Special Meeting of the HCDA, November 25, 2014, Regarding the Artspace Project Lease

20. The Application dated October 31, 2014, which included: (i) Project drawings; (ii) Final Environmental Assessment (letter to the Office of Environmental Quality Control ("OEQC") dated 10/28/14) ("Final EA"); (iii) HRS 201H Application to HHFDC ("201H Application"); (iv) BWS letter dated September 2, 2014; (v) Sewer Connection Application dated July 18, 2012; (vi) Leadership in Energy and Environmental Design ("LEED") v4 for Neighborhood Development Plan Project Checklist; and (vii) Traffic Impact Report ("TIR")

dated June 2013, had previously been submitted to the Authority for processing and all such material was accepted into the record in KAK 14-101 at the December 17, 2014 hearing.

21. Artspace presented the oral testimony of the following 5 witnesses:

	Witness	Position	Description of Testimony
1.	Cathryn Vandenbrink	Vice President, Properties, Artspace Projects, Inc.	General background of Project, company, and Project development.
2.	Vicky Holt Takamine	Executive Director, PA'I Foundation	PA'I Foundation, Hawaiian cultural art and education aspects of the Project.
3.	Kevin Miyamura	Principal, Urban Works, Inc.	Project architecture and conformance with the HCDA Rules.
4.	Jami S. Hirota	Engineer & Project Manager, Sam O. Hirota Inc.	Civil engineering aspects of Project.
5.	Heidi Zimmer Kurtze	Vice President, Property Development, Artspace Projects, Inc.	Project finance and development.

22. In addition to the oral testimony provided by the above witnesses, Artspace also provided written direct testimony of Kevin Miyamura (architecture), Jami S. Hirota (civil engineering), and Pete G. Pascua (traffic engineering), as Artspace Exhibits 12-14, respectively.

23. The HCDA admitted the following witnesses as experts in their designated areas of expertise, as follows: Kevin Miyamura, architecture; Jennifer Poepoe, architecture; Jami Hirota, civil engineering; Pete Pascua, traffic engineering; Heidi Kurtze, project finance; and Kevin Carney, real estate development and property management.

24. For the December 17, 2014 hearing, the HCDA received five public comments in writing in support of the Project and zero public comments in writing in opposition to the Project.

25. At the December 17, 2014 hearing, seven members of the public provided oral comments. Of those, all seven supported the Development Permit; zero opposed.

26. At the December 17, 2014 hearing, the HCDA released its Staff Report entitled Development Permit Request, KAK 14-101: Ola Ka ‘Ilima Artspace Lofts. (Hereinafter, the “HCDA Staff Report”).

27. On December 20, 2014, the HCDA posted an Amended Notice of Public Hearing, changing the location of the decision-making hearing to 461 Cooke Street, Makai Conference Room, Honolulu, Hawaii 96813.

28. On December 23, 2014, Artspace provided notification of the change in location for the decision-making hearing by providing notification by first-class United States mail, postage prepaid, was made to owners and lessees of record of real property located within a 300-foot radius of the perimeter of the proposed Project identified from the most current list available from the Real Property Assessment Division of the Department of Budget and Fiscal Services of the county in which the Project is located.

29. On January 12, 2015, Artspace filed a Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

30. On January 21, 2015, the Authority held a decision-making hearing at 461 Cooke Street, Makai Conference Room, Honolulu, Hawaii 96813.

PROJECT DESCRIPTION

31. **Site Area.** The Project is located at 1025 Waimanu Street, TMK No. (1) 2-3-003: 040, on Block 33 of the Central Kakaako (“CK”) Zone, NZ.5. The Project site is approximately 30,000 square feet.

32. **Site Control.** The HCDA is the current titleholder for the Project Site.

33. At the Authority Meeting on November 25, 2014, the Authority authorized the HCDA Executive Director to enter into a lease agreement with Artspace.

34. **Neighborhood Zone and Land Use.** The Project is designed for commercial and residential uses, which is consistent with Mauka Area Rules, Figure 1.9 and HAR §15-217-26.

35. **Building.** The Project is proposed to consist of an 8-story structure, 99 feet in height; 6,482 square feet of commercial space; approximately 9,264 square feet of open and recreational space; and 84 affordable rental housing units.

36. The building is designed as an urban block, in conformance with HAR §15-217-54, Figures 1.3, NZ.5, NZ.5-1, and BT-8 Urban Block.

37. The building’s proposed height of 99 feet conforms to the maximum height requirements for Block 33 of the CK neighborhood, as stated in the Mauka Area Rules, HAR §15-217-54, Figures 1.3 and NZ.5.1.

38. The Project, however, does not conform to §15-217-54(c) of the HAR with respect to the twenty-five percent (25%) of the building void created by floor plate ratios (Figure BT.8-1) to be located along the facade and have a minimum depth of 10 feet. The Project seeks an HRS §201H-38 exemption for building massing, as described below.

39. **Building Massing.** The Project will be 8 stories. Floors 1-3 will be 28,906 square feet; floor 4 will be 19,718 square feet (66%); and floors 5-8 will be 16,020 (55%). All floors of the Project conform to Figures BT.8 and BT.8-1 of the Mauka Area Rules.

40. **Frontage.** The Project is consistent with frontage and thoroughfare requirements of §§15-217-25, 15-217-39, and Figures 1.3, NZ.5-B and PZ.5 of the Mauka Area Rules. The Project provides for a pedestrian zone, street trees and landscaping, street lighting and planting strips, as required under HAR §15-215-39.

41. The Project will have shop front along Kawaiahao Street, as allowed under HAR Chapter 15-217, Figure FT-5.

42. The Project conforms to the Mauka Area Rules related to frontage and frontage occupancy.

43. **Open and Recreation Space.** Under the Mauka Area Rules, fifteen percent (15%) of the Project site must be designated as open space. The Project provides approximately 9,264 square feet of open space between the building towers. The Project is consistent with the open and recreation space requirements for an Urban Block building, as provided in HAR Chapter 15-217, Figure BT.8 and §15-217-56.

44. **Green Building.** The Project is consistent with HAR §15-217-59 for green building requirements. The Project intends to meet the base LEED certified rating and conform to the Green Building standard requirement.

45. Among the sustainable design standards with which the Project will comply include storm water quality, heat island effect, and energy.

46. Artspace is not required to certify or submit the Project to the U.S. Green Building Council (“USGBC”) for Project recognition or approval.

47. **Flood Zone.** Section 15-217-61 of the Mauka Area Rules provides standards that apply to all new buildings within an identified Honolulu or Federal Emergency Management Agency (“FEMA”) flood zone and that are required by code to have raised ground floors.

48. The Property is primarily within the Zone X of FEMA’s National Flood Insurance Program Flood Insurance Rate Map, which is an area determined to be outside the 0.2 percent change of a 500-year flood.

49. A very small portion of the Mauka Diamond Head corner of the Property lies within Zone AE, which corresponds to the 100-year floodplain.

50. Nevertheless, the provisions of HAR §15-217-61 are not applicable to the Project.

51. **Parking.** The Project includes a parking structure and loading stall. Although off-street parking is not required under HAR §15-217-63(e)(2), the Project will include 94 parking stalls for mixed residential and commercial use.

52. Parking will be located on the street level and second level, and in the allowed parking zone in accordance with Figures BT-8-C and 1.10-B of the Mauka Area Rules.

53. The parking stalls are currently divided equally between residents and the public to service the commercial and cultural space. This division, however, is flexible and open to change as necessary because there is a zero parking stall requirement under the Mauka Area Rules.

54. The residential parking has a separate gated entry for privacy and security.

55. The Project conforms to the Mauka Area Rules related to parking spaces.

56. Additionally, the Project includes loading space, as required under HAR §§15-217-63(l)(1) and 15-217-63(l)(5).

57. **Parking Access.** The Project is required to have curbs set back at a minimum of 22 feet from adjacent properties. HAR §15-217-63(c)(3). The Project meets this requirement with curbs set back on Waimanu Street at a minimum of 22 feet.

58. **Bicycle Parking.** Short- and long-term bicycle parking is required to be provided within 400 feet of the building entrance pursuant to HAR §15-217-63(m).

59. The Project provides parking for approximately 20 bicycles within 400 feet of the building entrance.

60. Additionally, the Project has the flexibility and is amendable to increasing the current bicycle parking allocation should more space be required.

61. **Landscaping.** The Project will include open and recreational space, automatic irrigation system with rain sensor control, and trees on the Kawaiahao Street at 30-foot spacing.

62. Additionally, a number of trees for the recreation area are being provided on the courtyard level. These will be a mix of drought-tolerant plants, groundcover planting and some turfed play areas. This landscaping conforms to HAR §15-217-56 and Figure 1.7.

63. **Pedestrian Zone Treatment.** Waimanu Street sidewalks are required to have a 6-foot wide throughway; Kawaiahao Street sidewalks require 6-foot wide throughway and 2-foot wide frontage. The Project conforms to these requirements.

64. **Mauka Area Plan.** The Project complies with and advances the goals, policies, and objectives of the Mauka Area Plan.

65. **Mauka District.** The Project will not have a substantial adverse effect on the surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.

HRS CHAPTER 201H EXEMPTIONS

66. Artspace requested certain exemptions from the Mauka Area Rules, pursuant to HRS § 201H-38.

67. HRS §201H-38(a) states: “The corporation may develop on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of housing projects that shall be exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon; provided that:

- (1) The corporation finds the housing project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (2) The development of the proposed housing project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or of the various boards of water supply authorized under chapter 54;

- (3) The legislative body of the county in which the housing project is to be situated shall have approved the project with or without modifications:
- (A) The legislative body shall approve, approve with modification, or disapprove the project by resolution within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body;
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, modifying, or disapproving the plans and specifications; and
 - (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the corporation or the responsible county official may certify maps and plans of lands connected with the project as having complied with applicable

laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and

- (4) The land use commission shall approve, approve with modification, or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in section 205-4. If, on the forty-sixth day, the petition is not disapproved, it shall be deemed approved by the commission.”

68. The Mauka Area Rules require that “at least twenty-five per cent of the building void shall be located along the facade and have a minimum depth of ten feet, as measured from the facade towards the rear lot line; provided, however, that this minimum depth from the facade shall be increased by three feet for every ten feet of building height.”

69. Artspace requested an exemption for additional setbacks from the build-to-line in order to maintain structural economy of the housing tower plan layout relative to parking capacity below.

70. The Project proposes a 3-foot setback from the build-to-line to the building envelope, with sun shading treatments within this 3-foot setback, to allow elevation variation and interest per the intent of this section.

71. The Mauka Area Rules require a minimum awning vertical clearance of 16 feet.

72. The Project proposes to provide a minimum vertical clearance of 12 feet to bottom of awnings for greater sun and rain protection of pedestrians and storefront glazing.

73. The Mauka Area Rules places a maximum floor area ratio (“FAR”) of 1.5, which may be increased to 3.5 by the HCDA Executive Director upon a finding that the public infrastructure is adequate to support the Project within the CK neighborhood zone.

74. On November 3, 2014, the HCDA Executive Director made a determination of adequate infrastructure to support a density of 3.5 FAR, which is consistent with the provisions of HAR §15-217-57.

75. The Project proposes a total floor area of 112,672 square feet.

76. The Project’s proposed actual floor area of 112,672 square feet, or 3.7 FAR, exceeds the allocated density of 2.2 FAR as well as the allowable density of 3.5 FAR.

77. Accordingly, Artspace requested an exemption under HRS §201H-38 from the provisions of the HAR §15-217-57.

78. The exemption enables the creation of dedicated commercial and cultural space on the Waimanu and Kawaiahao Streets and the creation of community space for artist tenants on the podium level of the structure.

79. The minimum dimension of at least half of the required loading spaces shall be 12 x 35 feet and have a vertical clearance of at least 14 feet.

80. The Project is required to have one loading space, and requests an exemption to reduce the size of the required loading space to 8’-6” x 19’-0” with a vertical clearance of 9’-0” to allow loading and maneuvering to be located within the building and clear of pedestrian zones, while also providing 46 public parking stalls.

81. HAR §15-217-65 requires a building dedication or in-lieu fee payment for public facilities. This section does not apply to, among others, any development or improvement project undertaken by an eleemosynary (or charitable) organization, development or improvement project for public uses, public project, and workforce housing projects. HAR §15-217-65.

82. Artspace requested an exemption from the dedication requirement and the in-lieu fee payment of Public Facilities Dedication.

83. Artspace requested an exemption from the Application fees and costs related to public hearings, including publishing of hearing notices and the cost of a court reporter, under HAR §15-217-93.

84. Artspace does not seek an exemption from the public notice requirement itself. Rather, Artspace requested an exemption from Application fees and costs associated with the public hearings, including publishing of hearings notices and the cost of court reporter.

85. The costs of publication fees and court reporter fees are each approximately \$2,000.00.

86. As required by the HHFDC, Artspace prepared an Environmental Assessment for the Project which disclosed that it would be requesting exemptions under HRS §201H-38.

87. On November 13, 2014, the HHFDC approved the certification of Artspace as an eligible developer and the Project, including the proposed exemptions from HCDA's Mauka Area Rules, for processing under HRS § 201H-38.

ACT 61 REQUIREMENTS

88. Act 61 became effective July 1, 2014. Act 61 sets forth specific criteria that the HCDA must consider when deciding whether to issue Artspace the requested Application. These specific criteria are discussed in the proceeding paragraphs.

89. The Authority shall consider the extent to which the Project advances the goals, policies, and objectives of the applicable district plan.

a. The Project is within the KCDD, and is subject to the Mauka Area Plan (2011) and the Mauka Area Rules, which were designed to guide the redevelopment of this former warehouse area into a vibrant pedestrian-oriented urban community.

b. The Mauka Area Plan establishes the general redevelopment goals and objectives for the Mauka Area for both public improvements and private development within the approximately 670-acre KCDD, administered by the HCDA.

c. The HCDA's "vision is to ensure that the Kakaako Community Development District becomes the most, sustainable, livable urban community for the State, a place where people can work, live, visit, learn and play."

d. The principles of the Mauka Area Plan are: (1) develop urban village neighborhoods where people can live, work, shop and recreate; (2) create great places, such as venues for performance and entertainment, or quiet places to sit and read; and (3) make the connection, which is to find balance between modes of transportation in addition to vehicular traffic.

e. Urban villages consist of a mix of land uses with a strong residential foundation. Neighborhoods shall include necessary public facilities, including community meeting places, childcare centers, educational and cultural facilities, recreational amenities and a good transportation system.

f. The objectives of the Mauka Area Plan relate to: (1) urban design; (2) parks, open space and views; (3) transportation; (4) reserved housing; (5) historic and cultural resource plan; (6) social and safety plan; (7) relocation plan; (8) public facilities program; and (9) infrastructure and improvement district program.

g. The Project advances the goals, policies and objectives of the Mauka Area Plan.

h. The Project will consist of a mixed-use building containing 84 housing units affordable to households earning at or below sixty percent (60%) of AMI.

i. The Mauka Area Plan states that the HCDA will focus on stimulating production of housing units for buyers that are between 100 and 140 percent of AMI. Therefore, the Project exceeds the desired reserved housing goals of the Mauka Area Plan.

j. The Mauka Area Plan also states HCDA's preference for reserved housing units to remain affordable as long as reasonable.

k. The rental units at the Project will remain affordable for 65 years.

l. In addition to the 84 affordable housing units, the Project includes ground floor commercial space and a two-story structured parking garage. Therefore it provides an excellent example of an urban village, in that it combines residential with commercial uses.

m. The Project also offers space for cultural and educational facilities, as the Project is intended for artist, and will include a community space of approximately 4,546 square feet for the PA'I Arts & Culture Center, and additional 1,936 square feet for other commercial uses. The Project also includes approximately 9,264 square feet of green open space to be used as a courtyard with trees and a playground.

n. The Project will provide a mixed-use development that blends live and work space for artists and their families, non-profit partners, and community events and gatherings.

o. It is located outside of the vantage points and associated view planes for the Mauka Area. Therefore, the Project helps to achieve the objectives of urban design; parks, open space and views; transportation; social and safety plan; and public facilities program.

90. The Authority shall consider the extent to which the Project protects, preserves, or enhances desirable neighborhood characteristics through compliance with the standards and guidelines of the Mauka Area Rules.

a. The Project largely conforms to the Mauka Area Plan.

b. For example, with respect to HAR §15-217-59 (Green Buildings) the Project was registered under LEED-ND (Neighborhood Design) on August 9, 2012.

c. Targeted credits under this rating system, as well as under LEED-BD+C, are identified to meet an equivalent LEED-BD+C certified rating and comply with Mauka Area Rules.

d. The core of the sustainable strategy is to emphasize on-site renewable energy and optimized energy performance as the most significant credits contributing to best and longest-term cost benefit to the residents and owner.

e. Additionally, the Project plans for a green roof between the two housing bars at the third floor courtyard level to both slow storm water runoff rates, as well as minimizing heat island effect and accommodate resident recreation space in accordance with HAR §15-217-56 (Landscape and recreation space).

f. As the existing conditions at the site are an asphalt parking lot, the pervious surface area will be increased by the addition of this green roof space as a result of the Project.

91. The Authority shall consider the extent to which the Project avoids a substantially adverse effect on surrounding land uses through compatibility with the existing and planned land use character of the surrounding area.

a. The Project has been through an extensive environmental review process that entailed a republication in order to ensure as much public comment as possible was solicited.

b. A Draft Environmental Assessment (“Draft EA”) was published by the OEQC on May 23, 2014, opening the period for public comment. The Draft EA was republished on September 23, 2014, and the Final EA with a Finding of No Significant Impact (“FONSI”) was accepted by the HHFDC in October 2014.

c. The Final EA and a FONSI was published by the OEQC on November 8, 2014. The conclusion of the Final EA is that the development of the Project will not have any substantial adverse effect on the environment.

92. The Authority shall consider the extent to which the Project provides housing opportunities for all income groups, particularly low, moderate, and other qualified income groups.

a. The Project is being built expressly to provide homes to those households earning between thirty percent (30%) and sixty percent (60%) of AMI. The rental unit mix is as follows:

Unit Types:	50	1-bedroom unit
	30	2-bedroom units
	4	3-bedroom units
No. of Units:	84	Total Units, inclusive of manager's unit
Target Market:	5 units at 30% AMGI	
	37 units at 50% AMGI	
	41 units at 60% AMGI	
	1 resident manager unit	

b. As stated on page 1 of the City of Honolulu's Consolidated Plan, Honolulu has, "...a pent up demand for housing estimated at 18,013 units for the five-year period from July 1, 2010 – June 30, 2015.

c. Of this demand, the greatest needs are, and will continue to be, low- and moderate-income households, those making less than 80% of median income.”

Sample rents per month (net of utility allowance), as follows:

1-bedroom unit @ 30% AMI	\$437.00
1-bedroom unit @ 50% AMI	\$796.00
1-bedroom unit @ 60% AMI	\$976.00
2-bedroom unit @ 30% AMI	\$516.00
2-bedroom unit @ 50% AMI	\$947.00
2-bedroom unit @ 60% AMI	\$1,163.00
3-bedroom unit @ 30% AMI	\$587.00
3-bedroom unit @ 50% AMI	\$1,085.00
3-bedroom unit @ 60% AMI	\$1,334.00

Artspace has committed to keep these units affordable for 65 years.

d. After construction, EAH Housing will manage the Project.

e. EAH Housing was established in 1968 and is a non-profit corporation founded with the belief that attractive affordable rental housing is the cornerstone to sustainable, living communities.

f. With a staff of over 450, EAH develops low-income housing, manages 111 properties in California and Hawaii, and plays a leadership role in local, regional and national housing advocacy efforts. EAH Housing’s Vice President in Hawaii is Kevin R. Carney. He joined EAH Housing in February 1997 as the first Regional Manager for the Hawaii

office. He is responsible for the overall operations of the Hawaii office, including acquisitions and rehabilitation, new development and property management.

g. Upon completion of the Project, the residential units will be leased to income-qualified households through a leasing program to be administered by Artspace and EAH Housing.

h. The leasing program will provide a preference for households that are participating in the arts.

i. Income qualifications are in compliance with Federal regulations related to housing tax credits, with annual inspections and certification of income.

93. The Authority shall consider the impact of the proposed Project on pedestrian-oriented development, including complete streets design.

a. The Project will support the intent the Mauka Area Plan by adding a pedestrian sidewalk and furnishings zone with street trees located at 30-foot spacing along Kawaiahao Street, a designated thoroughfare.

b. The Project will add a pedestrian sidewalk along Waimanu Street, a designated service street. The ground floor of the Project contains retail space that will be dedicated to support the arts and will activate the frontage along both streets.

94. The Authority shall consider impact of the proposed Project on transit-oriented development (“TOD”), including rail, bus, and other modes of rapid transit.

a. The Project appears to be within a five-minute walk of the Kakaako HART station.

b. As such, the Project aligns with local and State TOD goals to integrate new development within existing communities and to foster vibrant mixed-use communities that increase transit ridership.

c. The Project supports the Mauka Area Plan that aims to direct housing development along transportation corridors in order to achieve urban fill instead of urban sprawl and to reduce regional transportation impacts and costs.

95. The Authority shall consider impact for the proposed Project on community amenities such as gathering places, community centers, culture and arts facilities, and the full array of public facilities normally provided by the public sector.

a. The Project is intended to serve the broader Hawaiian community by developing a traditional Hawaiian cultural center with classroom space and space for teaching and performing hula, music and other traditional practices, as well as 84 units of affordable housing with preference for multi-ethnic artists and their families.

b. The courtyard/garden and community areas will encompass approximately 9,264 square feet and will be available to residents, partnering non-profit organizations, and the surrounding community for rehearsal, exhibitions, performances and events.

c. Approximately 4,546 square feet will be reserved for PA'I Arts & Culture Center, for native Hawaiian dancers, musicians, visual artists, cultural practitioners and others who are interested in experiencing native Hawaiian cultural traditions.

d. The cultural center will combine classroom space and flexible space for teaching and performing hula, music, and other traditional practices. Through distance learning

technology, the cultural center will be networked to audiences and artistic partners both across the islands and around the world. Similar to all Artspace projects, this building will be multi-ethnic, multi-generational, and multi-disciplinary.

96. The Authority shall consider the impact of the proposed Project on the preservation of important natural systems or habitats.

a. The Project site is currently a paved parking lot and does not contain soils of agricultural value.

b. The site is located below the State Department of Health Underground Injection Control line.

c. As such, the underlying aquifer is not considered a drinking water source, and the Project should have no impact on groundwater resources in the State.

d. The Project site was assessed for the presence of sensitive ecological areas, and no such areas were observed on the property. No wetlands are located within the Property, and it is located in Flood Zone X, which denotes an area outside of the 0.2% annual chance of flooding.

e. No sensitive wildlife is present on the Property.

f. Surrounding buildings, including the Pacifica Honolulu project, which is approximately 427 feet in height, limit existing views from the Property. Therefore, construction of the Project will not interfere with existing Mauka/Makai views.

g. In addition, the Project will be constructed consistent with all applicable requirements of the City and County of Honolulu (“City”) and the State of Hawaii with respect to appropriate Best Management Practices (“BMPs”).

h. For example, all storm water runoff from the Project will be reviewed for conformance with City Ordinance 96-34 regarding peak runoff. Both during and after construction, the Project will observe BMPs in accordance with the City’s Rules Relating to Storm Drainage Standards. Dust control BMPs will be incorporated during construction.

i. The Project will improve ocean water quality due to the reduction in pavement surface and installation of a green roof filtration system.

j. Further, the covered parking will should reduce any non-point pollution that is produced and that would potentially have an effect on near-shore waters.

k. Construction of the Project will also be in compliance with the following: (1) BMPs Manual for Construction Sites Nov 2011; (2) Rules Related to Soil Erosion Guidelines, effective June 1, 2013; (3) HAR Title 11, Chapter 54 (11-54) Water Quality Standards.

97. The Authority shall consider the impact of the proposed Project on the maintenance of valued cultural, historical or natural resources.

a. The Project will provide a positive impact on the maintenance of valued cultural, historic, and natural resources, as it will provide desperately needed homes in a dense urban core, thereby enhancing the ability of residents to make use of public transit. By providing homes that offer space for artist to do their work, the Project will also encourage live/work

opportunities, which necessarily have a lighter impact on natural resources because travel time from home to work is reduced/eliminated.

b. An archaeological inventory survey (“AIS”) of the Property was conducted by T. S. Dye & Colleagues, Archaeologists, Inc. dated March 24, 2014.

c. Six backhoe trenches were excavated to coincide with places where the Project building foundations are proposed and have a potential to penetrate the thick application of fill material on the Property. No historic properties were discovered during the AIS. SHPD accepted the AIS by letter dated April 28, 2014.

d. More recently, Alan Downer, Ph.D., SHPD Administrator, sent a letter dated September 29, 2014, confirming that, pursuant to HRS §6E-42 and HAR §13-284-10(3), the historic preservation review process for the property was completed.

e. The Project will have a positive impact on cultural resources.

f. Approximately 4,546 square feet of the Project will be leased to the PA‘I Foundation. PA‘I Foundation, organized in 2001, is a 501(c)(3) organization designed to serve the needs of the native Hawaiian community by developing educational opportunities to inform the public about native Hawaiian culture and Hawaiian practices.

g. According to the 2010 Census, of the 1.36 million people that make up the population of the State of Hawaii, twenty-one percent (21%) or 289,000 are native Hawaiians. PA‘I Foundation also provides educational outreach programs to communities interested in Hawaiian cultural traditions nationally and internationally.

h. The Project will allow the PA'I Foundation to develop a native Hawaiian Cultural Center that showcases native Hawaiian art, and studio space where dancing can be shared along with education of the arts.

i. Local schools can utilize this space during the daytime to advance the schools' offerings in performing arts.

j. The cultural center will not be used exclusively for Hawaiian art and culture, but is intended also to be used as a place for many artistic forms and cultures that will provide for opportunity for the community to engage in varying forms of art.

k. On November 14, 2012, a Project presentation was given to the Oahu Island Burial Council. On April 10, 2013, an update and discussion of the Project was presented to the Oahu Island Burial Council. On December 11, 2013, an informational update on the archaeological field excavation work was presented to the Oahu Island Burial Council.

l. On June 18, 2013, an informational meeting with the descendent families was held. The meeting discussed background information and a description of the Project, details of the Project design, and methodology in handling possible concerns and issues.

98. The Authority shall consider the impact of the proposed Project on the maintenance of other resources relevant to the State's economy.

a. Colliers International ("Colliers") determined that there are 49,218 households in the target market area of the Project with household incomes between thirty percent (30%) and sixty percent (60%) of AMI.

b. Colliers determined that there is a substantial unmet demand for affordable housing.

c. There is a shortage of over 17,000 units in the primary trade area, and nearly 20,000 in the secondary trade area.

d. The average monthly rent for apartments in the Kakaako/Kapiolani area as of the second quarter of 2013, compared to the projected estimated rental rates for the Project is described below:

	1 bedroom	2 bedroom	3 bedroom
Area average	\$1,375.00	\$1,762.00	\$2,660.00
New Projects	\$1,407.00	N/A	N/A
Artspace Ola Ka 'Ilima Lofts	\$437.00 - \$976.00	\$516.00 - \$1,163.00	\$587.00 - \$1,334.00

e. The residential units to be provided within the Project will mean that more of Hawaii's people can live in a safe, well-designed, and centrally located home. Reducing, or even eliminating any need for private transportation. In addition, urban in-fill development is a step Hawaii can take toward food security (by building homes on existing urban land) and reduce energy costs.

99. The Authority shall consider the impact of the proposed Project on the commitment of State funds and resources.

a. Development of the Project involves a commitment of State funds and resources. Below are the public funds currently allocated to the Project:

**City, Ordinance 13-20 (Bill 12, 2013) “Kaka‘ako
Affordable Housing for Artists Project”**

The Honolulu City Council budgeted \$1,101,000.00 to,
“Acquire land, plan, design, construct, and inspect an
affordable live/work space for low-income artists and their
families in the Kaka‘ako area.”

State of Hawaii, H.B. 200, 2013

Ola Ka ‘Ilima Art Center LLC, Oahu

For the 2013-2014 Fiscal Year, \$350,000.00 Grant-in-Aid
(“GIA”) was awarded in 2013.

State of Hawaii, H.B. 1700, 2014

Ola Ka ‘Ilima Art Center LLC, Oahu

For the 2014-2015 Fiscal Year, \$1,500,000.00 GIA was
awarded in 2014.

Low-Income Housing Tax Credits (“LIHTC”)

Ola Ka ‘Ilima Lofts LLLP

The Project received an allocation of up to \$1,425,000.00
of annual Federal and \$712,500.00 of annual state LIHTC.
These tax credits will enable the Project to raise
approximately \$17 million in equity.

Rental Housing Trust Funds

Ola Ka ‘Ilima Lofts LLLP

The Project received a Rental Housing Trust Funds loan in
the amount of \$4.5 million, associated with the rental-
housing component of the Project.

- b. The Project is a very high priority for Artspace as an organization.

Artspace is committing the resources necessary to ensure that the funds are secured in a timely
fashion.

100. The Authority shall consider the impact of the proposed Project on employment opportunities and economic development.

a. The Project will have a positive impact on employment and economic development.

b. The Project budget is approximately \$38,443,401.00, of which approximately \$34.7 million is related to construction-related costs.

c. Development of the Project will create employment opportunities in a wide range of services, including (but not limited to) architectural, engineering, professional services and construction. Specifically, the National Association of Home Builders and the Federal Reserve Bank apply an 8.3 jobs-per-million factor in estimating employment opportunities arising out of construction projects. Applied to this case, the Project is expected to generate at least 288 jobs over the course of construction.

d. The Project will create local jobs. Artspace is committed to local labor and subcontractor markets, as this goes to one of its core values as an organization.

e. Regarding the operational phase of the Project, the Project is designed with the concept to create affordable living and working space, and for community events and gatherings.

f. The purpose and intent of the Project is to provide affordable space in a prominent geographic area that will help to facilitate employment opportunities and economic development for the culture and arts industry. The economic development created by the Project is both direct (providing affordable residential and commercial space that will create

employment opportunities and drive economic development), and indirect (creating space for individuals to live and work, thereby bolstering economic demand for goods and services in that location).

g. The Project is a mixed-use development that includes commercial and residential space, parking and a cultural center. The Project designates approximately 4,546 square feet of ground-level space for a Hawaiian cultural center that is designed to serve the community with space for classrooms and performances. The cultural center provides employment opportunities for artists, teachers, and others involved in native Hawaiian art and culture.

h. Furthermore, the cultural center is intended to act as a platform for economic development in the KCDD related to native Hawaiian arts and culture.

i. In addition to the space set aside for the Hawaiian cultural center, the Project includes approximately 1,936 square feet of commercial space designed to provide affordable and accessible commercial space for other artists. This space will create up to 15 new permanent employment positions and positively influence economic development in the area.

j. The Project itself will also necessarily create employment opportunities and economic development related to its management and maintenance. Project management will generate four direct jobs in the form of onsite positions related to the ongoing, long-term management of the Project.

101. The Authority shall consider the impact of the proposed Project on the maintenance and improvement of the quality of educational programs and services provided by schools.

- a. Ample capacity exists in the State DOE facilities serving the Project area.
- b. Seven public and charter schools serve the area. With the exception to Washington Middle School, which serves the projected enrollment, the 2007-2008 student enrollments for the 4 schools serving the school age population of the Mauka Area is currently under capacity. The Final Supplemental Environmental Impact Statement concluded that in the long-term, the HCDA will coordinate educational needs of the KCDD with the DOE.
- c. The DOE has the authority to establish school impact fee districts. However, with respect to the Project, by letter dated November 19, 2014, the DOE did not make any request for fees or land from this Project.
- d. The Project will positively affect the quality of educational programming and services in the area by offering opportunities to integrate art and culture into educational curriculums and allowing residents to become educators in the community.

102. The Authority shall consider the representations and commitments made by the Applicant in the permit application process.

- a. Artspace is committed to keep these residential rental units and the commercial space affordable for 65 years, which is the term of the ground lease to be entered into between the HCDA and Artspace.

TRAFFIC

103. Pete G. Pascua, P.E., Vice President of Wilson Okamoto Corporation and Director of Traffic and Transportation Engineering Group, prepared a TIR (June 2013) for the purpose of identifying and assessing the potential traffic impacts and necessary mitigation measures resulting from the proposed Project.

104. The Traffic Impact Report (“TIR”) was submitted to the HCDA as part of the Application.

105. The TIR provided several recommendations associated with the Project implementation. These recommendations have been incorporated into the Project design. The recommendations listed in the TIR include

- a. Provide sufficient driveway width to accommodate safe vehicle ingress and egress.
- b. Provide adequate turning radii at all project driveways to avoid or minimize vehicle encroachments to oncoming traffic lanes.
- c. Maintain adequate on-site loading and off-loading service areas and prohibit off-site loading operations.
- d. Provide adequate turn-around area for delivery and refuse vehicles to maneuver on the project site to avoid vehicle reversing maneuvers onto public roadways.
- e. Restrict on-street parking along the project frontage to ensure adequate sight distance for vehicles entering and exiting the project site.

106. The Project results in minimal increase in overall traffic volumes, and is feasible from a traffic operations perspective.

107. The DPP commented in a letter dated December 12, 2014, that a Construction Management Plan should be prepared to address potential impacts from construction.

108. In response to the letter from the DPP, the Project continues to develop a construction mitigation plan, in conjunction with the proper authorities.

109. The DTS commented, in a letter dated December 8, 2014, that it supports workforce housing, and that the Project should encourage walking, biking, and use of transit.

110. The Project encourages walking through the development of pedestrian walkways, use of transit through its close proximity to public transportation, and biking through the availability of bicycle parking on the Property.

INFRASTRUCTURE

111. The existing infrastructure (e.g., water, sewer, electrical, cable, and roads) is sufficient for the Project.

112. The Project structural plan was carefully mapped by Tom Dye & Associates to review locations where drilling of piles would occur. Tom Dye & Associates then conducted a trenching process to match the structural plan. The structural plan was submitted to SHPD, and a concurrence letter was received.

113. The Department of Health Hazard Evaluation and Emergency Response Office reviewed the Project's Environmental Hazard Management Plan and agreed with the protocols described therein.

114. Sufficient electric and cable availability for the Project has been confirmed by Oceanic Time Warner Cable and Hawaiian Electric Company, Inc.

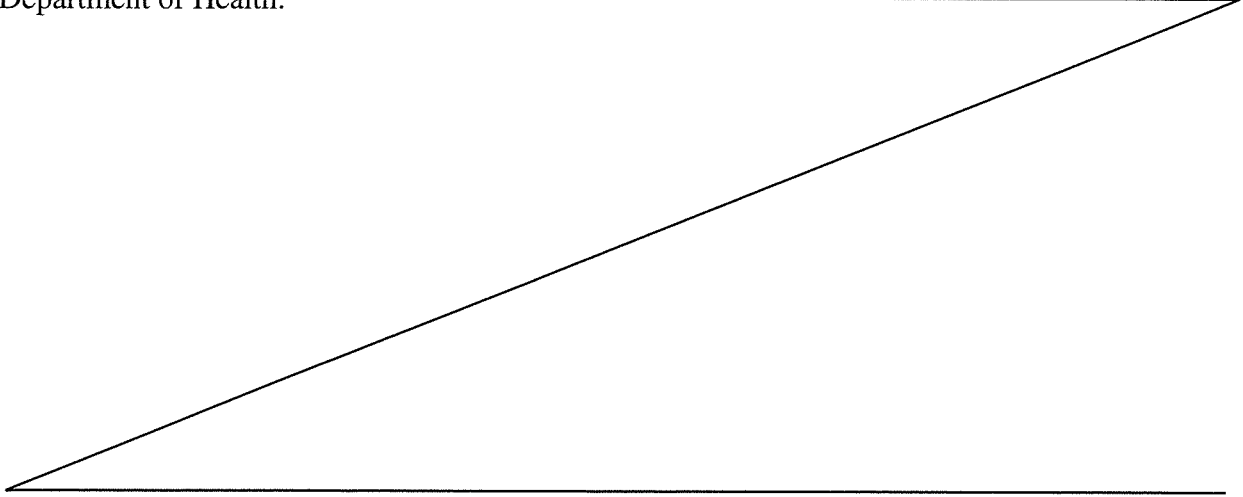
115. Potable-, irrigation-, and fire-protection water service is available from the municipal water system operated by the City's BWS.

116. The Project has adequate water supply, as determined by the BWS, most recently in a letter to the HCDA dated December 19, 2014.

117. Sanitary sewer service is available from the municipal sanitary sewer system operated by the City. The Sewer Connection Application, approved on December 1, 2014, confirmed that the City's sanitary sewer system was adequate to service the Project.

118. Two environmental assessment reports were completed for the Project, titled Phase 1 and Phase 2.

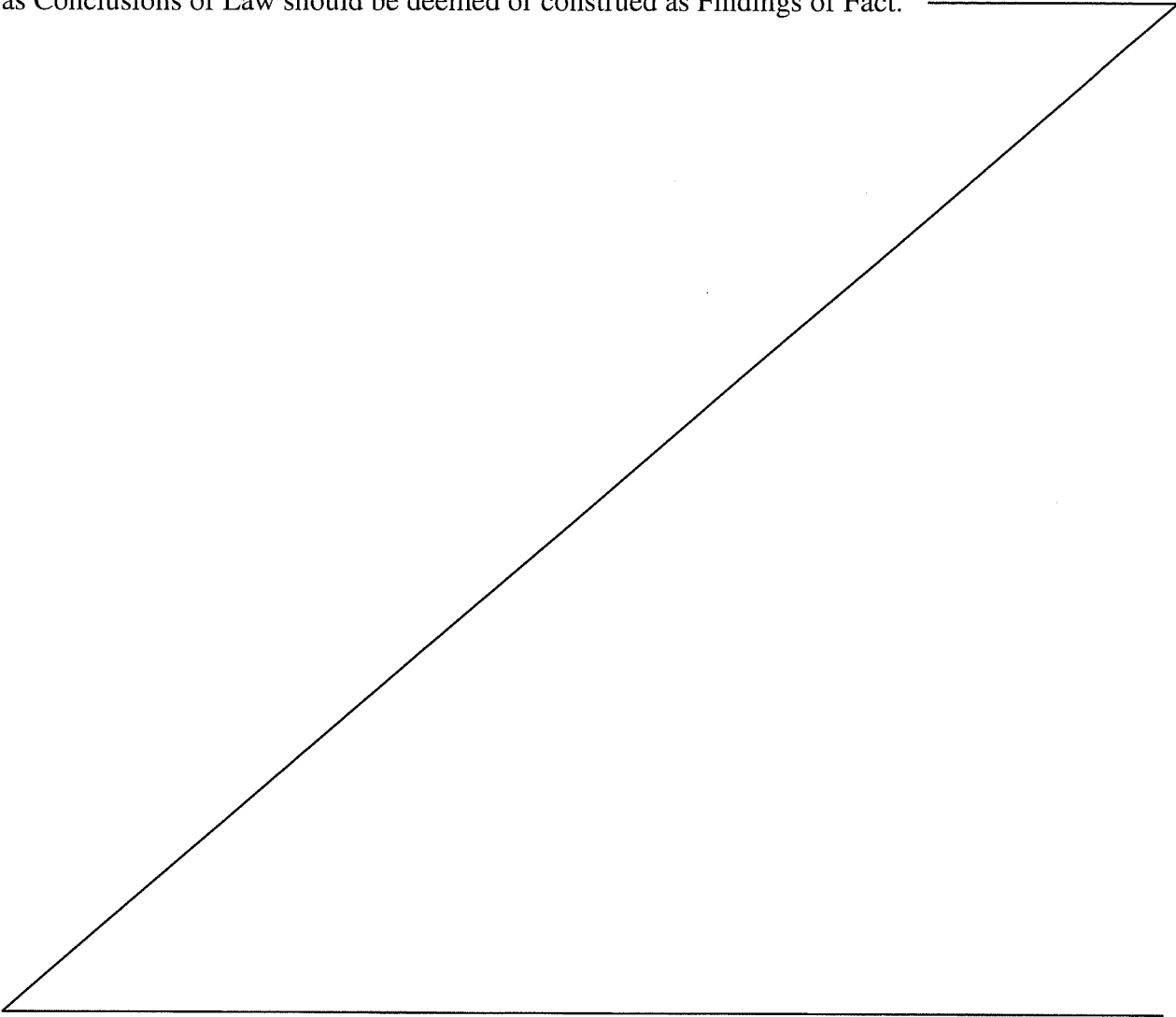
119. The Phase 2 assessment report recommended an environmental plan. The Project has adopted an environmental plan in conformity with the recommendations set forth in the Phase 2 assessment report, which was reviewed and agreed upon by the State of Hawaii Department of Health.



RULINGS ON PROPOSED FINDINGS OF FACT

Any Findings of Fact submitted by Artspace not already ruled upon by the HCDA by adoption herein, or rejected by clearly contrary Findings of Fact herein, are hereby denied and rejected.

Any Conclusions of Law herein improperly designated as Findings of Fact should be deemed or construed as Conclusions of Law; any Findings of Fact herein improperly designated as Conclusions of Law should be deemed or construed as Findings of Fact.



CONCLUSIONS OF LAW

1. The HCDA has jurisdiction to review, consider, and approve applications for development permits pursuant to Chapter 206E, HRS.

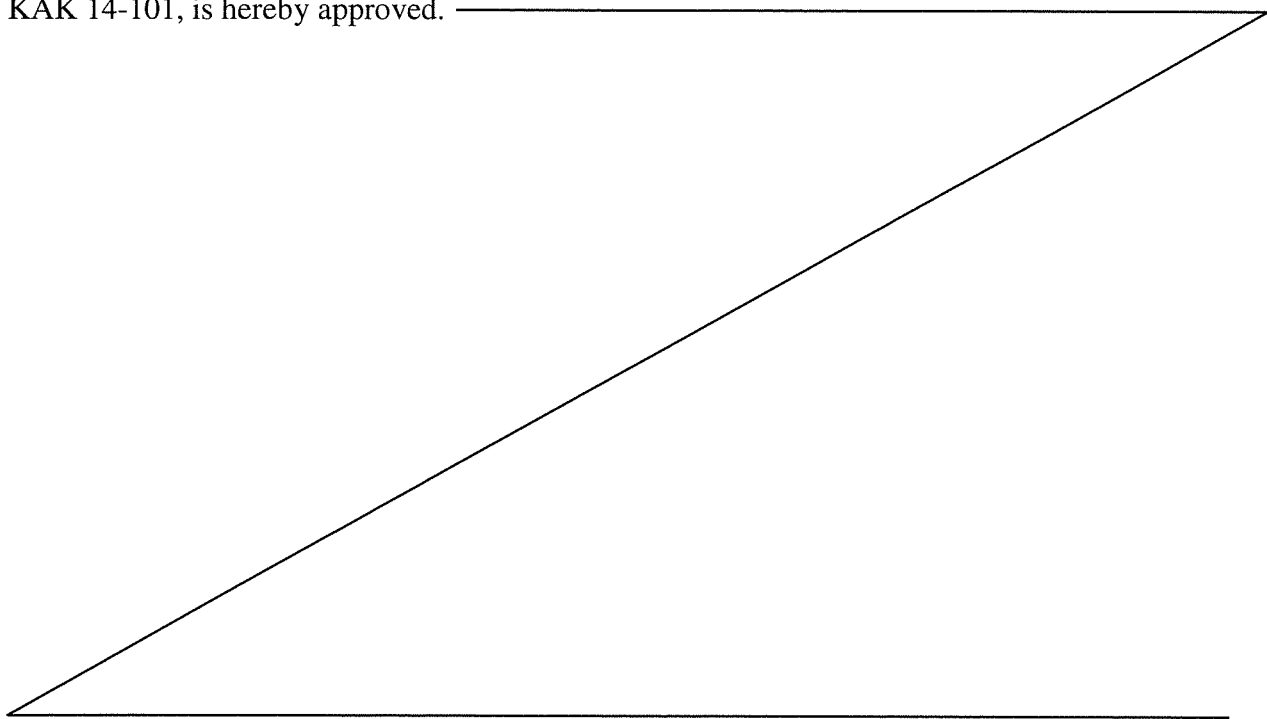
2. Pursuant to the Mauka Area Rules, the Rules applicable to this Application are those contained in HAR Chapter 15-217, adopted on September 14, 2011.

3. Subject to compliance with the requirements of HRS § 201H-38, the Project shall be entitled to the following exemptions from HCDA's Mauka Area Rules: (a) exemption from the requirements under HAR §15-217-54(c) and Figure 1.12-C to allow 3-foot setback from the build-to-line to the building envelope, to maintain structural economy of the housing tower plan layout relative to parking capacity below; (b) exemption from the requirements under HAR Chapter 15-217, Figure 1.13C to allow a minimum vertical clearance of 12 feet to bottom of awnings to provide for greater sun and rain protection of pedestrians and storefront glazing; (c) an exemption from the maximum FAR allowed under HAR §§15-217-57(c) and 15-217-57(d), in order to develop the Project with a FAR of 3.7, which shall enable the creation of dedicated commercial and cultural space on the Waimanu and Kawaiahao Streets and the creation of community space for artist tenants on the podium level of the structure; (d) an exemption from the requirements under HAR §15-217-63(l)(5) to allow loading space dimensions of 8'-6" x 19'-0" with a vertical clearance of 9'-0" to allow loading and maneuvering to be located within the building and clear of pedestrian zones, while also providing 46 public parking stalls; (e) an exemption from HAR §15-217-65 requiring building dedication or in-lieu fee payment for public facilities; and (f) an exemption from HAR §15-217-93 requiring

Application fees and costs related to public hearings, including publishing of hearing notices and the cost of a court reporter (collectively, “HRS § 201H-38 exemptions”).

4. With the exception of the HRS § 201H-38 exemptions noted above, the Project satisfies HAR §15-217-80(d) because it is (1) consistent with the Mauka Area Plan; (2) consistent with the Mauka Area Rules; and (3) compatible with the Mauka District.

5. Upon consideration of all applicable rules and regulations, the evidence and testimony presented by Artspace, the public comments, and all other evidence appearing of record, the HCDA concludes that, with the exception of the HRS § 201H-38 exemptions noted above, the Project has satisfied the requirements of HRS Chapter 206E, Act 61, and the Mauka Area Rules, HAR Chapter 15-217 *et seq.*, and the vision and intent of the applicable Mauka Area Plan for a development permit. The Application for the Ola Ka ‘Ilima Artspace Lofts Project, KAK 14-101, is hereby approved. _____



DECISION AND ORDER

IT IS HEREBY ORDERED that the Application for a Development Permit submitted by Artspace Projects, Inc., pursuant to Chapter 206E of the HRS, and Chapters 15-217 and 15-219 of the HAR, for a proposed mixed-use building to contain 84 affordable housing rental units to be made available to households earning between thirty percent (30%) and sixty percent (60%) of the AMI, ground floor commercial spaces and related improvements, to be located at 1025 Waimanu Street, in a project to be known as Ola Ka 'Ilima Artspace Lofts is APPROVED, subject to the following conditions and exemptions:

1. Floor Area and FAR. The total proposed floor area for the Project shall not exceed 112,672 square feet.
2. Traffic. The Applicant shall incorporate the recommendations made in the completed TIR into the Project's design. The Applicant shall obtain approval from the HCDA Executive Director, pursuant to HAR §15-217-90, prior to removing any of the TIR recommendations from the Project design.
3. Transit Accommodations. The Applicant shall coordinate with the City DTS, the HART and the HCDA to allow those agencies to make provisions for bus, bicycle, and transit accommodations along the Project's street frontages.
4. Transit Accommodations. The Applicant shall submit a parking program which details how proposed parking stalls may be made available for shared use by the public and commercial tenants and guests.

5. Impact Mitigation. The Applicant shall ensure that trash pickup and commercial deliveries at the Project site will be limited to early morning or evening non-peak business and travel times to the extent practicable, and will be managed with concerns for noise, pedestrian inconvenience and safety.

6. Sustainable Design. The Project shall be designed and constructed so as to target Silver LEED rating system, as committed to in the Application. The Applicant shall submit to the HCDA Executive Director documentation from the Project architect demonstrating the Project's LEED conformance.

7. Archaeological and Historical Resources. The Applicant shall comply with all applicable rules governing historic preservation and procedures for inadvertent discoveries pursuant to HAR §13-280 and Chapter 6E, HRS. The Applicant shall comply with all the requirements within the archaeological mitigation documents approved by SHPD.

8. Landscaping. Local street tree species and location shall be subject to final approval of the HCDA Executive Director.

9. Sidewalk Review. The Applicant shall review, and amend as necessary, sidewalk plans for Waimanu Street and Kawaiahao Street to accommodate adequate access for pedestrians and to provide optimal design that best accommodates traffic flow as well as sidewalk connectivity to adjacent parcels, subject to final approval of the HCDA Executive Director.

10. Curb Cut and Driveway Review. The Applicant shall review, and amend as necessary, curb cuts and driveway access to provide the safest possible design that considers

adequate physical distance separation and visual sight distance for pedestrians and vehicles entering, exiting and moving past the Project site.

11. Infrastructure. Infrastructure improvements can be divided into two categories: (1) infrastructure improvements or requirements that are immediately necessary to proceed with the Project; and (2) improvements which are necessary to improve and upgrade the vicinity in total through the HCDA District-Wide Improvement Program.

a. Improvements Necessary to Proceed with the Project: With regard to infrastructure improvements or requirements that are necessary to proceed with the Project, the Applicant shall be responsible for providing necessary developer improvements.

b. Improvements Proposed for the HCDA District-Wide Infrastructure Improvement Program: As part of the HCDA District-Wide Improvement Program, road and utility improvements are being undertaken in increments throughout the District, financed in part through an Improvement District Program.

In this regard, the Project may be subject to assessment for its pro rata share of the cost of improvements which may, in the future, be necessarily undertaken in the vicinity of the respective Project under the HCDA or other government agencies' improvement programs. If so, the Project will be assessed under the same methods and in the same manner as other properties in the area.

The Applicant shall agree to participate in the HCDA District-Wide Improvement Program at the time said program is implemented, unless otherwise

exempted from such participation as an certified, tax exempt, eleemosynary organization, ground lessee of the HCDA, affordable rental project or otherwise.

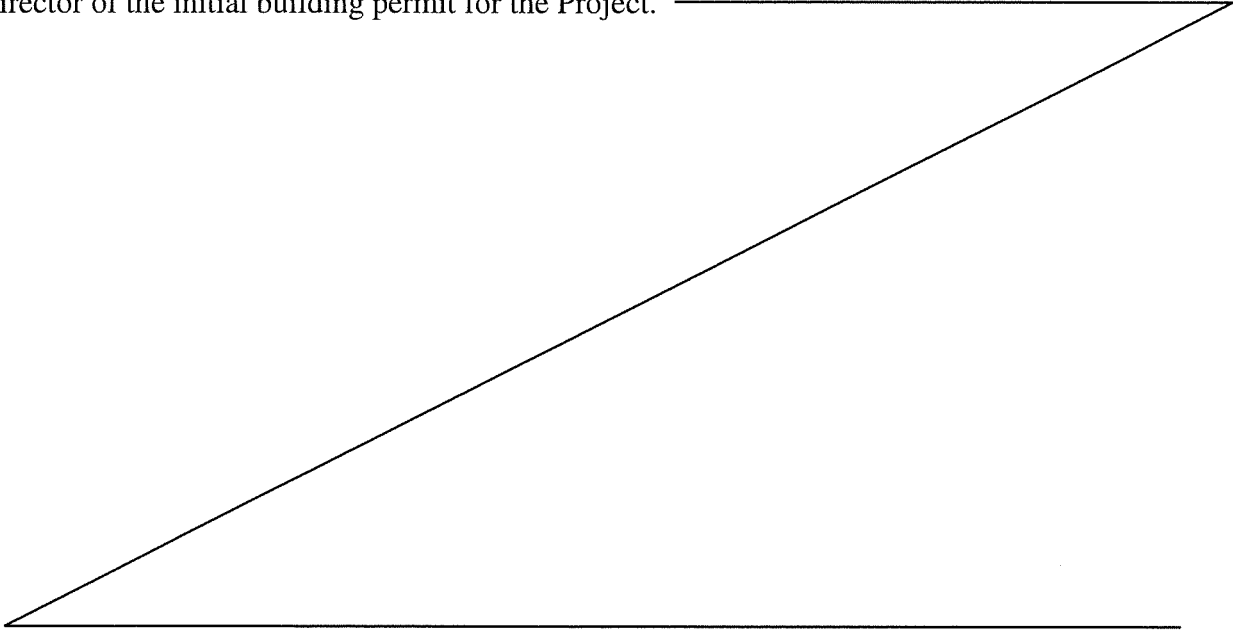
12. Best Practices. The Applicant shall plan, design, implement and maintain the Project site in accordance with the following City and State of Hawaii Requirements and Guidelines, to the extent such Requirements and Guidelines are applicable to the Project:

- a. “Best Management Practices (BMP) Manual for Construction Sites,” November 2011;
- b. “Rules Relating to Soil Erosion Standards and Guidelines,” April 1999;
- c. “Rules Relating to Storm Drainage Standards,” effective June 1, 2013;
- d. The Revised Ordinances of Honolulu (ROH)—for grading, specifically Chapter 14, “Public Works Infrastructure Requirements Including Fees and Services,” 1990 as amended;
- e. HAR, Title 11, Chapter 54 (11-54), “Water Quality Standards”; and,
- f. HAR, Title 11, Chapter 55, “Water Pollution Control”—for construction runoff, specifically Appendix C, National Pollutant Discharge Elimination System (NPDES) “General Permit Authorizing Discharges of Storm Water Associated with Construction Activities” (expires December 5, 2018).

13. HRS §201H-38 Exemptions. Because the HRS § 201H-38 exemptions are integral to the Project, the Project is approved subject to the Applicant’s compliance with the applicable requirements of HRS §201H-38 and so long as there are no substantial modifications to the Project.

14. Compliance with Rules. Except as otherwise noted herein, the Applicant shall comply with all applicable requirements of Subchapter 1 of the Rules (Purpose and Applicability), all applicable requirements of Subchapter 2 of the Rules (Regulating Plan and Neighborhood Zones), all applicable requirements of Subchapter 3 of the Rules (Thoroughfare Plan and Standards), all applicable requirements of Subchapter 4 (Area-Wide Standards) of the Rules, and all applicable requirements of Subchapter 5 (Procedures) of the Rules, and with any other terms and conditions as required by the HCDA Executive Director to implement the purpose and intent of the Rules.

15. Recordation. The Applicant shall record a memorandum of this Decision and Order with the Bureau of Conveyances or the Assistant Registrar of the Land Court as a covenant running with the land. Proof of such recorded memorandum certified by the appropriate agency shall be submitted to the HCDA before approval by the HCDA Executive Director of the initial building permit for the Project.

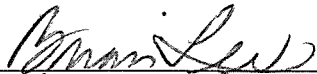


ADOPTION OF ORDER

The undersigned Kakaako Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 21st day of January, 2015. This ORDER and its ADOPTION shall take effect upon the date this ORDER is approved by the Authority.

Done at Honolulu, Hawaii, this 21st day of January, 2015.

Hawaii Community Development Authority
(Kakaako Members)



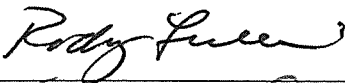
Brian Lee, Chairperson

Absent

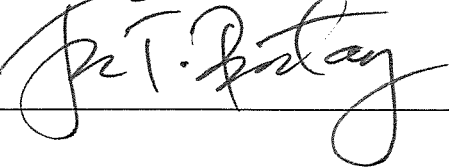
Lois Mitsunaga, Vice Chairperson



Miles Kamimura, Secretary



Rodney Funakoshi, as designated representative
of Director of Department of Business,
Economic Development and Tourism



Jade Butay, as designated representative of
Director of Department of Transportation

Abstained

Joseph Earing, as designated representative of
Department of Accounting and General Services




Scott Kami, as designated representative of
Director of Department of Budget and Finance



Brian T. Tamamoto

Vacant

APPROVED AS TO FORM:


Lori N. Tanigawa, Deputy Attorney General

CARLSMITH BALL LLP

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OUR REFERENCE NO.:
 067714-00001

August 15, 2016

Via Hand Delivery and
Via E-Mail contact@hcdaweb.org

Aedward Los Banos
 Interim Executive Director
 Hawaii Community Development Authority
 547 Queen St
 Honolulu, HI 96813

RECEIVED
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 HAWAII COMMUNITY
 DEVELOPMENT
 AUTHORITY

RE: Ola Ka 'Ilima Artspace Lofts, 1025 Waimanu Street, Kakaako
 TMK No. (1) 2-3-003: 040
Request for Extension to Development Permit KAK 14-101

Dear Director Los Banos:

As you are know, we represent Artspace Projects, Inc. ("**Artspace**"), a Section 501(c)3 non-profit real estate developer specializing in creating, owning and operating affordable spaces for artists and creative businesses. Hawaii Community Development Authority ("**HCDA**") issued Development Permit No. KAK 14-101 to Artspace on January 21, 2015 for the development of the Ola Ka 'Ilima Artspace Lofts project ("**Lofts Project**"), a mixed-use affordable rental housing and commercial project located within the Mauka Area of the Kakaako Community Development District, on land owned by HCDA. We also represent Ola Ka 'Ilima Lofts, Limited Liability Limited Partnership ("**Ola Ka 'Ilima**"), the entity that will develop the Lofts Project. Ola Ka 'Ilima and HCDA will be entering into a 65-year ground lease of the above-referenced subject property to allow for the construction and operation of the Lofts Project.

We are writing to respectfully request an extension to the Development Permit for the Lofts Project. Under the Mauka Area Rules, Hawaii Administrative Rules ("**HAR**") § 15-217-87(b), without an extension the Development Permit will expire in January 2017. Therefore, under HAR § 15-217-87(d), this is our first request for a one-year extension to the Development Permit.

Artspace and Ola Ka 'Ilima have made significant progress on the Lofts Project since the Development Permit was issued in January of 2015, particularly on securing the various funding sources necessary for this 100% affordable project, and hope to break ground on the Lofts Project in Q4/2016 or Q1/2017. As with any affordable project, and particularly a 100% affordable rental project, numerous funding sources are required. To build an affordable project, especially without the offset of market or luxury units, every dollar counts. The Lofts Project relies on a mix of funds and tax credits from HHFDC, State Grant-in-Aid funds, federal HOME funds, as allocated by the City, and various other sources, including private sector philanthropic funds.

A. Funding Activities Since Issuance of Development Permit KAK 14-101

In February 2015, the Honolulu City Council passed Resolution No. 15-29 pursuant to Hawaii Revised Statutes Chapter 201H, authorizing certain exemptions for the Lofts Project as a 100% affordable housing project. In April 2015 the City selected the Lofts Project to receive \$1,200,000 in HOME Investment Partnership Act funds.

In March 2016, Ola Ka 'Ilima was the successful responder to a Request for Proposals that was issued by the City for receipt of up to \$4,400,000 from the City's Affordable Housing Fund (FY 2016 Capital Improvement Projects Budget) for use at an affordable housing project in Kakaako. One of the necessary steps to make use of these City funds is the recordation of a covenant against the Waimanu Street property restricting it to affordable housing in perpetuity. HCDA, in order to allow the Lofts Project to access the City's Affordable Housing Fund money, in November 2015, passed a motion authorizing the Executive Director of HCDA to execute a declaration of restrictive covenant for the HCDA-owned property at 1025 Waimanu Street such that the property could be encumbered as affordable housing in perpetuity.

In April 2016, the Hawaii Housing Finance and Development Corporation approved the issuance of up to \$27,000,000 in revenue bonds for the Lofts Project, Federal and State Low Income Housing Tax Credits, and authorized \$7,750,000 from the Rental Housing Revolving Fund for the Lofts Project.

B. Development Activities

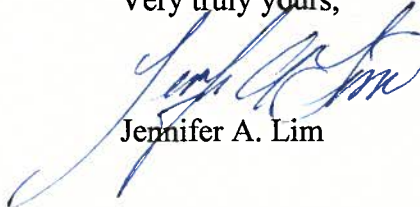
The architectural and engineering team is actively working to address the Department of Planning and Permitting's initial review comments (received in 2015) in anticipation of a final building permit review in October 2016. Ola Ka 'Ilima has also worked through certain infrastructure issues with HECO. We anticipate that the final plans for the foundation permit for the Lofts Project will be submitted to the Department of Planning and Permitting around October 15, 2016.

Mr. Aedward Los Banos
Interim Executive Director
August 15, 2016
Page 3

C. Conclusion

We respectfully request a one-year extension to Development Permit KAK 14-101 pursuant to HAR § 15-217-87(d). Our client will be available to respond to any questions that the HCDA members may have about the status of the Lofts Project and this request for an extension. If possible, we ask that the Authority consider this request at a hearing in October, or as soon as reasonably possible thereafter. Thank you for your consideration of this request.

Very truly yours,



Jennifer A. Lim

JAB1/1jah

cc: Greg Handberg, Artspace Projects, Inc./Ola Ka 'Ilima Lofts, LLLP

4812-7815-3269.2.067714-00001

Artspace Ola Ka 'Ilima Lofts

HCDA Update
October 5, 2016

Greg Handberg, Senior Vice President
Artspace Projects, Inc.

Exhibit C

Artspace

The Nation's leading developer of affordable artist housing

Created the Nation's first tax credit artist housing project in 1990

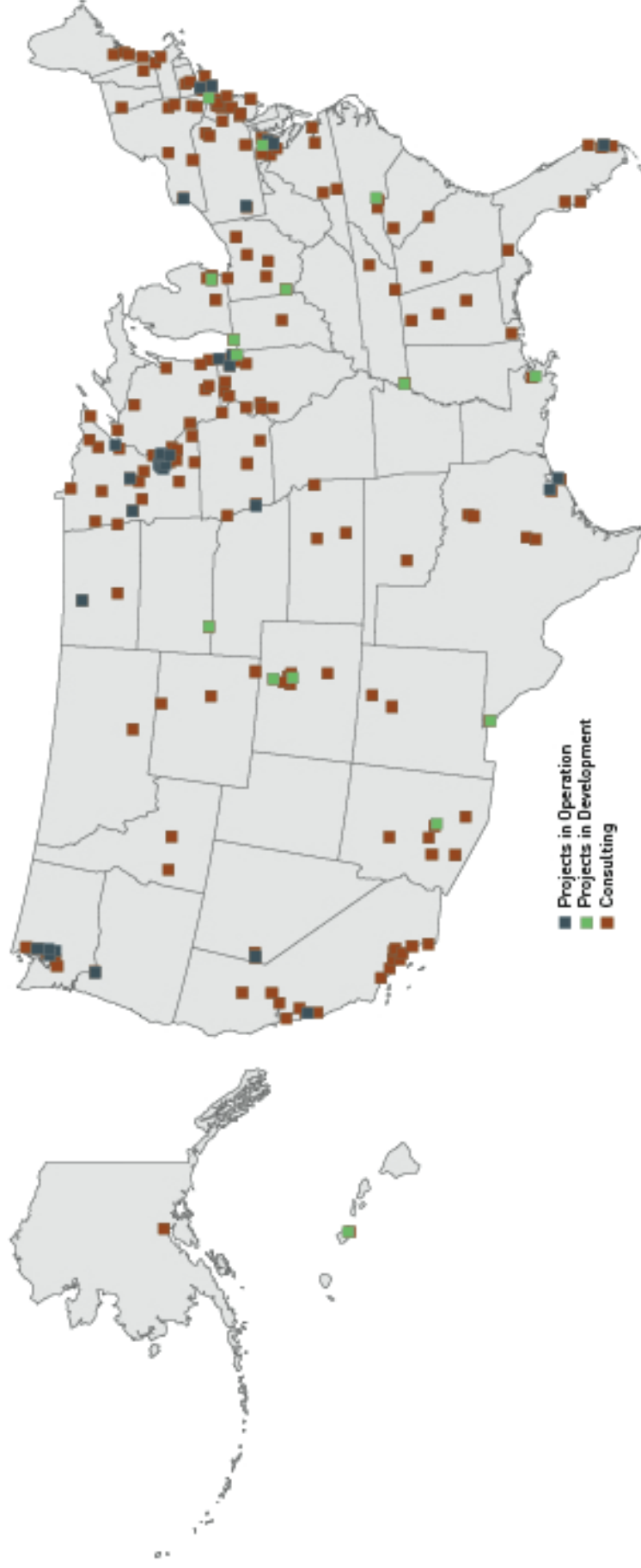
41 projects completed to date, including 30 tax credit projects

30 year history of successfully developing, owning and mixed-use cultural projects



Mt. Baker Lofts
Seattle, WA

Artspace At Work - 2016



Artspace Ola Ka 'Ilima Lofts



Summary

Artspace Ola Ka 'Ilima Lofts

84 Dwelling Units

50 One Bedroom Units

30 Two Bedroom Units

4 Three Bedroom Units

Bedrooms	Rent (Low)	Rent (High)
1 Bedroom	\$565	\$1,131
2 Bedroom	\$678	\$1,357
3 Bedroom	\$784	\$1,568

6,259 SF Commercial/Cultural Space

96 Structured Parking Spaces

Community Facilities For Artists

Artspace Ola Ka 'Ilima Lofts will provide a preference for low income families actively engaged in the Arts

Family Size	Income (Low)	Income (High)
1 Person	\$21,120	\$42,240
2 Person	\$24,120	\$48,240
3 Person	\$27,250	\$54,300
4 Person	\$30,150	\$60,300
5 Person	\$32,580	\$65,160
6 Person	\$34,980	\$69,960
7 Person	\$37,410	\$74,820

Sources of Funds

Artspace Ola Ka 'Ilima Lofts

Source	Amount	Status
Residential First Mortgage	\$4,800,000	Committed (Citi)
Commercial First Mortgage	\$900,000	Committed (Citi)
HHFDC RHRF	\$7,750,000	Committed
City & County HOME	\$1,200,000	Committed
City & County AHF	\$4,400,000	Committed
State of Hawaii GIA	\$3,350,000	Committed
Philanthropic	4,075,000	Committed
Deferred Developer Fee	\$300,000	Committed
General Partner Capital	\$3,800,000	Committed
LIHTC Equity	<u>\$23,900,000</u>	Committed (Raymond James)
Total Sources of Funds	\$54,475,000	

Uses of Funds

Artspace Ola Ka 'Ilima Lofts

Source	Amount
Acquisition	\$1
Construction	\$41,595,598
Architecture & Engineering	\$2,952,430
Construction Financing & Permitting Fees	\$1,870,000
Permanent Financing Fees	\$706,250
Soft Costs	\$750,880
Developer Fee & Overhead	\$5,600,000
Legal	\$400,000
Reserves	\$599,841
Total Uses of Funds	\$54,475,000

Project History

Environmental Assessment ✓

201-H ✓

Development Permit ✓

City & County NEPA Review ✓

Financing Secured ✓



Moving Forward

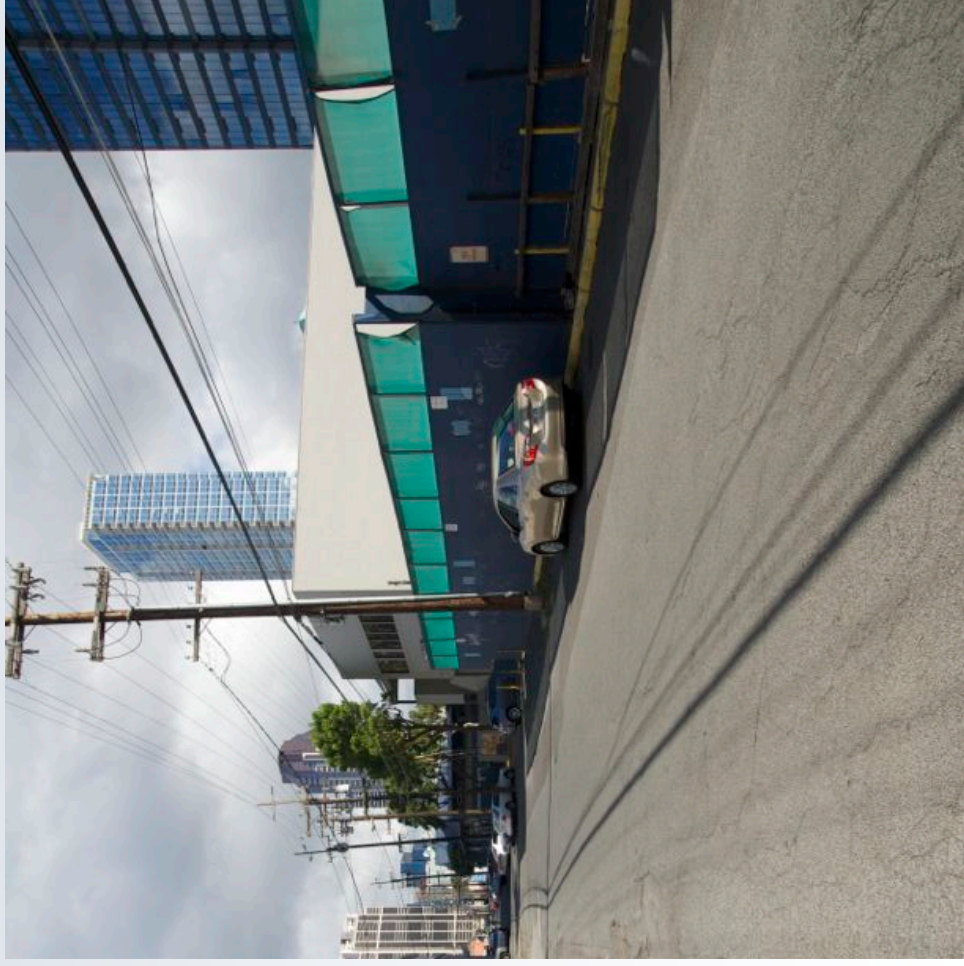
Foundation Permit: 12/16 –1/17

Building Permit: 2/17

Construction Closing: 2/17

Construction Start: 3/17

Construction Completion: 9/18



Request

Authorize Extension Of
Development Permit

Authorize HHFDC 201-H
Regulatory Agreement



Thank You!

For your consideration

Greg Handberg
Greg.handberg@artspace.org

Learn more about Artspace and its work across the country at:

www.Artspace.org

REVOCABLE RIGHT OF ENTRY (ROE 2-16)

By this REVOCABLE RIGHT-OF-ENTRY AGREEMENT ("ROE") made and executed this 1 day of April 2016, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("HCDA"), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to Artspace Projects, Inc. ("Artspace") a nonexclusive ROE upon and subject to each of the following terms and conditions:

1. **Grant of ROE.** The HCDA hereby grants to Artspace, and all of its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, "Permitted Persons") a nonexclusive ROE to enter upon the Premises (as defined below) for the sole purposes set forth in Paragraph 4 below. Artspace is responsible for communicating and explaining the terms and conditions of this ROE to all Permitted Persons.

2. **Premises.** This ROE shall pertain to that certain real property located at 1025 Waimanu Street and identified by Tax Map Key No. (1) 2-3-003: 40 ("Premises") depicted on the map attached to this ROE as Exhibit "A" and made a part hereof.

3. **Term and Duration.** The term of this ROE granted hereby shall be applicable from 12:01 a.m. on April 1, 2016 ("Commencement Date") to and including 11:59 p.m. on March 30, 2017 ("Termination Date"). This ROE shall automatically terminate on the Termination Date, unless terminated earlier as provided below. Artspace agrees to be bound by the terms and conditions of the ROE and any written amendments thereto.

4. **Use of Premises.** This ROE granted hereby shall be for the sole purpose of conducting additional targeted soil borings as part of an environment investigation for the proposed Pa'i / Artspace building.

5. **Acknowledgement of Use by Other Persons.** Artspace acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of the HCDA, and with the exception of the uses specified in Paragraph 4 above, Artspace shall not unreasonably interfere with and impair the use and enjoyment of the Premises by such persons or other entities.

6. **Due Care and Diligence.** The Permitted Persons will exercise due care and diligence in entering upon the Premises and will not disrupt or disturb in any way or in any manner whatsoever the activities customary to the operations of the HCDA or its agents, and Artspace shall exercise due care for public safety. At all times during the term of this ROE and upon the termination of this ROE, Artspace shall be responsible for: (a) removing any debris or trash deposited by Permitted Persons on the Premises; (b) repairing any damage to the Premises caused by its use by Permitted Persons; and (c) restoring the Premises to its original or better than original condition. Specifically all boring holes shall be properly filled and patched. Should any problems arise with respect to the boring locations, Artspace will be responsible for the restoration and or repair of these areas. This provision shall survive the termination of this ROE.

7. **Indemnity.** Artspace shall defend, indemnify and hold harmless the HCDA and the State of Hawaii, and their respective officials, directors, members, employees, and agents (collectively the **Indemnified Parties**) from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon or arising out of or in connection with: (a) Artspace's breach of this ROE; (b) any Permitted Person's tortious conduct or violation of law on or upon the Premises; (c) any injury sustained or suffered by a Permitted Person while on the Premises; and (d) any other act or omission in any way relating to or arising out of the Artspace's entry and use of the Premises under this ROE (collectively, **Covered Claims**). Artspace shall also reimburse the HCDA for all its costs and expenses, including reasonable attorneys' fees, incurred in connection with HCDA's defense of any Covered Claims. This provision shall survive the termination of this ROE. Notwithstanding anything to the contrary in this Paragraph 7, Artspace shall not be liable for indemnifying the Indemnified Parties with respect to claims, actions, penalties, damages, liabilities, costs or expenses to the extent they are caused by the negligence or willful misconduct of any such Indemnified Parties.

8. **Insurance.** (a) Artspace shall obtain and maintain at all times at its own expense insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

Commercial General Liability:	\$1,000,000 per occurrence and \$2,000,000 in the aggregate \$1,000,000 Completed Operations Aggregate Limit \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Limit
Umbrella Liability:	\$2,000,000 Aggregate
Worker's Compensation:	Coverage A: As required by Hawaii Laws Coverage B: Employer's Liability \$1,000,000 Bodily Injury by Accident Each Accident \$1,000,000 Bodily Injury by Disease \$1,000,000 Policy Limit and \$1,000,000 Each Employee
Automobile:	\$500,000 per occurrence and \$1,000,000 in aggregate

(b) Prior to first entry onto the Premises, Artspace shall provide to the HCDA a certificate of insurance to evidence compliance with the insurance requirements set forth in subsection (a) above.

(c) The insurance policies obtained by Artspace in accordance with subsection (a) above shall name the Hawaii Community Development Authority and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.

(d) The HCDA shall be notified at least fifteen (15) days prior to the termination, cancellation or material change in Artspace's insurance coverage.

(e) Artspace shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of Artspace or Permitted Persons in connection with Artspace's use or occupancy of the Premises.

(f) The procuring of such required policy or policies of insurance shall not be construed to limit Artspace's liability under this ROE or to fulfill the indemnification provisions and requirements of this ROE. Notwithstanding said policy or policies of insurance, Artspace shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this ROE.

(g) Artspace shall keep such insurance in effect and the certificate(s) on deposit with the HCDA during the entire term of this ROE. Upon request by the HCDA, Artspace shall furnish a copy of the policy or policies.

(h) Failure of Artspace to provide and keep in force such insurance shall be regarded as a material default under this ROE and the HCDA shall be entitled to exercise any or all of the remedies provided in this ROE for default of Artspace.

(i) The HCDA is a self-insured State agency. Artspace's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of and shall not contribute with insurance provided by Artspace.

The HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in HCDA's sole discretion, the above insurance does not provide adequate protection for the HCDA, it may require Artspace to obtain insurance sufficient in coverage, form, and amount to provide adequate protection.

9. **Condition of Premises/Assumption of Risk.** Artspace hereby agrees and acknowledges that the HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to the HCDA or reasonably discoverable by Artspace. Artspace agrees that the HCDA shall not be held responsible for any injury or damage to Artspace or Permitted Persons due to the presence of hazardous materials or dangerous or defective conditions on or in the Premises. Artspace

further agrees that any property left on the Premises during the term of this ROE shall be left there at the sole risk of Artspace.

10. **Compliance with Laws and Regulations.** Artspace shall, at all times during the term of this ROE, observe and comply with all applicable laws, rules and regulations, whether County, State or federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for use of the Premises.

11. **No Hazardous Materials.** Artspace shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Artspace shall not allow the handling, storage or use of such materials, nor allow to be brought onto the Premises any such materials, except with the prior written consent of the HCDA. If any governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Artspace, then the Artspace shall be responsible for the reasonable costs thereof. In addition, Artspace shall execute affidavits, representations and the like from time to time at HCDA's request concerning Artspace's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Artspace.

For the purpose of this ROE "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

12. **Prohibited Use.** Any use of the Premises not authorized in Paragraph 4 above shall constitute a material breach of this ROE and upon such breach, the HCDA may terminate this ROE forthwith without notice and pursue any other remedies to which the HCDA is entitled to by law or under this ROE.

13. **Improvements.** Artspace shall not construct any improvements of any kind or nature upon the Premises or any other properties of the HCDA without HCDA's express prior written consent, which consent may be granted or withheld in HCDA's sole discretion. Any unauthorized improvements, including but not limited to structures, erected on or moved onto the Premises by Artspace shall remain the property of Artspace and Artspace shall have the right, prior to the termination or revocation of this ROE, or within an additional period the HCDA in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event Artspace shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to Artspace. This provision shall survive the termination of this ROE.

14. **No Lien.** Artspace shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by the HCDA.

15. **Non-transferrable.** This ROE or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without HCDA's express prior written consent.

16. **Additional Terms and Conditions.**

- (a) There will be no usage fee during the term of this ROE.
- (b) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized.
- (c) Animals, plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.
- (d) If Artspace continues to enter or remain on the Premises after the Termination Date, Artspace shall pay the HCDA as liquidated damages \$1,000.00 for each calendar day (or part thereof) that such unlawful entrance and occupation of the Premises continues beyond the Termination Date. Such damages are not a penalty, but rather are reasonable estimates of the losses that the HCDA would suffer and that the Parties acknowledge would be difficult to ascertain under the circumstances triggering the damages and are HCDA's exclusive remedy, other than equitable relief (such as an injunction barring Artspace from entering and remaining on the Premises) or legal relief (in the form of eviction of Artspace from the Premises or similar legal relief, but not damages) for such entrance or use.
- (e) The HCDA reserves the right to impose following additional terms and conditions, if deemed necessary.

17. **Termination.** The HCDA may terminate this ROE at any time upon forty-eight (48) hours written notice to Artspace in accordance with Paragraph 18 below.

18. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this ROE by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

Hawaii Community Development Authority
Attention:
Aedward Los Banos, Interim Executive Director
547 Queen Street,
Honolulu, Hawaii 96813
Telephone: (808) 594-0300 Facsimile: (808) 587-0299
E-mail: aedward.o.losbanos@hawaii.gov

Artspace Projects, Inc.
Attention: Gregory Handberg
250 Third Avenue North
Minneapolis, Minnesota 55401
Telephone: (612) 889-3905
<http://www.artspace.org>

19. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.


20. **Governing Law.** This ROE shall be governed by and construed under the laws of the State of Hawaii.

21. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

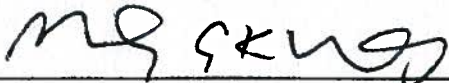
22. **Entire Agreement.** This ROE constitutes the entire agreement and understanding between the Parties and shall supersede any all prior communications, representations, or agreements, both verbal and written, between the Parties regarding Artspace's use of the Premises. This ROE cannot be modified except by a written instrument signed by both Parties.

IN WITNESS WHEREOF, the HCDA and Artspace Projects, Inc. have caused this ROE to be executed as of the day and year first above written.

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY, STATE OF HAWAII

By 
Aedward Los Banos
Interim Executive Director

APPROVED AS TO FORM:

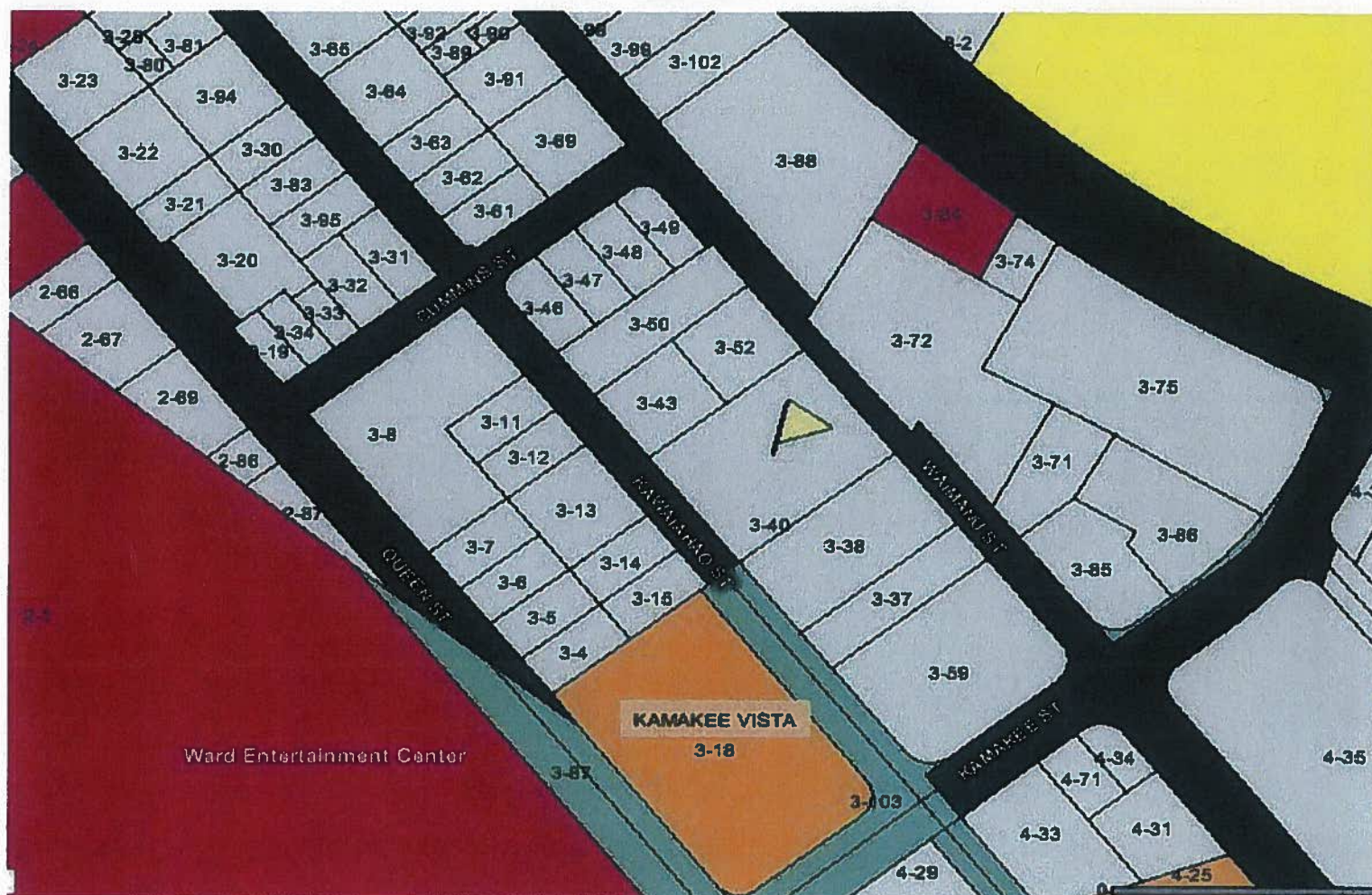


Deputy Attorney General

ARTSPACE PROJECTS, INC.

By 

Name: Gregory Handberg
Title: Senior Vice President



REVOCABLE PERMIT 15-07

This Revocable Permit is entered into as of this ____ day of December 2015 (“Effective Date”), by and between the HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA”), a body corporate and a public instrumentality of the State of Hawaii, whose business address is 547 Queen Street, Honolulu, Hawaii 96813, and District Parking Services Inc. (“DPSI”), whose business address is 401 Kamakee Street, Suite 408, Honolulu, Hawaii 96814 (collectively, “the Parties”).

1. **Grant of Revocable Permit.** The HCDA hereby grants to DPSI and all of its employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, “Permitted Persons”) a nonexclusive Revocable Permit to enter upon the premises (defined below) for the purpose set forth below (hereinafter, “RP”). DPSI is responsible for communicating and explaining the terms and conditions of this RP to all Permitted Persons.

2. **Premises.** The RP shall pertain to an approximate 30,000 square foot paved lot located at 1025 Waimanu Street, Honolulu, Hawaii, 96813, identified as Tax Map Key (1) 2-3-3: 40 (“Premises”). There are approximately ninety (90) striped parking stalls in this lot. The Premises is depicted on the map attached to this RP as Exhibit “A” and made a part hereof.

3. **Term and Duration.** The term of this RP granted hereby shall be applicable from 12:01 a.m. on January 17, 2016 (“Commencement Date”) through 11:59 p.m. on January 16, 2017 (“Termination Date”). This RP shall automatically terminate on the Termination Date, unless earlier terminated as provided herein.

4. **Use of Premises.** DPSI's use of the Premises shall be for access to the parking areas within the Premises (“Parking Areas”), conducting parking concessions. DPSI shall not permit the Premises to be used for any illegal purpose, immoral, or indecent activity, or lodging or sleeping purposes, nor shall DPSI's use of the Premises be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, or age.

5. **Rent.** Without notice of demand, DPSI shall pay to the HCDA a monthly rental fee of an amount equal to ninety-nine and a half percent (99.5%) of the gross sales collected by DPSI for the prior month (“Rent”). Payment of Rent shall occur no later than the twentieth (20th) day of the following month, and shall be accompanied by a written statement signed by DPSI, or by a person duly authorized by DPSI, which contains a detailed accounting of the gross sales for the premises (Permits, Commercial Vehicles, Daily Parking, Violations, Special Events, etc.) (“Accounting”). The Accounting provided by DPSI shall be in such form and contain such details as the HCDA may reasonably determine. The Accounting shall be conducted in accordance with generally accepted accounting principles and shall be maintained and made available for inspection by the HCDA up to three (3) years from the Termination Date. If the twentieth (20th) day falls on a weekend or State holiday, DPSI shall tender payment of the Rent on the business day immediately preceding the weekend or State holiday. Without prejudice to any other remedy available to the HCDA, DPSI shall, without further notice or demand, pay to

the HCDA: (a) interest at the rate of one percent (1%) per month, compounded monthly, on any amount due and unpaid from the date payment is due to the date of payment; and (b) a service charge of \$200.00 for each calendar month in which payment is due and remains unpaid.

6. **Acknowledgement of Use By Other Persons.** DPSI acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of HCDA and with written notice to DPSI, and with the exception of the uses specified in Paragraph 4 above, shall not otherwise interfere with their use and enjoyment of the Premises.

7. **Due Care and Diligence.** DPSI shall exercise due care and diligence in entering upon and occupying the Premises and shall exercise due care for public safety. Neither DPSI nor any Permitted Person shall make or cause any waste, strip, nuisance or any other unlawful, improper or offensive use of the Premises. At all times during the term of this RP and upon the termination of this RP, DPSI shall be responsible for: (a) removing any debris or trash deposited by Permitted Persons on the Premises; (b) repairing any damage to the Premises caused by its use by Permitted Persons; and (c) restoring the Premises to its original condition. This provision shall survive the termination of this RP.

8. **Indemnity.** DPSI shall defend, indemnify, and hold harmless the HCDA and the State of Hawaii, and their respective officials, directors, members, employees, representatives, and agents from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon or arising out of or in connection with: (a) DPSI's breach of this RP; (b) a Permitted Person's tortious conduct or violation of law while on the Premises; (c) any injury sustained or suffered by a Permitted Person while on the Premises; and (d) any other act or omission in any way relating to or arising out of this RP (collectively, "Covered Claims"). DPSI shall reimburse the HCDA for all its costs and expenses, including reasonable attorneys' fees, incurred in connection with the HCDA's defense of any Covered Claims. This provision shall survive the termination of this RP.

9. **Insurance.** (a) DPSI shall obtain and maintain at all times at its own expense insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

Commercial General Liability:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate
\$1,000,000 Completed Operations Aggregate Limit
\$1,000,000 Each Occurrence Limit
\$1,000,000 Personal & Advertising Limit

Umbrella Liability: \$2,000,000 Aggregate

Worker's Compensation:

Coverage A: As required by Hawaii Laws
Coverage B: Employer's Liability
\$1,000,000 Bodily Injury by Accident Each Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

Automobile: \$1,000,000 per occurrence and \$2,000,000 in aggregate

- (b) DPSI's insurance shall be issued by an insurance company authorized to do business in the State of Hawaii.
- (c) Prior to first entry onto the Premises, DPSI shall provide to the HCDA an insurance binder to show compliance with subsection (a) above.
- (d) The insurance obtained by DPSI in accordance with subsection (a) above shall name the HCDA and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.
- (e) HCDA shall be notified at least fifteen (15) days prior to the termination, cancellation or material change in DPSI's insurance coverage.
- (f) DPSI shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of DPSI in connection with DPSI use or occupancy of the Premises.
- (g) The procuring of such required policy or policies of insurance shall not be construed to limit DPSI's liability under this RP or to fulfill the indemnification provisions and requirements of this RP. Notwithstanding said policy or policies of insurance, DPSI shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this RP.
- (h) DPSI shall keep such insurance in effect and the certificate(s) on deposit with HCDA during the entire term of this RP. Upon request by the HCDA, DPSI shall furnish a copy of the policy or policies.
- (i) Failure of DPSI to provide and keep in force such insurance shall be regarded as a material default under this RP and the HCDA shall be entitled to exercise any or all of the remedies provided in this RP for default of DPSI.
- (j) The HCDA is a self-insured State agency. DPSI's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with insurance provided by DPSI.

The HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in the HCDA's sole discretion, the above insurance does not provide adequate protection for the HCDA, it may require DPSI to obtain insurance sufficient in coverage, form, and amount to provide adequate protection.

10. **Condition of Premises/Assumption of Risk.** DPSI warrants that it has inspected the Premises and all improvements thereon and knows the condition thereof, accepts the Premises, including soil, water, structures and any hazardous materials or substances which may be found to exist, and fully assumes all risks incident to the use and enjoyment of the Premises. DPSI hereby agrees and acknowledges that the HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to the HCDA or reasonably discoverable by DPSI. DPSI agrees that the HCDA shall not be held responsible for any injury or damage to DPSI due to the presence of hazardous materials on or in the Premises. DPSI further agrees that any property left on the Premises during the term of this RP shall be left there at the sole risk of DPSI.

11. **Hazardous Materials.** Neither DPSI nor any Permitted Person shall release any hazardous materials at, onto, or from the Premises, store or use at the Premises such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for storage and use of such materials, or bring onto the Premises any such materials, unless DPSI obtains the HCDA's prior written consent, which the HCDA may withhold in its sole and absolute discretion. DPSI shall be responsible for the cost of any testing required by any governmental agency to ascertain whether DPSI or any person acting on DPSI's behalf has released any hazardous materials at, onto, or from the Premises. At the HCDA's request, DPSI shall execute affidavits, representations and the like concerning DPSI's knowledge and belief regarding the presence of any hazardous materials that DPSI or any person acting on its behalf has brought onto or directly released at, onto, or from the Premises. DPSI shall indemnify, defend and hold the HCDA harmless from any damages and claims resulting from any direct release by DPSI or any person acting on DPSI's behalf, during the term of this RP, of hazardous materials at, onto, or from the Premises or elsewhere. For purposes of this RP, "hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act of 1976, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Federal Water Pollution Control Act of 1972 (commonly known as the Clean Water Act), or any other Federal, state or local environmental law, ordinance, rule, or regulation, whether existing as of the date hereof, previously in force, or subsequently adopted. For purposes of this paragraph, to "release" hazardous material means to (a) release, spill, emit, pump, inject, deposit, dump, dispose of, discharge, or disperse hazardous material in or into the indoor or outdoor environment (including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata) or (b) cause the leaking, leaching, escape, migration, or movement of hazardous material into or through such environment. This provision shall survive the termination of this RP.

12. **Compliance with Laws and Regulations.** DPSI shall, at all times during the term of this RP, observe and comply with all applicable laws, rules and regulations, whether County, State or federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for use of the Premises.

13. **Prohibited Use.** Any use of the Premises not authorized in Paragraph 4 above shall constitute a material breach of this RP and upon such breach, the HCDA may terminate this RP forthwith without notice and pursue any other remedies to which the HCDA is entitled to by law or under this RP.

14. **Improvements:** DPSI shall not construct any improvements of any kind or nature upon the Premises without the HCDA's express prior written consent, which consent may be granted or withheld in the HCDA's sole discretion. If DPSI obtains the HCDA's express prior written consent to construct improvements on the Premises, any improvements, including but not limited to permanent structures, erected on or moved onto the Premises by DPSI shall remain the property of DPSI and DPSI shall have the right, prior to the termination or revocation of this RP, or within an additional period the HCDA in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the DPSI shall fail to remove the improvements prior to the termination or revocation of this Permit or within an

additional period the HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to DPSI. Any improvements, alterations, or additions shall be accomplished at the sole risk and responsibility of DPSI and shall comply with all applicable laws. The HCDA shall not be responsible for any destruction or damage to any such improvements, alterations, additions, or any personal property erected, constructed, or left on the Premises by DPSI. This provision shall survive the termination of this RP.

15. **No Lien.** DPSI shall not create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon. DPSI shall defend, indemnify, and hold harmless the HCDA from and against any and all such encumbrances and all resulting expenses, including without limitation, all reasonable attorneys' fees and costs incurred by the HCDA in attempting to clear or clearing the Premises of such encumbrances.

16. **Non-transferrable.** This RP or any rights hereunder shall not be sold, transferred, assigned, conveyed, released, mortgaged, sublet, alienated, encumbered or otherwise disposed of without the HCDA's express prior written consent. Any disposition in contravention of this provision shall be void and shall constitute a material breach of this RP. Any change in ownership or control of forty percent (40%) or more of the equity or voting interest in DPSI from the Effective Date through any time during the term of this RP shall be considered a disposition, and the HCDA, in its sole discretion, may either withhold its consent to the disposition or condition the HCDA's consent on an adjustment of the Rent or other terms in this RP.

17. **Special Conditions.**

A. DPSI shall not park any vehicles in the driveways without the HCDA's prior written consent, and in any such instance only in compliance with law.

B. DPSI shall keep on file with the HCDA a schedule of the parking operation hours and a schedule of the parking rates charged.

C. DPSI shall conduct parking operations on the Premises with due diligence and efficiency, unless prevented from doing so by causes beyond DPSI's control.

D. Should DPSI or any Permitted Person tow or cause a vehicle to be towed from the Premises, DPSI shall provide notice of a right to post tow hearing to all persons seeking to recover possession of a towed vehicle. A blank notice template is attached hereto as Exhibit "B." DPSI shall document the receipt of the notice to the owner and provide the HCDA with a copy of the notice. If a person requests a post tow hearing to contest the validity of the tow, the HCDA shall appoint a hearings officer and DPSI shall provide documentation (including video and photographs) concerning the tows to the HCDA and be available to testify at the hearing. Photos shall show date and time of the tow. DPSI shall be bound by the decision of the HCDA hearings officer. If the HCDA hearings officer determines that there is an insufficient factual or legal basis for the tow, DPSI shall cause the release of the vehicle to the person without the person having to pay the towing and storage fees (if the vehicle has not already been recovered) or refund to the person all towing and storage fees already paid (as well as any fines or penalties the person may have paid).

18. **Termination.** This RP may be terminated by either party following at least thirty (30) days prior written notice to the other party.

19. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this RP by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

HCDA:
Anthony J.H. Ching
Executive Director
Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813

DPSI:
Mr. Glenn Brasher
District Parking Services Inc.
401 Kamakee Street, Suite 408
Honolulu, Hawaii 96814

20. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

21. **Governing Law.** This RP shall be governed by and construed under the laws of the State of Hawaii.

22. **Counterparts.** This RP may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

23. **Entire Agreement.** This RP constitutes the entire agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This RP cannot be modified except by a written instrument signed by both Parties.

IN WITNESS WHEREOF, the HCDA and DPSI have caused this RP to be executed as of the day and year first above written.

Hawaii Community Development Authority

By: _____
Anthony J.H. Ching
Executive Director

District Parking Services Inc.

By: _____
Glenn Brasher
President

APPROVED AS TO FORM:

Deputy Attorney General

EXHIBIT "A"



EXHIBIT "B"

NOTICE OF RIGHT TO POST TOW HEARING

Your vehicle, license number _____ was towed from the 1025 Waimanu Street Lot 40 at _____.m. on _____, 20__, by DPSI (through its authorized towing company contractor, _____, _____, Honolulu, Hawaii _____, Phone _____) acting on behalf of the Hawaii Community Development Authority, State of Hawaii.

The reason your vehicle was towed is:

As vehicle owners or other persons entitled to possession of impounded vehicles, you have the following options:

(A) You may recover possession of your vehicle by paying the towing and any storage fees that may have accrued.

(B) If you take issue with the impoundment of your vehicle, you may:

(i) Recover possession of the vehicle by paying the towing and storage fees that have accrued and file a lawsuit for damages with any court but only to the extent already allowed by law (all defenses are reserved including sovereign immunity); or

(ii) Either before or after you have recovered possession of the vehicle by paying the towing and storage fees that have accrued, demand an administrative hearing to determine whether there was a sufficient factual and legal basis for impounding your vehicle. To be entitled to such hearing, your written demand must be filed with the

Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813
Attn: Asset Management

within 5 working days after you learned that your vehicle was impounded or was missing. Your demand should include your name, vehicle license plate number, date your vehicle was towed, a brief explanation of why you believe the impounding of your vehicle was not warranted, and the best way to contact you to notify you of the hearing date, time, and location. If you have not already recovered possession of your vehicle, the hearing will be held within 48 hours after the filing of your written demand (excluding weekends and state holidays). Otherwise, the hearing will be held within a reasonable time. A determination that there was an insufficient factual or legal basis for impounding your vehicle will require DPSI to cause the release of the vehicle to you without your having to pay the towing and storage fees (if you have not already recovered possession) or refund to you all towing and storage fees already paid (as well as any fines or penalties you may have paid).