


Reviewed and Approved by Executive Director: 

March 1, 2023

FOR ACTION

I. REQUEST

Consider Authorizing the Executive Director to Amend the Development Agreement with Stanford Carr KM II LLC, a Wholly Owned Affiliate of Stanford Carr LLC, Dated April 11, 2018, for the Development of the Innovation Hale Project Located at Kakaako Makai Lot C, Honolulu, Hawaii, Tax Map Key No. (1) 2-1-015:052 (portion), to Extend the Developer Feasibility Period by An Additional Six Months to Allow Stanford Carr KM II LLC to Prepare a Detailed Development Schedule and Milestones as a Condition to the Board Reviewing a Further Extension of the Developer Feasibility Period Beyond the Six Month Period.

II. BACKGROUND

The Innovation Hale Project (Project) is slated for development on Oahu Tax Map Key (1)-2-1-015: 052 in the Kakaako Community Development District Makai Area, Honolulu, Oahu, on property owned by the Hawaii Community Development Authority (HCDA). This property is also known as Lot C, which has been master planned by the HCDA as a multi-phase build out (see Location Map and Master Plan attached as Exhibit A).

The Project is envisioned to be a 7-story office condominium with a commercial retail component on the ground floor (see Innovation Hale Conceptual Plans attached as Exhibit B).

In December 2015, the HCDA issued a request for proposals (RFP) from developers for the planning, design, construction, financing of a civic/mixed-use commercial project for the initial phase of the Lot C masterplan (specifically the Entrepreneur's Sandbox and the Innovation Hale). SCD KM II LLC, a wholly owned affiliate of Stanford Carr Development LLC (SCD), was the sole respondent to the RFP.

On July 13, 2016, the Authority adopted the recommendation of the RFP Evaluation committee for the Entrepreneur's Sandbox and Innovation Hale and authorized the Executive Director to negotiate a development agreement with SCD. Because development of the Entrepreneur's Sandbox and the Innovation Hale were on different timelines with different funding sources, the HCDA executed separate Development Agreements with SCD for each project.

Both Development Agreements for the Entrepreneur's Sandbox and the Innovation Hale were executed with SCD on April 11, 2018. SCD commenced construction on the Entrepreneur's Sandbox in May 2018 and completed construction in February 2019.

Section 7.1 of the Development Agreement for the Innovation Hale (Agreement) originally provided for a Developer's Feasibility Period of 730 calendar days, during which the developer performs due diligence. This includes investigations on archaeological, environmental, infrastructure, and financial feasibility relating to the development and construction of the Project. The Agreement is attached as Exhibit C.

If SCD elects to proceed with the Project, it is required to issue the HCDA a written Notice to Proceed prior to expiration of the Feasibility Period. Failure to deliver a Notice to Proceed before the expiration of the Feasibility Period is deemed disapproval by SCD and an election not to proceed, and the Agreement shall be considered terminated.

In September 2019, SCD indicated it was still conducting planning diligence and required additional time to move the Project forward. On December 4, 2019, the Kakaako Authority granted a 365-day extension of the Developer's Feasibility Period to April 10, 2021.

In February 2021, SCD requested another one-year extension of the Developer's Feasibility Period for the Agreement due to adverse impacts to the office market caused by the onset of the COVID-19 pandemic. On April 7, 2021, the Kakaako Authority granted the additional 365-day extension of the Developer's Feasibility Period to April 10, 2022.

In January 2022, SCD again requested an additional 365-day extension, citing continued impacts to the office market due to the pandemic. On February 2, 2022, the Kakaako Authority granted the additional 365-day extension of the Developer's Feasibility Period to April 10, 2023.

HCDA staff met with SCD in February 2023 to discuss the upcoming expiration of the Developer's Feasibility Period, and SCD noted it would like to request an additional three-year extension. HCDA staff instead proposed a six-month extension to allow time for SCD to create a project timeline and schedule of deliverables necessary to requesting a further extension of the Developer's Feasibility Period.

In a letter dated February 9, 2023, SCD requested a six-month extension of the Developer's Feasibility Period for the Agreement to allow adequate time to reassess SCD's development plans and schedule for the site. The letter is attached as Exhibit D.

III. DISCUSSION

HCDA staff agrees that the COVID-19 pandemic has caused unforeseen and unprecedented challenges in the office market in Honolulu. However, SCD should

demonstrate, to the satisfaction of the board, that it has a detailed development schedule and milestones before any longer-term extension is considered by the board.

HCDA staff recommends extending the Developer's Feasibility Period for an additional six months to allow for the completion of the project timeline. Any further extension will be contingent on SCD satisfactorily completing those project milestones.

HCDA staff also recommends amending Section 9.2 of the Development Agreement to be consistent with the extension of the Feasibility Period.

All other terms and conditions of the Agreement shall remain unchanged.

IV. RECOMMENDATION

It is recommended that the Board Authorize the Executive Director to Amend the Development Agreement with Stanford Carr KM II LLC, a Wholly Owned Affiliate of Stanford Carr LLC, Dated April 11, 2018, for the Development of the Innovation Hale Project Located at Kakaako Makai Lot C, Honolulu, Hawaii, Tax Map Key No. (1) 2-1-015:052 (portion), to Extend the Developer Feasibility Period by An Additional Six Months to Allow Stanford Carr KM II LLC to Prepare a Detailed Development Schedule and Milestones as a Condition to the Board Reviewing a Further Extension of the Developer Feasibility Period Beyond the Six Month Period and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

Attachments:


Exhibit A – Location Map and Lot C Master Plan

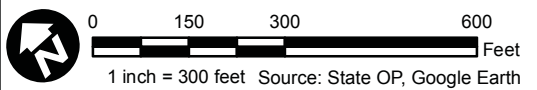
Exhibit B – Innovation Hale Conceptual Plans

Exhibit C – Innovation Hale Development Agreement Dated April 11, 2018

Exhibit D – SCD Request Letter Dated February 9, 2023

Prepared By: Lindsey Doi, Asset Manager 

Reviewed By: Craig K. Nakamoto, Executive Director 



INNOVATION BLOCK AT LOT C MASTER PLAN

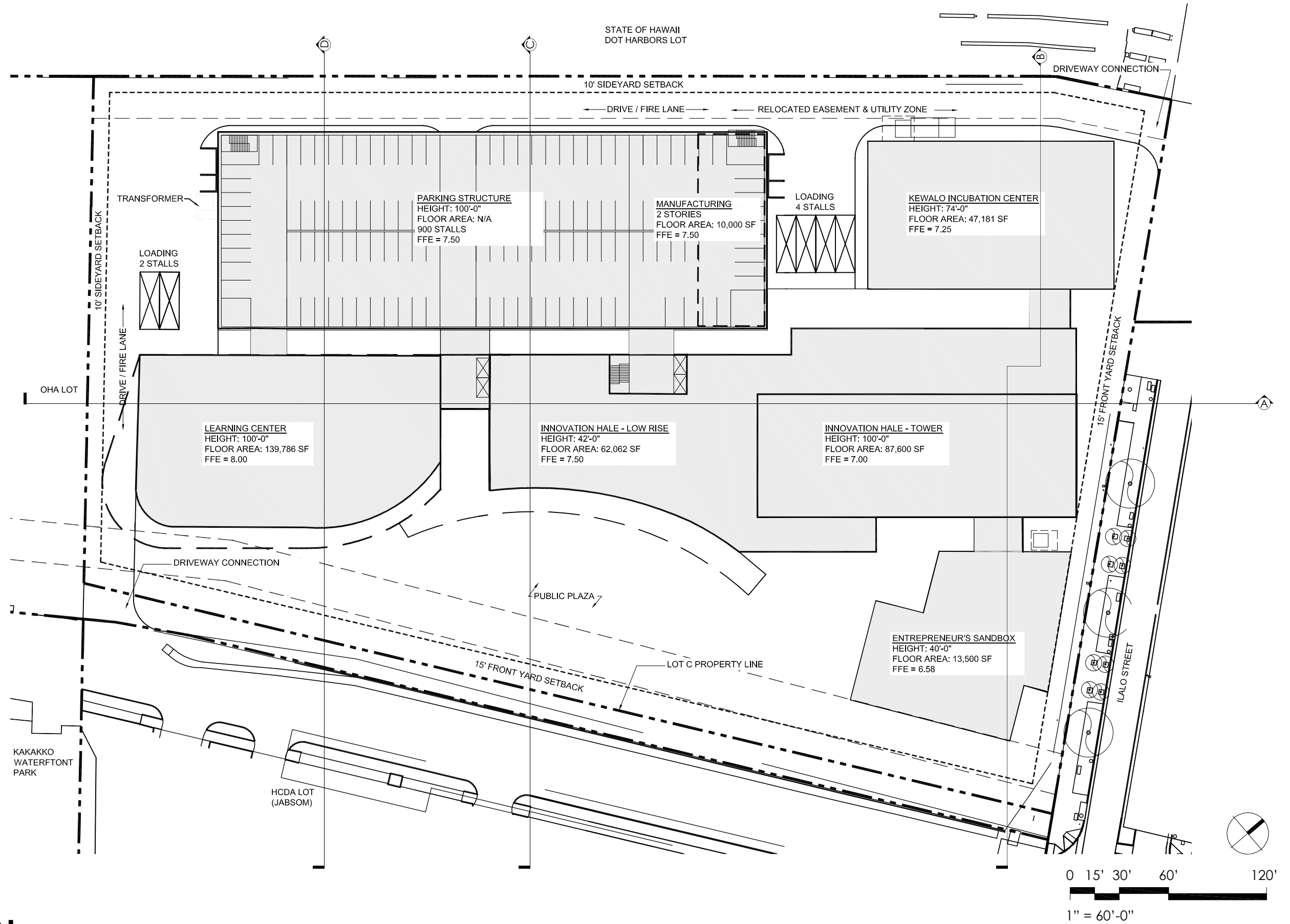
PROJECT LOCATION

FIGURE

1-3

PHASE 3 ZONING

*SEE DEVELOPMENT CRITERIA - ZONING & PARKING ANALYSIS



LOT C MASTER PLAN

KAKAAKO MAKAI INNOVATION BLOCK AT LOT "C" MASTER PLAN - 07.29.2015

FERRARO CHOI

"EXHIBIT B"

MASTER PLAN

PHASE 1:

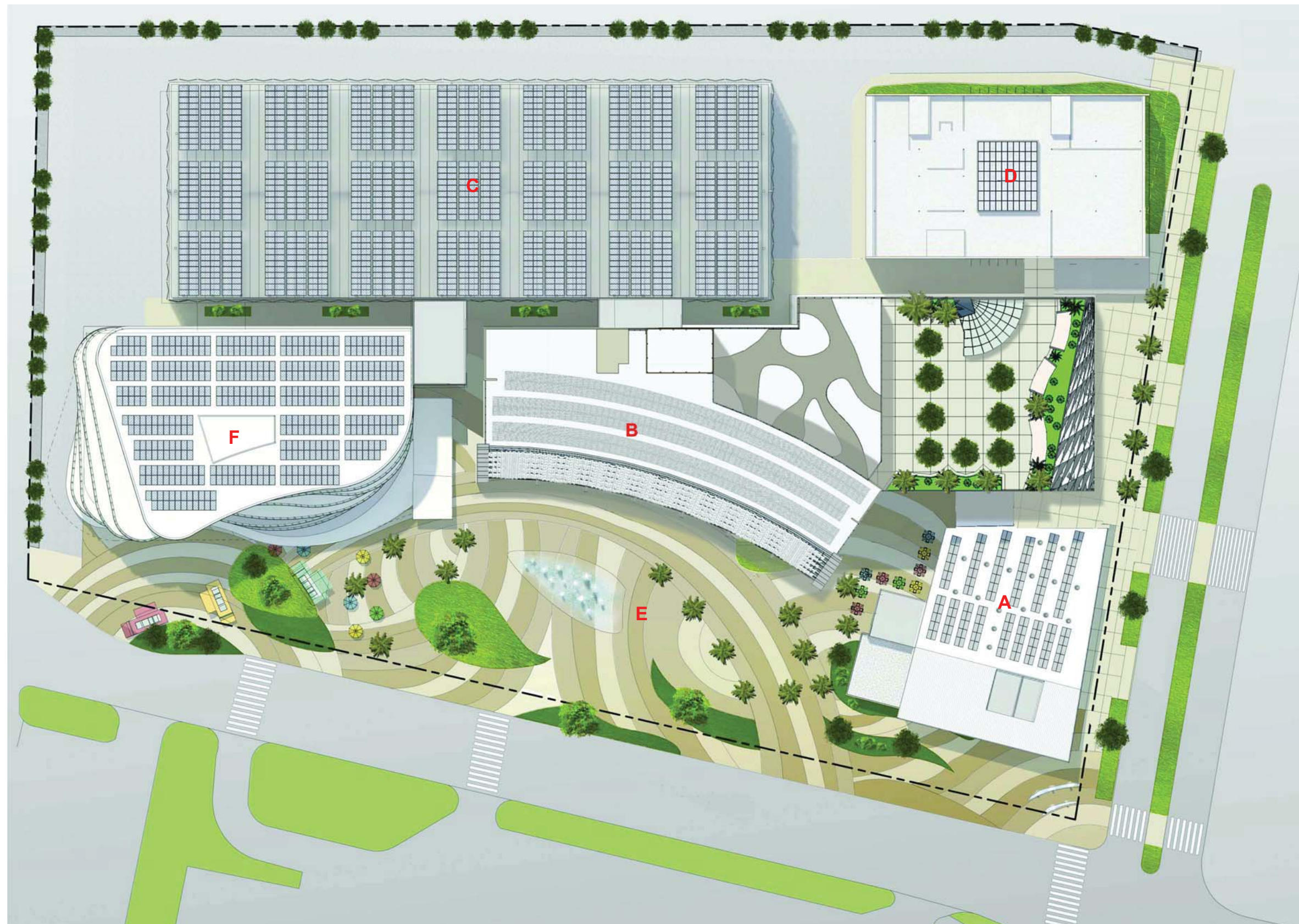
- A - SANDBOX
- B - INNOVATION HALE

PHASE 2:

- C - PARKING STRUCTURE & LOADING ZONE
- D - KEWALO INCUBATION CENTER
- E - PUBLIC PLAZA

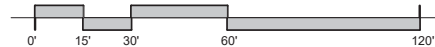
PHASE 3:

- F - LEARNING CENTER



MASTER PLAN - PHASE 1, 2 & 3

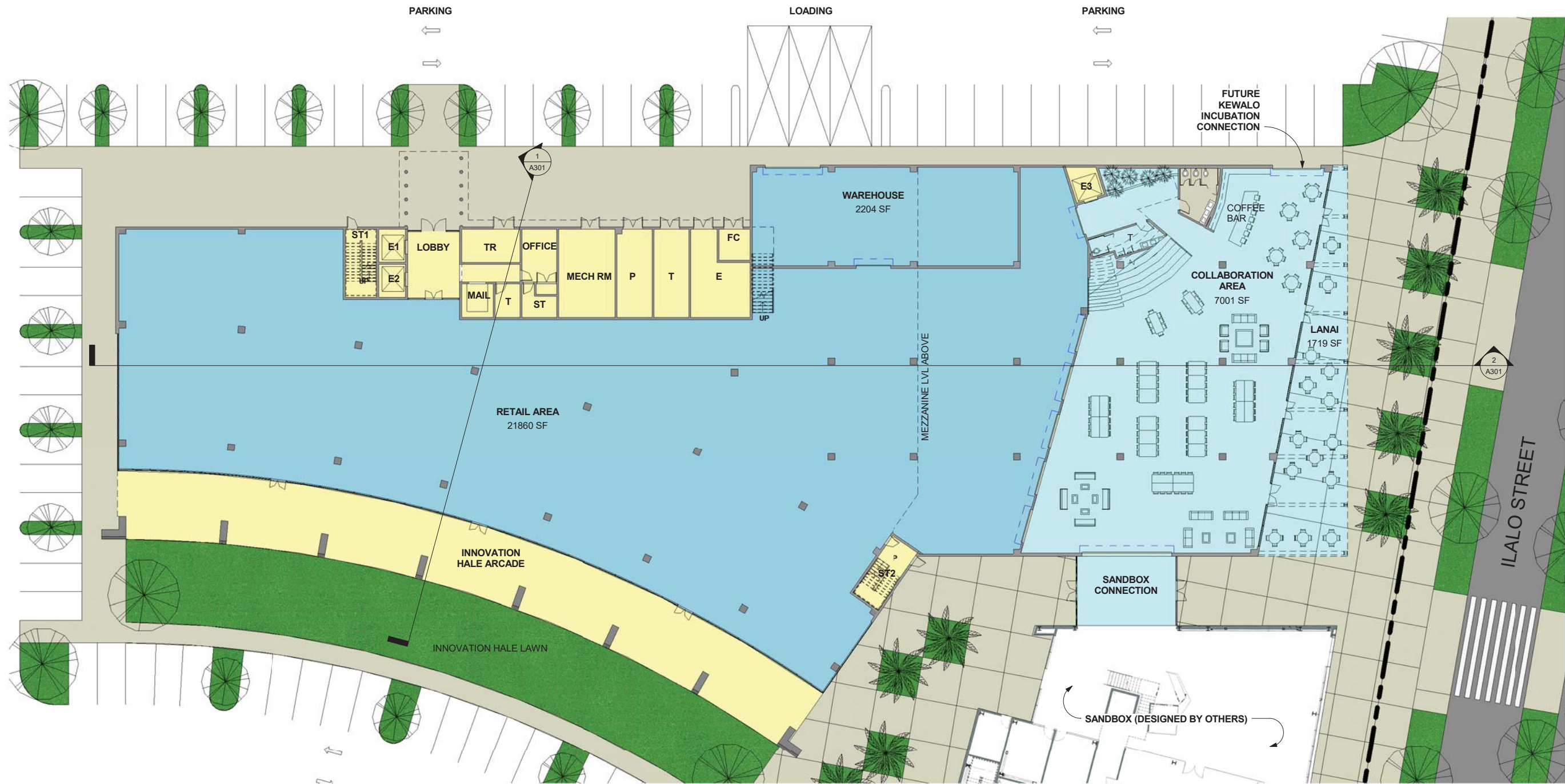
HTDC PHASE 1 A & B - CONCEPTUAL DESIGN



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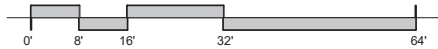


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ARCHITECTURE | PLANNING | INTERIOR



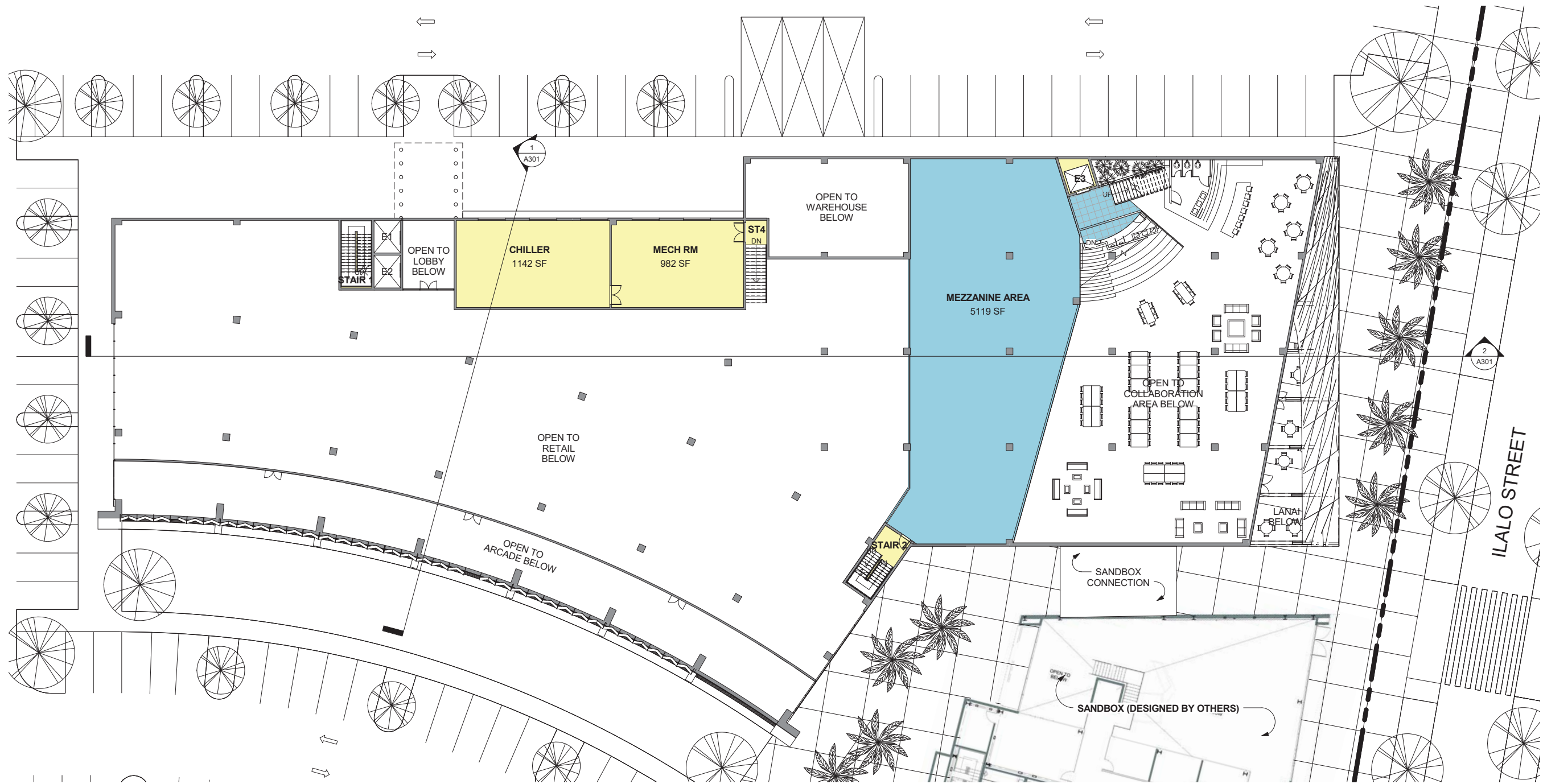
1ST FLOOR PLAN

HTDC PHASE 1 A & B - CONCEPTUAL DESIGN



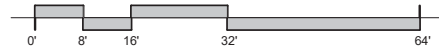
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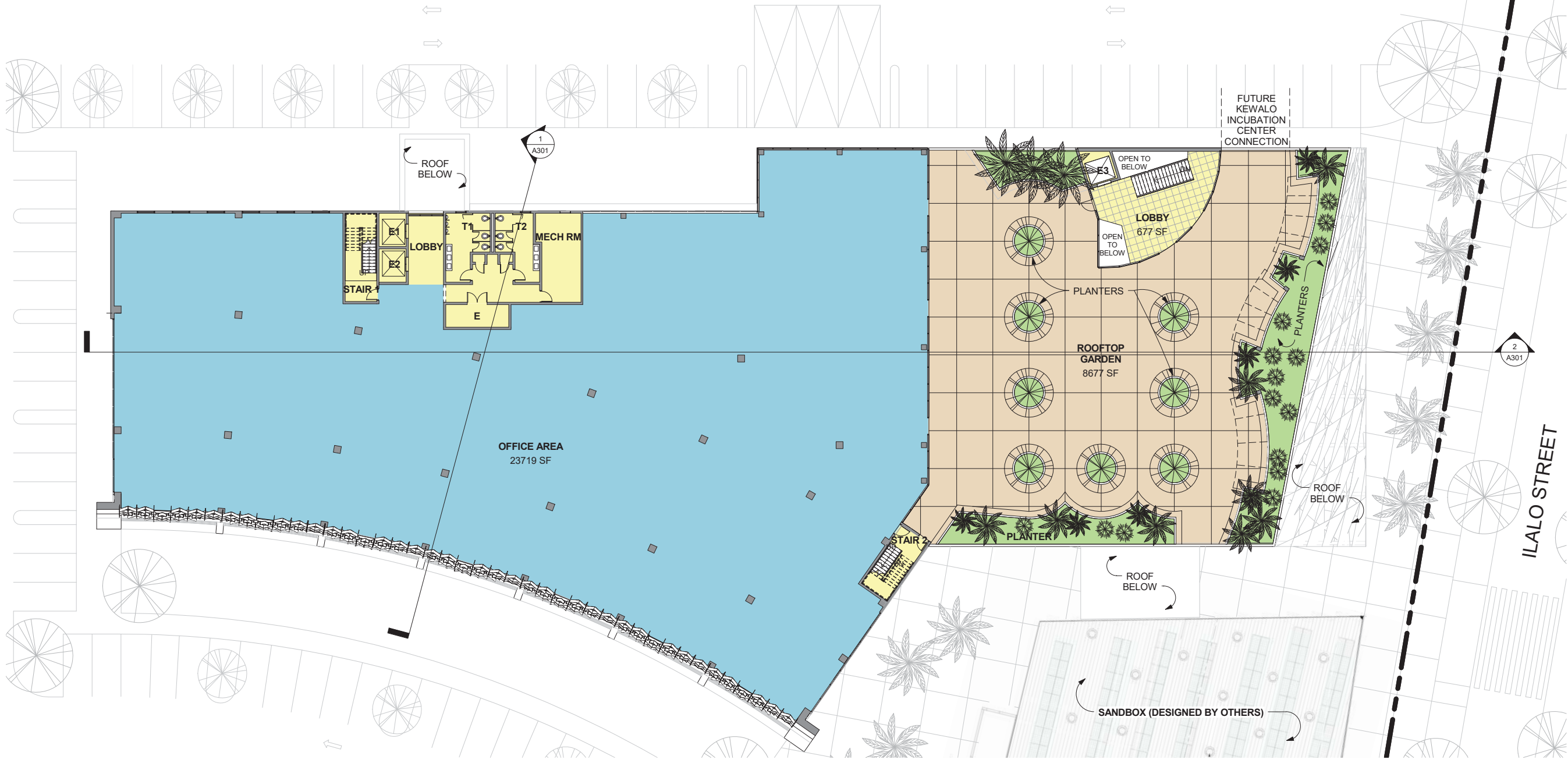
MEZZANINE FLOOR PLAN

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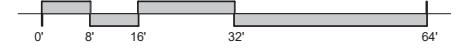


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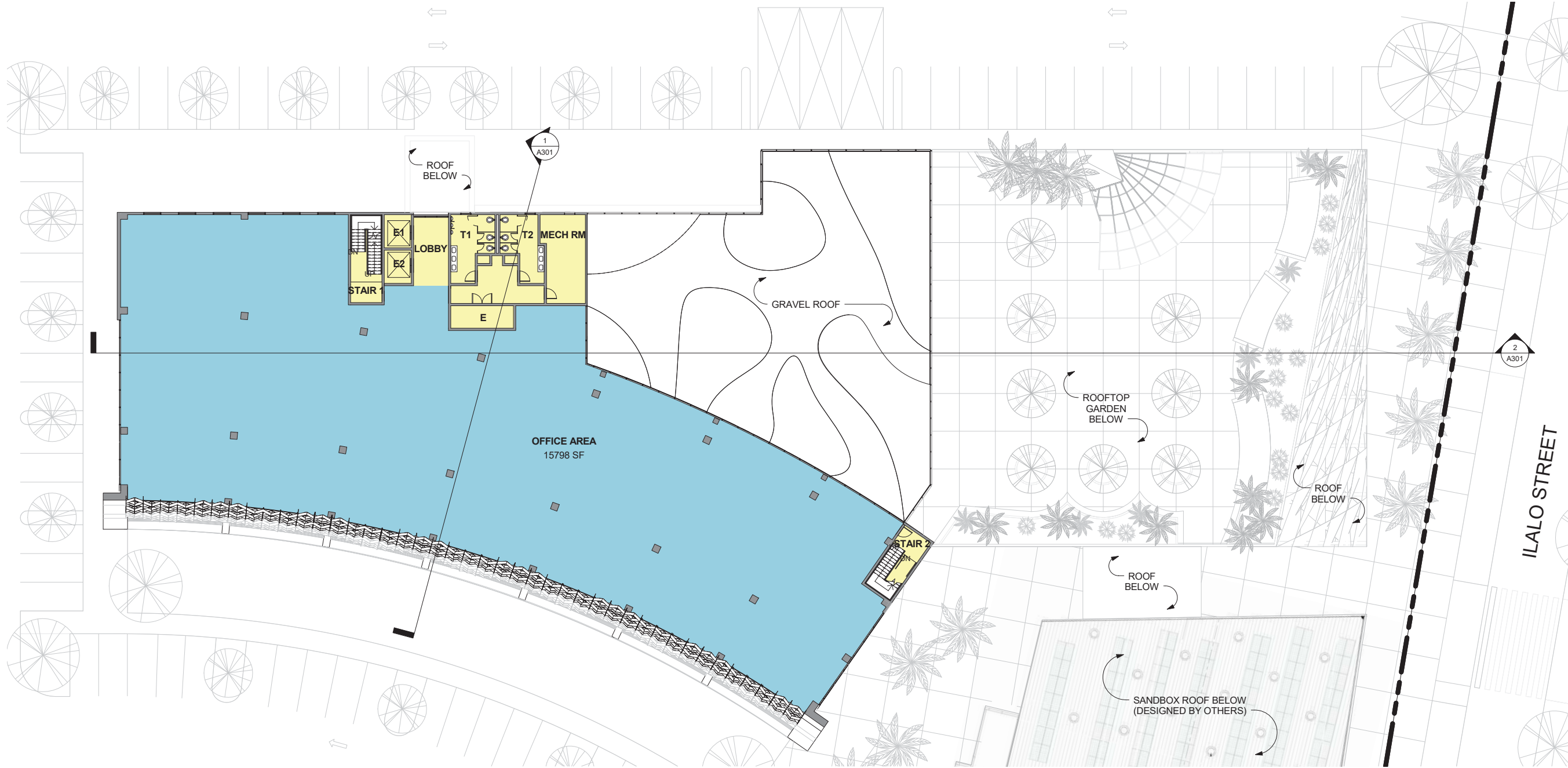


2ND FLOOR PLAN
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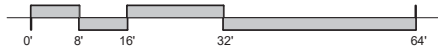
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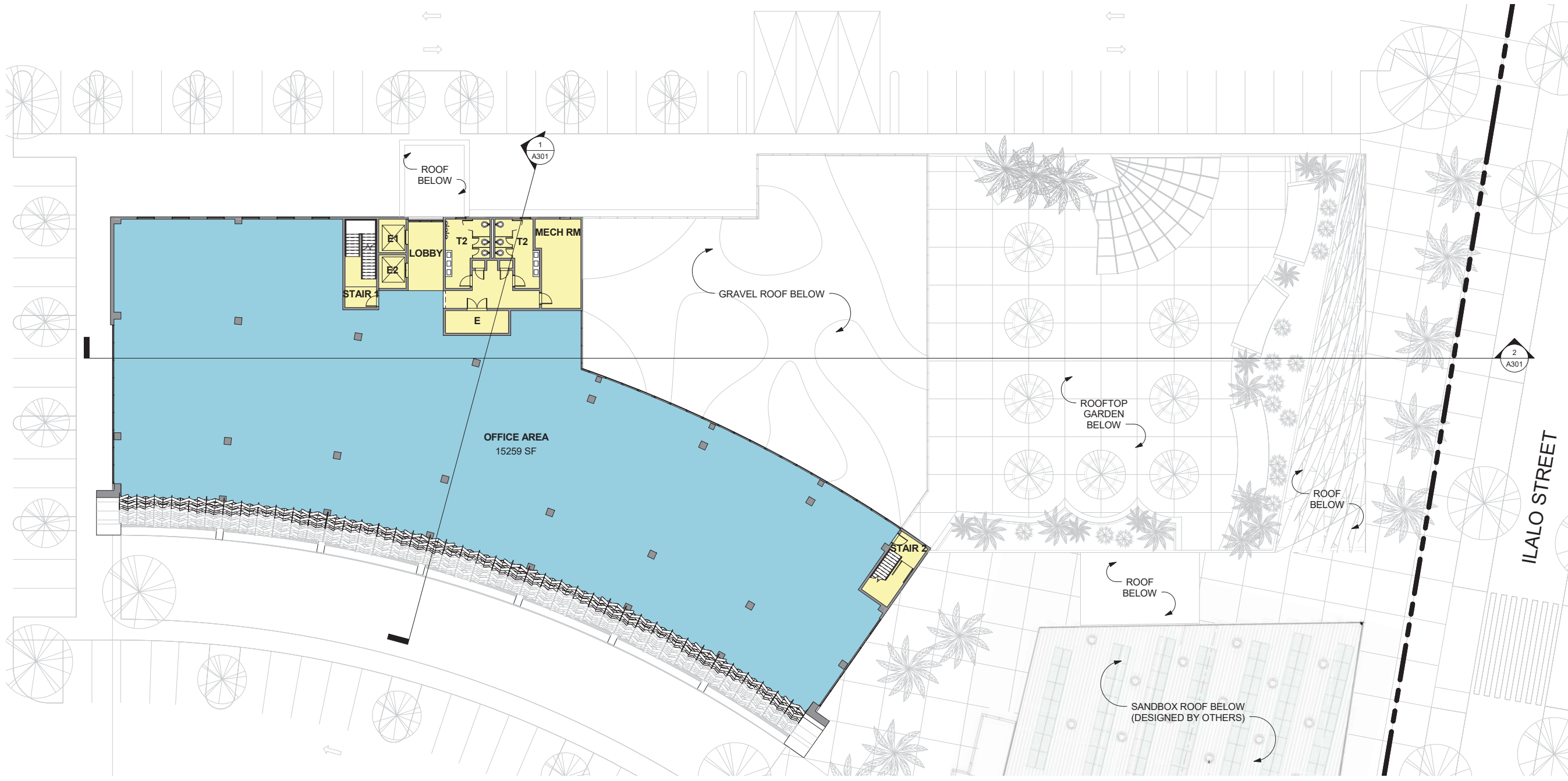
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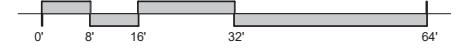
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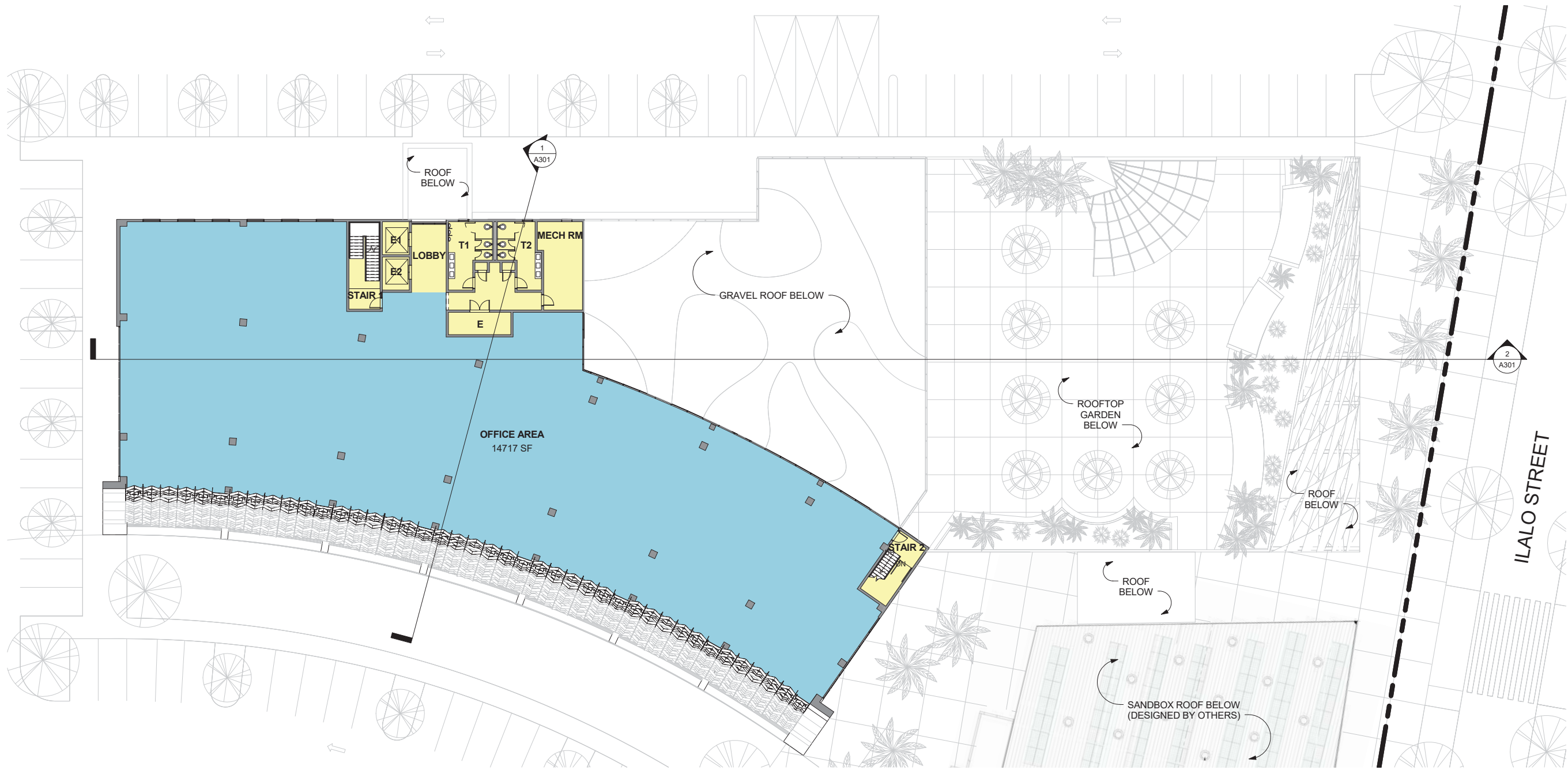


4TH FLOOR PLAN
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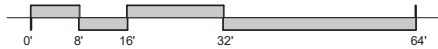
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5TH FLOOR PLAN

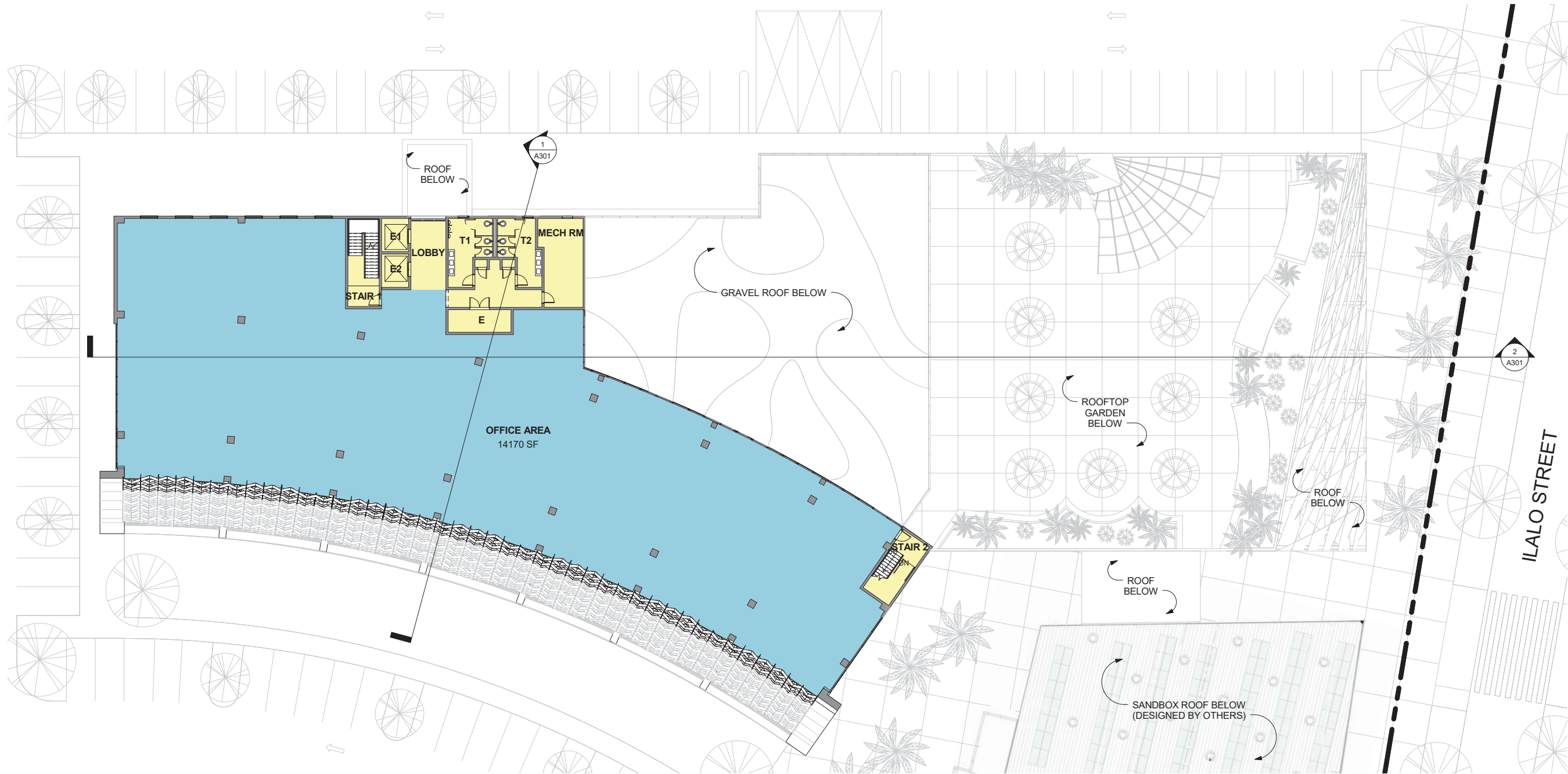
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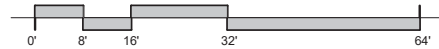
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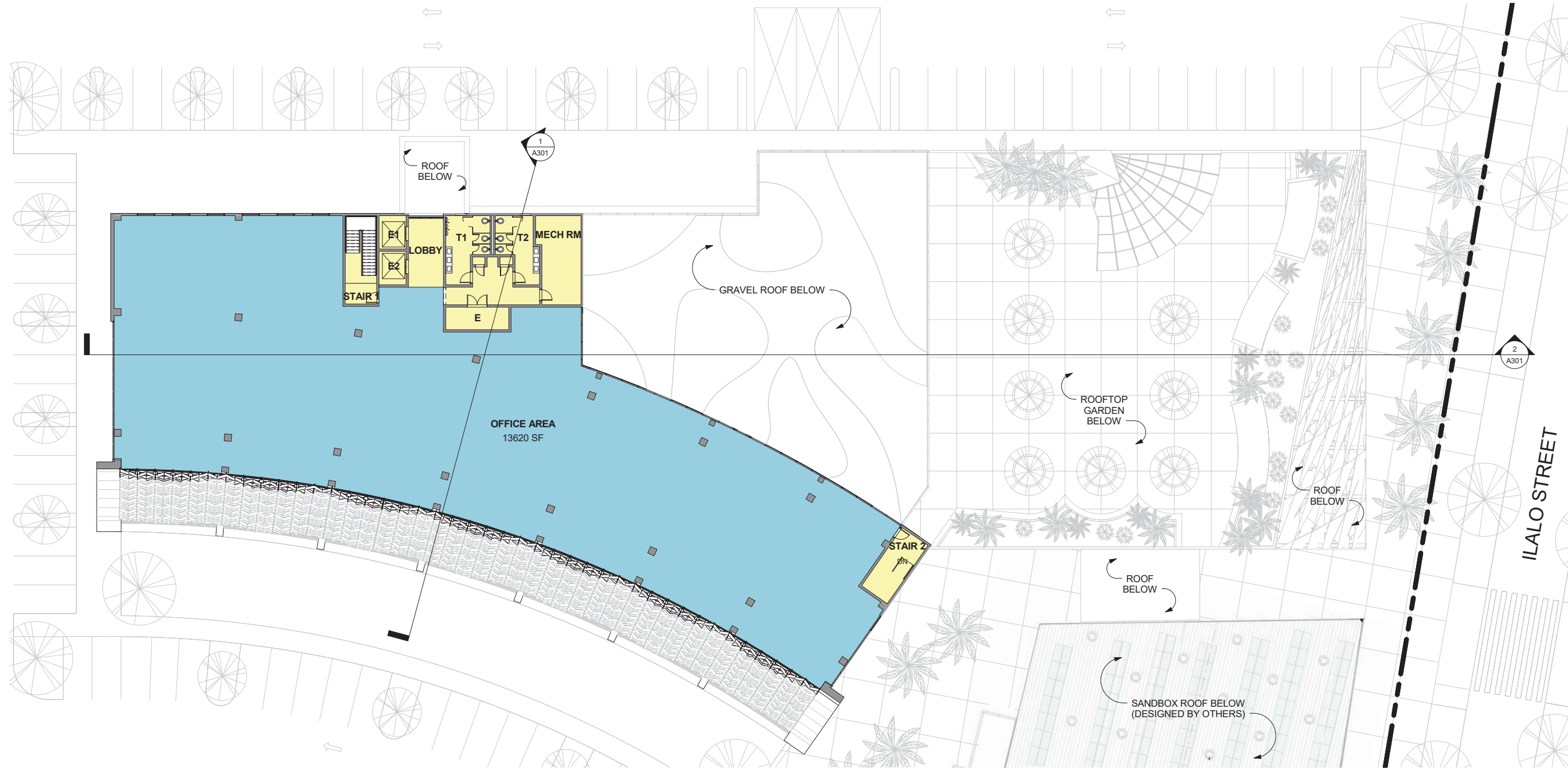


6TH FLOOR PLAN
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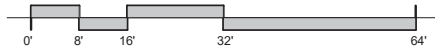


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7TH FLOOR PLAN
 HTDC PHASE 1 A & B - CONCEPTUAL DESIGN



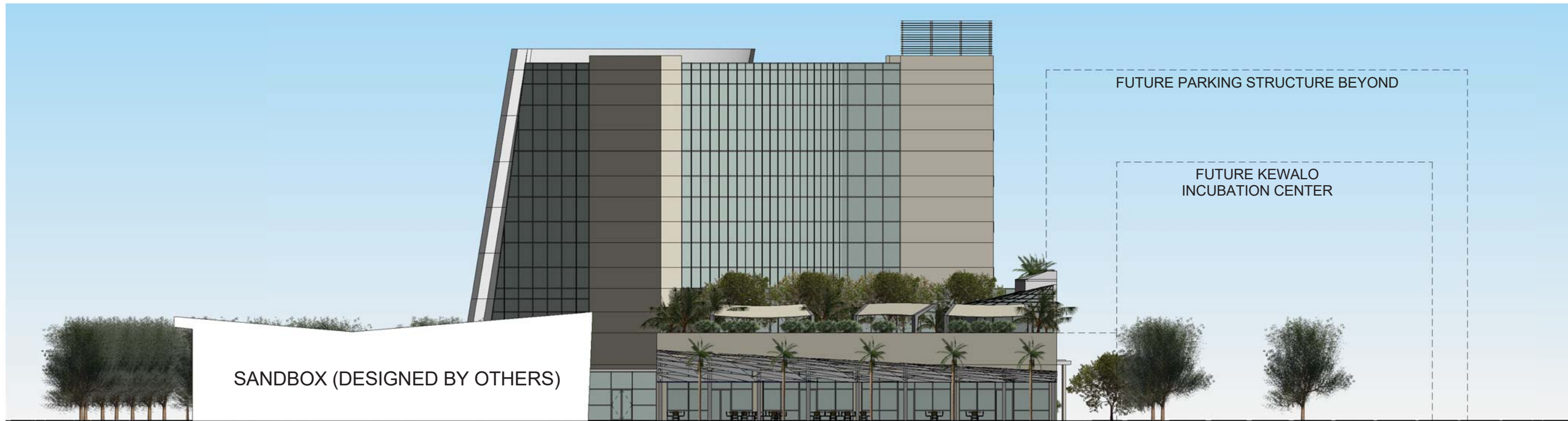
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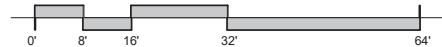


SOUTH ELEVATION - KEAWE STREET



EAST ELEVATION - ILALO STREET

HTDC PHASE 1 A & B - CONCEPTUAL DESIGN

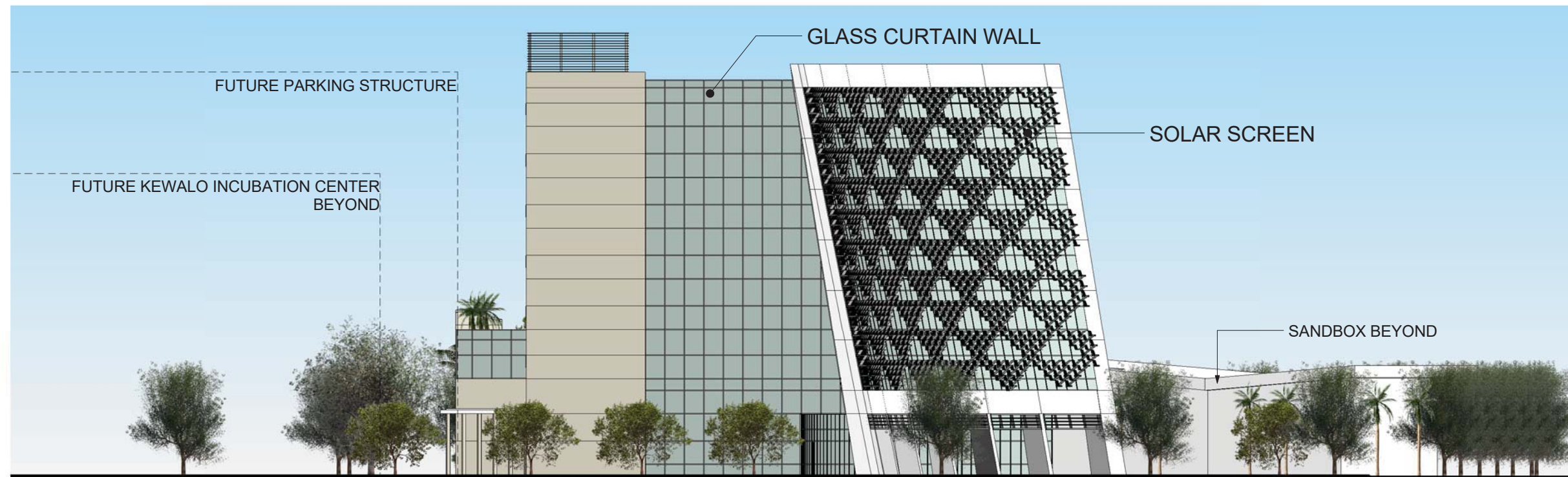


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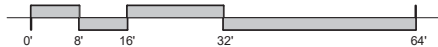
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NORTH ELEVATION

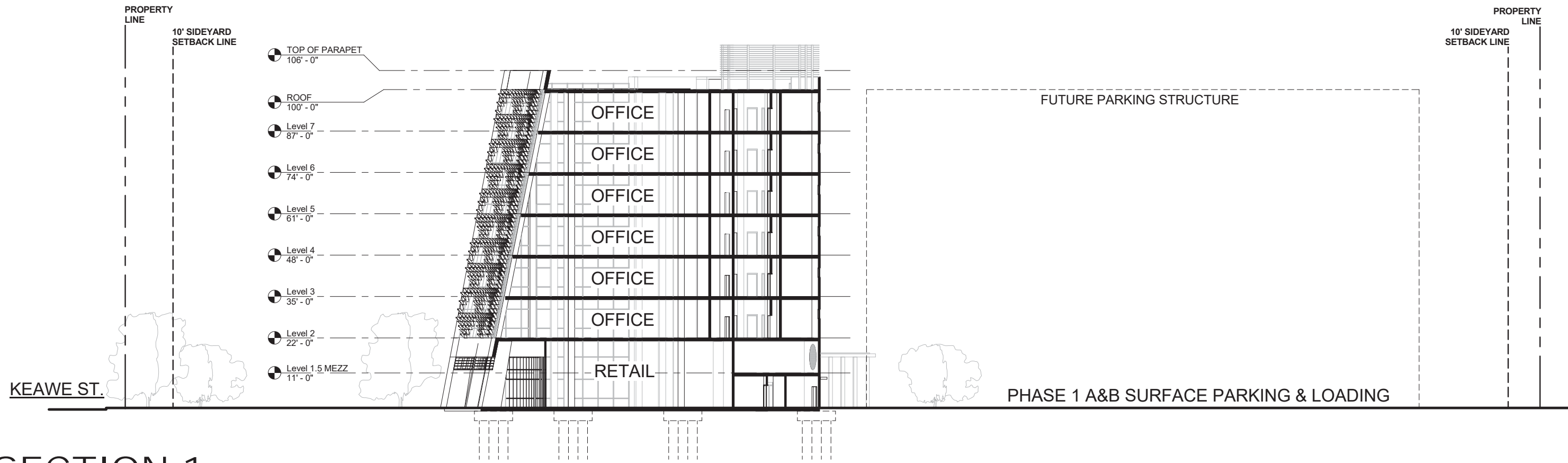


WEST ELEVATION
HTDC PHASE 1 A & B - CONCEPTUAL DESIGN

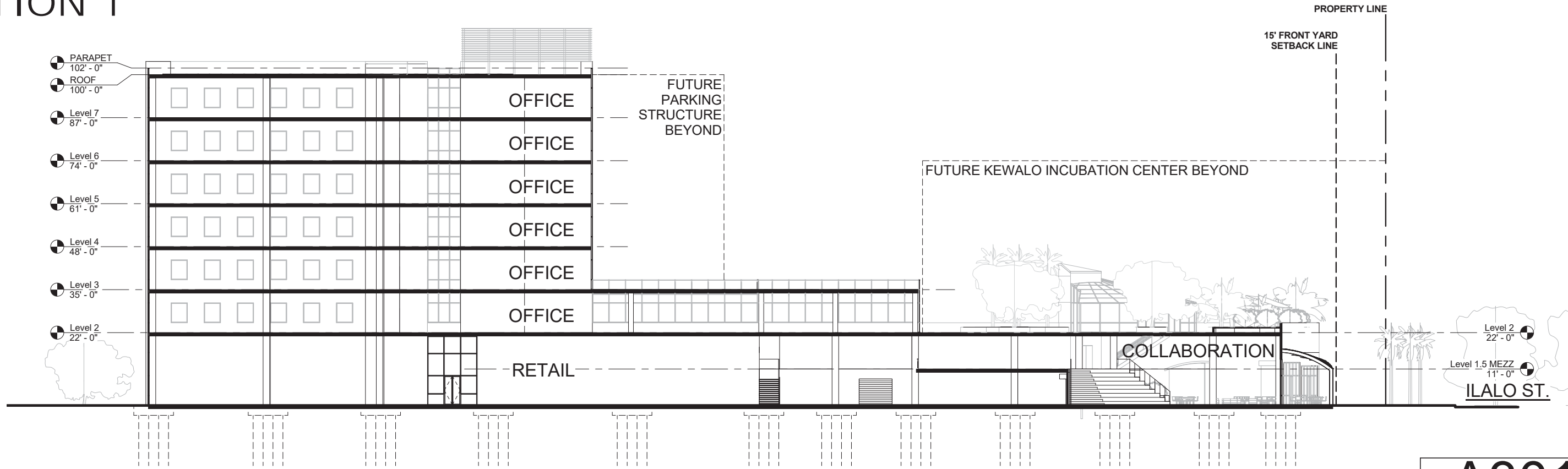


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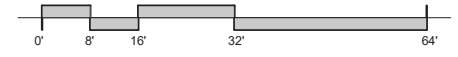


SECTION 1



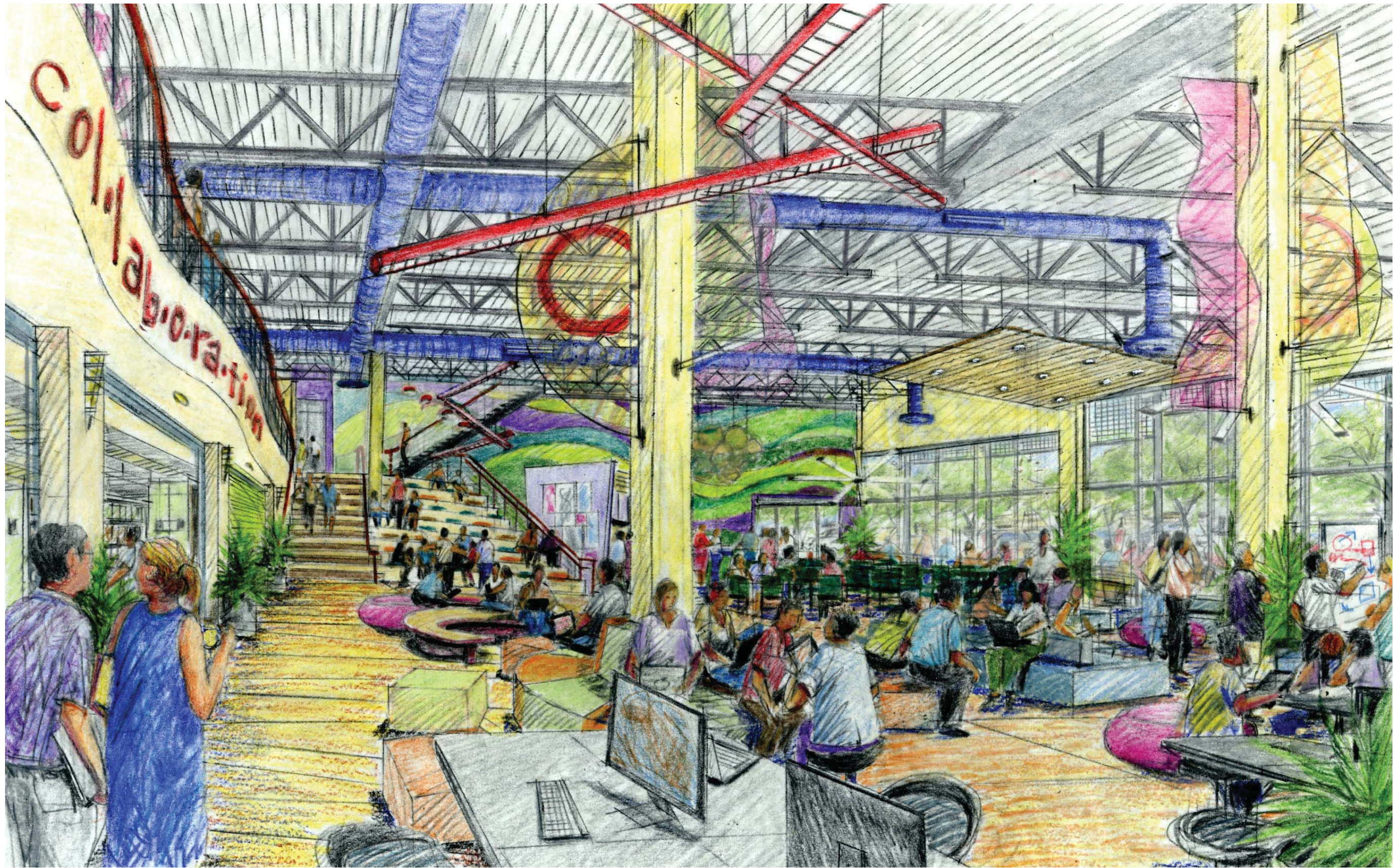
SECTION 2

HTDC PHASE 1 A & B - CONCEPTUAL DESIGN



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INTERIOR VIEW - COLLABORATION AREA

HTDC PHASE 1 A & B - CONCEPTUAL DESIGN

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SHEET NO.



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MAUKA VIEW ALONG KEAWE STREET

HTDC PHASE 1 A & B - CONCEPTUAL DESIGN

A402
SHEET NO.



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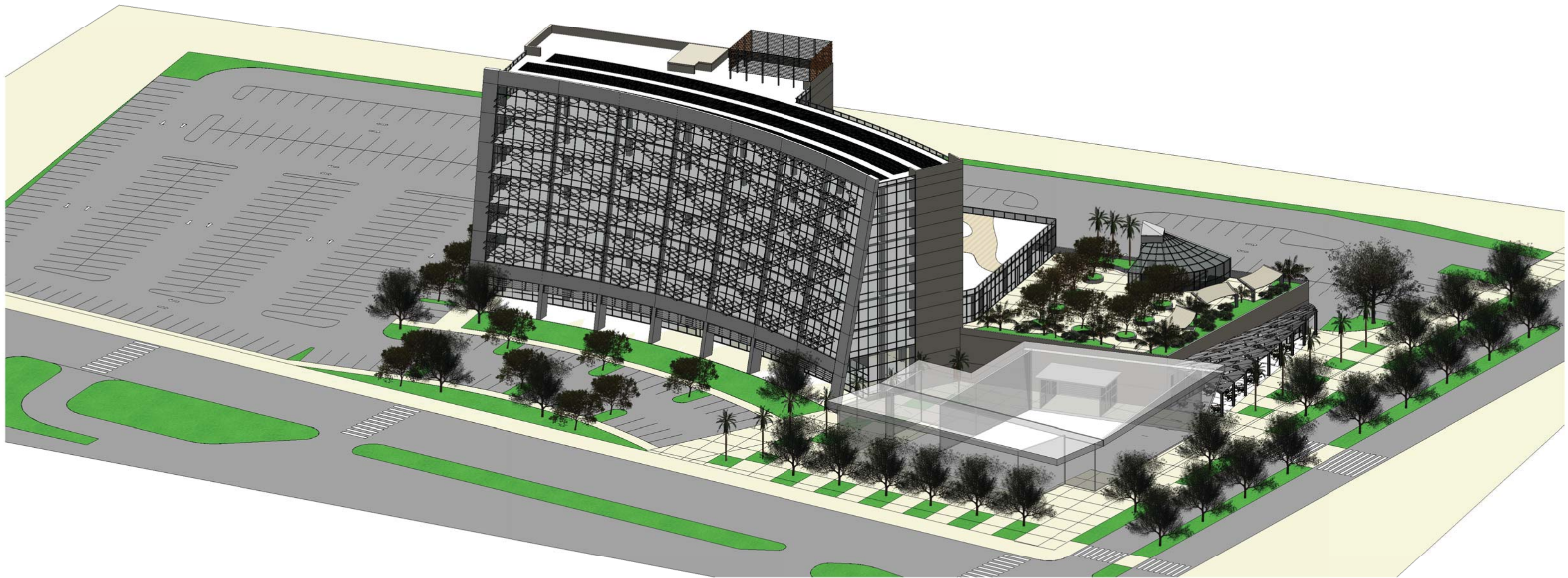
3D MASSING ALONG ILALO STREET

HTDC PHASE 1 A & B - CONCEPTUAL DESIGN

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ADG
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ARCHITECTURE | PLANNING | INTERIOR



3D MASSING ALONG KEAWE STREET

HTDC PHASE 1 A & B - CONCEPTUAL DESIGN

A404	
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"EXHIBIT C"

DEVELOPMENT AGREEMENT

Between

HAWAII COMMUNITY DEVELOPMENT AUTHORITY,
a body corporate and a public instrumentality of the State of Hawaii

and

SCD KM II LLC,
a Hawaii limited liability company

Dated April 11, 2018

Re: Kaka'ako Makai Lot C, Phase IB, Innovation Hale
Tax Map Key No. (1) 2-1-015-052 (por.)

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DEVELOPMENT AGREEMENT

This Development Agreement (this “**Agreement**”) is made and entered into as of April 11, 2018, (the “**Effective Date**”) by and between the HAWAII COMMUNITY DEVELOPMENT AUTHORITY (the “**HCDA**”), a body corporate and a public instrumentality of the State of Hawaii, duly organized and existing pursuant to Chapter 206E, Hawaii Revised Statutes, whose principal place of business is 547 Queen Street, Honolulu, Hawaii 96813, and SCD KM II LLC, a Hawaii limited liability company (the “**Developer**”), whose business address is 1100 Alakea Street, 27th Floor, Honolulu, Hawaii 96813. The HCDA and the Developer are each sometimes referred to in this Agreement as a “**Party**” and collectively, as the “**Parties**”.

RECITALS:

A. The HCDA owns approximately 5.511 acres of land referred to as “Kaka‘ako Makai Lot C” identified on the Tax Maps of the State of Hawaii as Tax Map Key No. (1) 2-1-015-052, located on the Island of Oahu, State of Hawaii, one block Makai (seaward) of Ala Moana Boulevard on Ilalo Street, between Keawe Street and Forrest Avenue (the “**Land**”).

B. The Hawaii State Legislature has determined that there is a need for replanning, renewing or redeveloping Kaka‘ako. Pursuant to Chapter 206E, HRS, the Hawaii State Legislature authorized and empowered the HCDA to, *inter alia*, develop a community development plan for Kaka‘ako and to establish and adopt rules relating to the use, zoning, planning and development of land in Kaka‘ako.

C. The HCDA issued a Request for Proposals (No. HCDA 03-2015) dated December 7, 2015, as amended, to solicit proposals to develop a civic/mixed-use commercial project on a portion of the Land for the development of Phase 1 of the Kaka‘ako Makai Innovation Block Master Plan to consist of the Sandbox Project and the Project (“**Phase 1**”).

D. The HCDA selected the proposal submitted by Stanford Carr Development, LLC for Phase 1 of the “Lot C Project”.

E. The HCDA authorized its Executive Director or the Executive Director’s designee to negotiate a development agreement for Phase 1 of the Lot C Project.

F. In furtherance of the public purposes pertaining to Kaka‘ako set forth in Chapter 206E, HRS, the HCDA is entering into this Agreement with the Developer, an affiliate of Stanford Carr Development, LLC,.

G. The HCDA and the Developer wish to enter into this Agreement to set forth the rights, duties and obligations of the HCDA and the Developer, as the exclusive Developer, with respect to the development of the Project (as such term is hereinafter defined).

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS

The definitions set forth in Chapter 23 of Title 15, Subtitle 4, of the Hawaii Administrative Rules (“**HAR**”), entitled “The Kaka‘ako Community Development District Rules for the Makai Area” are incorporated by reference.

“**Addressee**” shall have the meaning set forth in Section 20.2.

“**Agreement**” means this Agreement.

“**City**” means the City and County of Honolulu, a municipal corporation of the State of Hawaii.

“**Developer**” means SCD KM II LLC, or its respective affiliates, successors and assigns.

“**Developer Parties**” shall have the meaning set forth in Section 5.5.1.

“**Development Permit**” means the permit approval required from the HCDA under Section 15-23-11 of the Makai Area Rules for the construction of the Project.

“**Effective Date**” shall have the meaning set forth in the preamble of this Agreement.

“**EHE/EHMP**” shall have the meaning set forth in Section 10.7.

“**Entrepreneur’s Sandbox**”, means an approximately 13,500 square-foot public facility tasked with promoting the development of high technology and enterprise, comprising part of Phase 1A of the “Entrepreneur’s Sandbox/Collaboration Center”.

“**Feasibility Period**” shall have the meaning set forth in Section 7.

“**Final Subdivision Approval**” shall have the meaning set forth in Section 9.15.1.

“**Ground Lease**” shall have the meaning set forth in Section 9.16.

“**HCDA**” shall mean the Hawaii Community Development Authority, a body corporate and a public instrumentality of the State of Hawaii duly organized and existing pursuant to Chapter 206E, Hawaii Revised Statutes.

“**HCDA’s Materials**” Shall have the meaning set forth in Section 7.2.

“**HRS**” means the Hawaii Revised Statutes, as amended.

“**Kaka‘ako**” means the Kaka‘ako Community Development District set forth in Section 206E-32, HRS.

“**LEED**” shall have the meaning set forth in Section 11.5.

“**Land**” means the approximately 5.511 acres of land referred to as “Kaka‘ako Makai Lot C” identified on the Tax Maps of the State of Hawaii as Tax Map Key No. (1) 2-1-015-052, located on the Island of Oahu, State of Hawaii, situated one block Makai (seaward) of Ala Moana Boulevard on Ilalo Street, between Keawe Street and Forrest Avenue owned by HCDA.

“**Lender**” shall have the meaning set forth in Section 21.1.

“**Lot C Project**” means the proposed phased development of a civic/mixed-use commercial project on the Land, consisting of the following anticipated facilities: (1) Entrepreneur’s Sandbox, (2) Innovation Hale, (3) Kewalo Incubation Center, (4) Learning Center, and (5) Regional Parking Garage, as depicted on the Site Plan attached hereto as Exhibit “A”.

“**Makai Area Plan**” means the Makai Area Plan for Kaka‘ako, as amended from time to time.

“**Makai Area Rules**” means Title 15, Subtitle 4, Chapter 23 of the Hawaii Administrative Rules entitled “The Kaka‘ako Community Development District Rules for the Makai Area”, as amended from time to time.

“**MUZ**” shall have the meaning set forth in Section 3.

“**Notice**” shall have the meaning set forth in Section 20.1.

“**Notice to Proceed**” shall have the meaning set forth in Section 7.5.

“**Parking Structure**” shall have the meaning set forth in Section 10.5.

“**Phase**” means and refers to the appropriate phase of the Lot C Project if the Developer elects to develop the Lot C Project in phases.

“**Phase 1**” means the Sandbox Project and the Project, collectively.

“**Plans and Specifications**” means the plans and specifications for the Project described in Section 9.2.2.

“**Project**” shall have the meaning set forth in Section 4.

“**Project Budget**” shall have the meaning set forth in Section 9.2.4.

“**Project Schedule**” shall have the meaning set forth in Section 9.2.3.

“**Project Site**” means the site underlying the proposed Project as shown on the map attached hereto as **Exhibit “A”** and located on a portion of the Land described in **Exhibit “B”**.

“**RFP**” means the Request for Proposals (No. HCDA 03-2015) dated December 7, 2015, as amended, issued by HCDA to solicit proposals to develop a civic/mixed-use commercial project on a portion of the Land for the development of Phase 1 of the Kaka‘ako Makai Innovation Block Master Plan.

“**Sandbox Development Agreement**” means the Development Agreement dated of even date herewith by and between the HCDA and SCD KM I LLC concerning development of the Sandbox Project.

“**SHPD**” shall have the meaning set forth in Section 9.6.

“**Sandbox Project**” means Phase 1A of the Project referred to as the “Entrepreneur’s Sandbox/Collaboration Center”, consisting of the construction of an approximately 13,500 square-foot “Entrepreneur’s Sandbox”, a public facility tasked with promoting the development of high technology and enterprise.

“**Sandbox Project Site**” means the site underlying the proposed Sandbox Project as shown on the map attached hereto as **Exhibit “A”** and located on a portion of the Land described in **Exhibit “B”**.

“**SMA**” shall have the meaning set forth in Section 11.16.

“**State**” means the State of Hawaii.

“**Substantially Complete**” shall have the meaning set forth in Section 9.12.

“**Survey**” shall have the meaning set forth in Section 7.4.

“**Title Cure Election Period**” shall have the meaning set forth in Section 7.4.

“**Title Objection Notice**” shall have the meaning set forth in Section 7.4.

“**Title Report**” shall have the meaning set forth in Section 7.4.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the parties hereby agree as follows:

1. **GENERAL**. This Agreement sets forth the HCDA’s and the Developer’s respective responsibilities, terms, and conditions, pursuant to which the Developer will develop,

construct and complete the Project on a portion of the Land, free of mechanics and materialmen liens.

2. **TERM.** The term of this Agreement shall commence on the Effective Date and end upon the date on which performance of all obligations of the HCDA and the Developer pursuant to this Agreement have been completed and fulfilled. The Developer will have 1,095 calendar days after the end of the Feasibility Period to commence construction. If the Developer is unable to commence construction within such 1,095-calendar day period, then this Agreement shall automatically terminate.

3. **LAND USE DESIGNATIONS FOR THE PROJECT SITE.** The Parties acknowledge that the current State Land Use Classification for the Project Site is Urban and the HCDA Makai Area Plan Land Use Designation is Mixed-Use Zone (“**MUZ**”) with an allowable Floor Area Ratio of 1.5.

4. **DESCRIPTION OF THE PROJECT.** The Project will include Phase 1B of the Lot C Project referred to as the “Innovation Hale”, consisting of a total of approximately 152,830 square feet of floor area, comprised of approximately 30,080 square feet of retail space, approximately 10,800 square feet of collaboration and common space, and approximately 111,950 square feet of office space (the “**Project**”).

5. **DEVELOPER.**

5.1. **Developer.** The Developer is SCD KM II LLC, a Hawaii limited liability company.

5.2. **Submission of Information About the Developer to the HCDA.** The Developer makes the following representations or will submit the following information to the HCDA:

5.2.1. *Organizational Documents.* The Developer has provided or will provide to the HCDA copies of Developer’s organizational documents.

5.2.2. *Developer’s Financial Data.* As evidence of Developer’s financial capability to undertake the Project, the Developer will demonstrate to the HCDA the predevelopment steps taken to secure financing and equity investment. The Developer shall disclose to the HCDA any material change in the Developer’s proposed financing for the Project.

5.3. **Assignment.** The identity of the member(s) and manager(s) of the Developer is of material importance to the HCDA. This Agreement cannot be assigned, sold, pledged, hypothecated, or transferred by the Developer, without the prior written consent of the HCDA, which consent may be withheld by the HCDA. For purposes of this section, “assignment” includes any direct or indirect transfer of this Agreement or site control, including without

limitation, any assignment or other transfer of this Agreement or site control by the Developer. Notwithstanding the foregoing, the Developer, with prior consent of the HCDA, may assign this Agreement for collateral and security purposes to lenders or other parties that provide financing for the Project.

5.4. No Third Party Beneficiaries. There are no third party beneficiaries under this Agreement.

5.5. Conflicts of Interest. The Developer hereby represents as follows:

5.5.1. Neither the Developer nor any of the Developer's members, managers, officers, or other affiliates (collectively referred to as the "**Developer Parties**"), are employees of the HCDA or, in the case of the Hawaii State Legislature, a legislator;

5.5.2. The Developer has not been assisted by an employee of the HCDA or, in the case of the Hawaii State Legislature, a legislator, for a fee or other compensation to obtain this Agreement and will not be assisted or represented by any employee of the HCDA or, in the case of the Hawaii State Legislature, a legislator, for a fee or other compensation in the performance of this Agreement;

5.5.3. The Developer has not been assisted or represented for a fee or other compensation in the award of this Agreement by an employee of the HCDA or, in the case of the Hawaii State Legislature, a legislator;

5.5.4. The Developer has not been represented or assisted personally on matters related to this Agreement by a person who has been an employee of the HCDA, except in its regulatory role, within the preceding two (2) years, or who while in State office or employment, was involved in the matter with which this Agreement is directly concerned; and

5.5.5. The Developer has not been represented or assisted on matters related to this Agreement for a fee or other consideration by a person who has been an employee of the HCDA or, in the case of the Hawaii State Legislature, a legislator, within the past twelve (12) months.

6. COMPLIANCE WITH LAWS, REGULATIONS AND REQUIREMENTS.

The Developer shall comply with all applicable federal, State and local laws, ordinances, codes, regulations, and governmental requirements, including those pertaining to zoning, construction, environment, ecology, health and safety, and those promulgated by the HCDA that apply to the development and construction of the Project. Without limiting the generality of the foregoing:

6.1. HRS Chapter 6E. The Developer shall comply with all applicable provisions of HRS Chapter 6E.

6.2. HRS Chapter 343. An Environmental Assessment for the Development Master Plan for Lot C has been completed and a determination of Finding of No Significant Impact has been made by the HCDA.

6.3. HRS Chapter 205A. The Developer shall comply with the applicable provisions of HRS Chapter 205A, "Coastal Zone Management".

6.4. HAR Chapter 15-150. Except as otherwise provided herein, the Developer shall comply with the applicable "Rules Governing Special Management Areas and Shoreline Areas within Community Development Districts and Practice and Procedures before the Office of Planning".

6.5. Makai Area Rules and Makai Area Plan. The Developer shall comply with the Makai Area Rules and the Makai Area Plan. The Developer may rely upon the requirements in effect as of the date that a Development Permit is issued by the HCDA for the Project.

6.6. Development Permit. The Developer shall comply with all of the terms and conditions set forth in the Development Permit for the Project.

7. DEVELOPER'S FEASIBILITY PERIOD.

7.1. Developer's Feasibility Period. The Developer shall have the right to perform due diligence, in its sole discretion, as the Developer deems necessary to investigate title, archaeological, environmental, financial feasibility, infrastructure and all other conditions and matters relating to the development and construction of the Project free of mechanics and materialmen liens. The feasibility period shall commence upon the execution of this Agreement and shall end on the earlier to occur of (a) and (b) below (the "**Feasibility Period**"):

- (a) ten (10) business days after the Developer's receipt of all of the following: (i) the Phase II Environmental Site Assessment report; (ii) a certified copy of the HCDA's Order approving the Developer's Development Permit Application for the Project; and (iii) an SMA Permit (as such term is hereinafter defined) for the Project; and
- (b) 730 calendar days after the Effective Date.

7.2. HCDA' Materials. Within five (5) business days after the Effective Date, the HCDA shall deliver to the Developer copies of all documents and materials in HCDA's possession or control pertaining to ownership, title, environmental, and physical condition of the Project Site (collectively "**HCDA Materials**").

7.3. Right of Entry. The HCDA hereby grants to the Developer a right of entry authorizing the Developer and Developer's employees, agents, consultants, contractors, and

subcontractors to enter the Project Site during the term of this Agreement with prior notice, and while thereon, to conduct surveys and appraisals, take measurements, conduct geotechnical investigations, test borings, other tests of surface and subsurface conditions and soil tests and sampling, conduct structural and engineering studies, and inspect the Project Site, all at the Developer's sole cost and expense. The Developer will indemnify and hold harmless the HCDA, and their respective officials, directors, members, employees, and agents, including the State, from any and all actual losses, damages, claims, liabilities, causes of action, suits, costs and expenses, including without limitation, reasonable attorneys' fees and costs, incurred as a direct result of the actions of the Developer and its employees, agents, consultants, contractors and subcontractors pursuant to this right of entry, except to the extent caused by the negligence or misconduct of the HCDA or its officials, directors, members, employees, and agents.

7.4. Title and Survey Review. The Developer shall have the right, during and after the Feasibility Period, to review: (a) a Preliminary Title Report for the Land ("**Title Report**"), including copies of all recorded documents listed as exceptions therein (hereafter the "**Title Report**"); and (b) an ALTA (American Land Title Association) survey of the Project Site and/or the Land prepared by a licensed surveyor ("**Survey**"). Any such survey costs shall be the responsibility of the Developer. The Developer shall have the right, but not the obligation, to deliver to the HCDA a notice disapproving/objecting to any items described in the Title Report or Survey ("**Title Objection Notice**"). Within ten (10) days after receipt of the Developer's Title Objection Notice (the "**Title Cure Election Period**"), the HCDA must respond in writing to the Developer as to whether the HCDA, at the HCDA's cost and expense, will undertake to cure any of the title or survey objections to the reasonable satisfaction of the Developer. In the event the HCDA is unable to eliminate or does not eliminate such disapproved title or survey matters to the reasonable satisfaction of the Developer after such notice and response, the Developer's remedy will be to either: (y) permit the HCDA an extended period of time to address the removal of the unacceptable encumbrance, such time shall be mutually acceptable to both Parties; or (z) terminate this Agreement by written notice of termination delivered to the HCDA. If the Developer terminates this Agreement because the HCDA is unable or unwilling for any reason to cause such unacceptable encumbrance(s) to be eliminated, neither the HCDA nor the Developer will have any further obligation hereunder to the other. Each Party will be responsible for the payment, settlement or other satisfaction of its own respective obligations.

7.5. Notice to Proceed. If the Developer elects to proceed with the development of the Project in accordance with this Agreement, the Developer must deliver to the HCDA a written notice to proceed ("**Notice to Proceed**") prior to expiration of the Feasibility Period. Failure of the Developer to deliver a Notice to Proceed to the HCDA before the expiration of the Feasibility Period, shall be deemed disapproval by the Developer and an election not to proceed, and this Agreement shall be considered terminated.

7.6. Developer's Termination Right. If the Developer determines at any time in its sole discretion, prior to the expiration of the Feasibility Period as defined in 7.1, that the Project is not feasible, the Developer will provide written notice in accordance with Section 20 of this Agreement, to the HCDA to terminate this Agreement and neither party shall have any further obligations under this Agreement, except as otherwise expressly set forth in this Agreement.

8. CONDITIONS TO DEVELOPER'S OBLIGATION TO DEVELOP THE PROJECT. The Developer's obligation to construct and develop the Project as set forth in this Agreement is subject to the HCDA's satisfaction of all of HCDA's obligations contained herein and the satisfaction of each of the following conditions precedent:

8.1. Conditions.

- 8.1.1. *Development Permit.* Issuance of an Order by the HCDA approving the Developer's Planned Development Permit Application pursuant to HRS Chapter 206E, and HAR Chapters 15-23 and 15-219 allowing the Developer to proceed with construction of the Project.
- 8.1.2. *Notice to Proceed.* The Developer must have delivered a Notice to Proceed to the HCDA indicating the Developer's affirmative approval of the Project Site, the Development Permit, and any other matters pertaining to the Project.
- 8.1.3. *HCDA Approval of Plans and Specifications.* HCDA approval of the Developer's Plans and Specifications with respect to compliance and conformity with the Makai Area Plan and the Makai Area Rules.
- 8.1.4. *Conditions for Issuance of Ground Lease.* Satisfaction of all of the conditions precedent pertaining to the Developer, set forth in Section 9.16.
- 8.1.5. *Financing.* Receipt by the Developer of a loan commitment from a lender to fund construction and development of the Project.

9. DEVELOPER'S OBLIGATION TO CONSTRUCT AND DEVELOP THE PROJECT.

9.1. Generally. If the Developer issues its Notice to Proceed, all conditions set forth in Section 8 have been satisfied, and the HCDA is not in default of its responsibilities under Section 10, then the Developer will develop, construct and complete the Project free of mechanics and materialmen liens in accordance with the terms and conditions of this Agreement, the Plans and Specifications and other related development and construction documents, and the Development Permit for the Project. The Developer shall be responsible for all pre-development due diligence, including, without limitation, site investigation, entitlements, subdivision, and any other matters pertaining to feasibility for development of the Project.

9.2. Project Plans and Specifications, Schedule, and Budget.

- 9.2.1. Schematic Design. Within 270 calendar days after the Effective Date, the Developer shall provide the HCDA with schematic design drawings of the Project for the HCDA's preliminary review and

comment solely with respect to compliance and conformity with the Makai Area Plan and Makai Area Rules.

9.2.2. Plans and Specifications. Pursuant to permitting by the HCDA for a Development Permit for the Project, the Developer will submit to the HCDA copies of plans and specifications for the Project (the “**Plans and Specifications**”). The Plans and Specifications will be based on and generally conform to the HCDA approved design development plans. The HCDA shall review and comment on the Plans and Specifications (and may transmit all or any part of the Plans and Specifications to any other government agency for review and comment) solely for compliance and conformity with the Makai Area Plan and Makai Area Rules. If the Developer proposes to make any material or substantive changes in the Plans and Specifications, the Developer shall notify the HCDA in writing of the Developer’s intent to effect such proposed change(s) and submit a detailed description of the proposed change(s) for the HCDA’s review and prior written approval or disapproval, in whole or in part, for compliance and conformity with the Makai Area Plan and Makai Area Rules. The HCDA shall promptly respond to the Developer as to whether the HCDA will approve or disapprove, in whole or in part, in writing, such proposed change(s). If the HCDA disapproves, in whole or in part, such proposed change(s), the HCDA will set forth HCDA’s reason for disapproval and will offer recourse to the Developer.

9.2.3. Project Schedule. Within 270 calendar days after the Effective Date, the Developer shall submit a schedule for the Project (the “**Project Schedule**”), and periodic updates, on the progress of development and construction of the Project until the Project is completed. The Developer shall periodically update the Project Schedule and notify the HCDA of any changes in the Project Schedule that may result in a cumulative extension of the commencement of construction of the Project by more than ninety (90) days.

9.2.4. Project Budget. Prior to commencement of construction, the Developer shall submit to the HCDA a detailed Project Budget Schedule (the “**Project Budget**”), including, but not limited to, periodic updates showing cost projections for the Project, construction and non-construction costs, and actual expenditures. The Developer shall provide the HCDA with a copy of the current Project Budget upon the HCDA’s request.

9.3. Licensed Contractors. All contractors and subcontractors working on the Project must meet all State licensing requirements and possess current contracting licenses for the work being performed. Such contractors and subcontractors must not be debarred from

participating in State, federal, or county procurement, or otherwise doing business with any State, federal or county government entities.

9.4. Contractor(s) Insurance. The Developer shall procure, carry and continuously maintain, or cause to be maintained, at a minimum, the insurance coverages set forth in **Exhibit “C”** attached hereto.

9.5. Prevailing Wages. The Developer shall comply with all requirements for the payment of the State’s prevailing wages to its contractors.

9.6. Archaeology. The Developer, including any contractor and subcontractors, or their respective agents, authorized representatives, and employees, will immediately stop work and contact the State Department of Land and Natural Resources, State Historic Preservation Division (“SHPD”) should any previously unidentified archaeological resources, such as artifacts, concentrations of shell or bone and human burials, be encountered during construction. The Developer shall be responsible for complying with any and all SHPD requirements, including but not limited to, archaeological inventory survey, archaeological monitoring during construction, and preparation of archaeological monitoring report(s).

9.7. Environmental Site Assessment and Remediation. The Developer shall be responsible for any and all diligence and compliance required by the State Department of Health in connection with the Project, including preparation of any studies and plans for remediating and managing any environmental conditions on the Land that are reasonably necessary for development and construction of the Project.

9.8. Coordinating Development and Construction Activities. The Developer shall be responsible for coordinating the development and construction of the Project with other development and construction activities occurring in the Kaka’ako Makai area, including activities involving roadway and utility infrastructure improvements. The Developer agrees that the Project Schedule will consider the activities occurring outside of the Project Site by or on behalf of the HCDA and that such activities will not interfere with the development and construction of the Project. The HCDA shall inform the Developer of any such activities planned by or on behalf of the HCDA to occur within a quarter mile radius of the Project Site.

9.9. The HCDA’s Rights to Monitor the Project. The HCDA and its agents, will have the right to inspect, observe, and monitor the progress of development and construction of the Project.

9.10. Completion of the Project and Survey Certification. Upon completion of the Project and if requested by the HCDA, the Developer will provide the HCDA with the following with respect to the Project:

9.10.1. “As-built” plans in digital format and full-sized hard copy;

9.10.2. A Certificate of Completion issued by an architect or engineer duly licensed under the laws of the State, certifying that the Project has

been completed in accordance with the approved Plans and Specifications;

9.10.3. ALTA “As Built” Survey and Surveyor’s Report prepared and certified by a surveyor registered under the laws of the State showing and stating that all improvements “as built” are located within the boundary and setback lines of the Project Site or the Land, as applicable; and

9.10.4. A certified copy of the Affidavit(s) of Notice(s) of Completion duly filed in the appropriate Circuit Court of the State, which will be promptly filed after the architect or engineer has certified that the Project has been completed.

9.11. No Liens. Subject to compliance by each Party with its payment obligations contained in this Agreement, the Developer shall not permit any lien or claim of lien to stand against the Project Site for any work performed by, or materials furnished to, the Developer in connection with construction of the Project on the Project Site for which the Developer is responsible. The Developer shall indemnify and hold the HCDA and the State harmless from and against any such lien and from any and all expense and liability in connection with any such lien including, but not limited to, reasonable attorneys’ fees and court costs resulting therefrom and actually incurred. In the event any such lien or claim of lien arises, the Developer shall cause the same to be released of record (either by payment or posting of a statutory bond) within fifteen (15) business days following written demand from the HCDA, or if the Developer desires to contest any such liens or claim, then the Developer shall take such other action as necessary to remove the effect thereof, in good faith, within fifteen (15) business days of its notice of such lien or claim. If the Developer shall fail to obtain the release of any such lien within said fifteen (15) business day period, and the Developer is not contesting such claim as provided for herein, the HCDA, at its option, may bond for and obtain the release of any such lien, in which case the Developer shall, within fifteen (15) business days of its receipt of a written request therefor, reimburse the HCDA for all costs and expenses incurred by the HCDA in obtaining such bond and release.

9.12. Substantial Completion. The construction of the Project shall be “**Substantially Complete**” (with words of similar import, such as “Substantial Completion” and “Substantially Completed”, being similarly defined) at such time when the HCDA shall have received a Certificate of Substantial Completion from the Developer’s architect or engineer.

9.13. Ownership and Operation Upon Completion. Upon Substantial Completion of the Project, the Developer will own all improvements comprising the Project situated on the Project Site and will thereafter be solely responsible for maintaining and operating the Project.

9.14. Concurrent Review. The Developer may process application(s) for building permit and other necessary permits from State, federal and county governmental agencies having jurisdiction over the Project concurrent with the HCDA’s review of the Plans and Specifications provided that the HCDA has issued a Development Permit for the Project.

9.15. Subdivision. The HCDA and the Developer acknowledge that, as of the Effective Date, the Land has not been subdivided as necessary to create a separate, legally leasable parcel of land. During the Feasibility Period, the Developer will and is authorized to take such actions as are required, necessary, and appropriate to apply for, process, and obtain all applicable subdivision consents, permits, approvals and authorizations from all county and other governmental departments or other instrumentalities required for the proper legal subdivision of the Land so as to create a separate lot consisting of the Project Site so that the Developer may legally lease the Project Site from the HCDA in accordance with all applicable laws of the State of Hawaii and the City and County of Honolulu (“**Final Subdivision Approval**”). The HCDA shall cooperate with the Developer’s efforts to subdivide the Land, as described above, including signing any and all necessary consents and approvals in the HCDA’s capacity as fee owner of the Land.

9.16. Ground Lease.

9.16.1. *Form of Ground Lease*. Within ninety (90) calendar days after the Effective Date, the HCDA shall deliver to the Developer a Ground Lease for the Project Site, which includes, *inter alia*, the terms set forth in Exhibit “D” incorporated and attached hereto (the “**Ground Lease**”). The Ground Lease form shall include customary financing and other protective provisions requested by lenders and in particular, expressly permit and facilitate the encumbering of the Ground Lease and the leasehold interests in the Innovation Hale Project the Project for financing purposes. The HCDA and the Developer will make diligent, good faith, and commercially reasonable efforts to negotiate and reach agreement on the form of the Ground Lease prior to expiration of the Feasibility Period.

9.16.2. *Conditions Precedent to Effectiveness of the Ground Lease*. The HCDA will execute a Ground Lease to the Project Site, which will become effective upon satisfaction of the following conditions precedent:

9.16.2.1. The Developer must have obtained Final Subdivision Approval of a separate subdivided lot consisting of the Project Site.

9.16.2.2. The HCDA must have issued an order for a Development Permit for the Project.

9.16.2.3. The Developer must have provided the HCDA with evidence satisfactory to the HCDA that the Developer has or will have all funds, and/or has secured or will secure commitment(s) for financing to develop, construct and complete the Project on the Project Site.

9.16.3. *No Rights Prior to Execution of Ground Lease.* Notwithstanding any express or implied provision to the contrary, this Agreement shall not constitute a lease nor shall this Agreement grant or convey to the Developer, any right, title or interest, including right of possession for any purpose, in or to the Project Site.

9.16.4. *Closing.* The Parties shall coordinate closing and recording of the Ground Lease to occur concurrently with the closing of the Developer's construction loan financing for the Project, provided however, that: (a) all of the conditions precedent set forth in Section 8 have either been satisfied or waived by the Developer and (b) all of the conditions precedent set forth in Section 9.16.2 have been satisfied. The Developer shall be responsible for all closing costs relating to the Ground Lease, including but not limited to, boundary staking, escrow fees, conveyance taxes, title insurance fees, and recording fees. Upon execution of the Ground Lease, the HCDA will deliver possession of the Project Site to the Developer free and clear of any and all third parties presently occupying the Project Site and any and all third party rights to possession of the Project Site.

10. HCDA'S RESPONSIBILITIES. The HCDA will be responsible for the following terms and conditions at the HCDA's sole cost and expense:

10.1. Documentation of HCDA Approvals as a Condition of Financing. In connection with the Developer obtaining financing for the development of the Project, the HCDA will promptly provide the Developer with documentation of any and all HCDA approvals of the development of the Project Site as may be required by the Developer's lenders and investors as a condition of providing financing for the Project.

10.2. Ground Lease. The HCDA shall prepare, execute, and deliver to the Developer a Ground Lease in accordance with the terms set forth in Section 9.16 above.

10.3. Regulatory Approvals. The HCDA shall promptly process all regulatory approvals under its jurisdiction, which approvals shall not be unreasonably withheld, conditioned, or delayed.

10.4. Environmental Assessment. The HCDA has prepared and provided to the Developer, an environmental assessment prepared for the Innovation Block at Lot C Master Plan, which covers the Land.

10.5. Parking. The HCDA shall provide the Developer with legal rights to use surface parking on the Land to accommodate required off-street parking for the Project until and for so long as the parking structure to be constructed pursuant to Phase 2 of the Lot C Project (the "**Parking Structure**") is completed by the HCDA. The HCDA shall enter into a lease, license

or other agreement (in a form mutually agreed to by the HCDA and the Developer) reasonably required by the Developer to establish valid and enforceable parking rights as and when required to obtain permits and any other required governmental approvals for construction of the Project in order to satisfy any government-imposed parking requirements for the Project provided, however, that the parking fees for such off-street surface parking shall not exceed \$75.00 per stall per month. Prior to the HCDA's completion of construction of the Parking Structure, the HCDA and the Developer shall enter into a parking agreement or similar instrument to be recorded in the Bureau of Conveyances of the State of Hawaii under which the HCDA shall grant to the Developer, as a covenant that runs with the Project Site, the right to use the number of parking stalls in the Parking Structure that may be required to satisfy any government-imposed parking requirements for the Project for use by owners and/or occupants of the Project, with initial parking charges not to exceed \$100 per stall per month. The HCDA expressly agrees that the HCDA's disclaimers provided in Sections 12.1, 12.2 and 12.3 of this Agreement do not apply to the HCDA's plans to construct the Parking Structure to serve the Lot C Project, including the Project. The Parties acknowledge and agree that the Developer is relying upon the HCDA's representation and warranty that subject to the HCDA receiving CIP (Capital Improvement Program) funding from the State Legislature, HCDA will construct the Parking Structure with a sufficient number of parking stalls for the use and benefit of the Lot C Project, including the Project and the Developer has the right to rely on the HCDA's representation and warranty in this regard. The HCDA agrees to make good faith and commercially reasonable efforts to cooperate with the Developer and other government agencies in order to effectuate the intent of this Section 10.5, which is to provide adequate parking for the Project Site to satisfy parking requirements for issuance of building permits to commence construction of the Project and to ensure permanent parking for the Project Site. In the event that the HCDA is unable to construct the Parking Structure by March 31, 2025 for any reason whatsoever, the HCDA shall provide the required amount of parking for the Project by some alternative permanent off-street parking that is acceptable to the Developer and the appropriate government agency throughout the term of the Ground Lease.

10.6. Relocation of Existing Overhead Power Lines. The HCDA shall relocate all existing overhead power lines located on the Project Site.

10.7. Site Investigation Report. The HCDA has prepared and provided to the Developer a copy of the Site Investigation Report and Environmental Hazard Evaluation and Environmental Hazard Management Plan ("EHE/EHMP").

10.8. Archaeological Studies. The HCDA shall provide the Developer with copies of all archaeological studies, surveys and inventories in its possession or control pertaining to the Land and the immediately surrounding area (within approximately 300 square feet of the perimeter boundary of the Land), as part of the HCDA's Materials.

10.9. Notice to Tenants. The HCDA will engage current users of the Land and provide adequate notice with regard to the right of entry granted to the Developer. The Developer shall notify the HCDA sixty (60) days in advance of any necessary work on the Project Site or the Land that would require the HCDA to terminate site use by current users, including current arrangements for parking.

10.10. Taxes and Assessments. Except as otherwise agreed to in writing by the HCDA and the Developer and until the Ground Lease is effective, the HCDA is responsible for the payment of all real property and other taxes and assessments affecting the Project and the Site, and the Developer shall, in no event, be responsible for any such costs.

11. DEVELOPER'S AUTHORITY AND RESPONSIBILITIES. The Developer will have the authority to and be responsible for carrying out the following terms and conditions concerning construction of the Project, at Developer's cost:

11.1. Development and Construction of the Project. The Developer shall develop, construct and complete the Project in accordance with the provisions of Section 9 of this Agreement.

11.2. Permits and Approvals. Prior to commencement of construction, the Developer and/or the Developer's general contractor(s), as their respective interests appear, shall apply for and obtain all required State, federal and county permits and approvals, including building permits, grading permits and any other permits applicable to and required for the development and construction of the Innovation Hale Project.

11.3. Coordination of Development and Construction Activities with Other Kaka'ako Makai Projects. The Developer shall use the Developer's commercially reasonable efforts to avoid and minimize disruptions to ongoing commercial and industrial projects located in the Kaka'ako Makai area that are in the near vicinity of the Project Site.

11.4. Participation in Public Hearings, and Government and Public Presentations. The Developer shall participate in making presentations to governmental and legislative bodies, agencies and departments, the general public, including community and neighborhood organizations, and other interested persons and organizations for the purposes of: (1) obtaining governmental approvals and other actions necessary for the development of the Project; and (2) explaining and informing the general public and other interested persons and organizations about the Project.

11.5. Environmental Sustainability Measures. To the extent practicable, the Developer will incorporate environmental sustainability measures into the design, demolition and construction of the Project. The Developer will endeavor to meet the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") ratings base standards, or other comparable, nationally-recognized, consensus-based guidelines, standard, or system with respect to the design of the Project.

11.6. Offsite Infrastructure Improvements. During the Feasibility Period, the Developer shall become familiar with all off-site infrastructure utility connection points as to capacity and the acceptability for connection to on-site utilities infrastructure. If for any reason during the Feasibility Period the Developer determines that the off-site infrastructure utility connection points do not have the adequate capacity or are unacceptable for connection to on-site

infrastructure utilities, the Developer may terminate this Agreement by providing written notice of termination to the HCDA prior to the expiration of the Feasibility Period.

11.6.1. *Main Utility Lines.* The main utility lines, such as water, sewer, drainage, electrical, telephone, and cable TV lines, for the Project will be available through Ilalo Street. The Developer will be responsible for the construction of all improvements and connections, including lateral connections, from the Project Site to the main utility lines, including all fees and costs associated with the same. Any remedial work that may be required such as cleaning, clearing, repairing or replacing any main utility lines or conduits, will be the Developer's responsibility.

11.6.2. *Main Sewer line and Main Waterline.* The main sewer line and main waterline are located under Ilalo Street. The Developer shall be responsible for the construction of all lateral connections from the Project Site to these main lines. Any remedial work that may be required such as cleaning, clearing, repairing or replacing any lateral conduits or utility lines from the Project to these main lines will be the Developer's responsibility.

11.6.3. *Water Allocation.* The Developer shall obtain a water allocation reservation from the Honolulu Board of Water Supply for the Project.

11.6.4. *Water Requirements.* The Developer shall be responsible for satisfying all requirements of the Honolulu Board of Water Supply, including: (a) the construction of all required improvements, (b) water meters, and (c) the payment of all fees and charges, including water facilities charges, water meter fees and water connection fees, necessary to provide water to the Project .

11.7. Dedication of Public Improvements. The Developer is fully responsible for designing, constructing and completing any improvements that are intended to be dedicated to the City in connection with the development of the Project, including roads, sidewalks, utilities and other public improvements, in full compliance with City standards. The Developer shall be solely responsible for the dedication of such improvements.

11.8. Health and Safety Programs. The Developer is responsible for establishing health and safety programs, including programs and mitigation plans as provided by federal, State, and City requirements for the Project.

11.9. Consultant Contracts. The Developer will provide the HCDA with copies of the Developer's planning, architectural, engineering and other consultant contracts for the Project upon request.

11.10. Payment of Permit Fees. The Developer shall be responsible for the payment of and will pay all fees and other costs which are imposed by State and City departments, agencies or other governmental entities authorized to issue such permits or approvals and having jurisdiction over the Project. The Developer will be responsible for seeking any exemption from fee payment(s) where allowed.

11.11. Anti-Discrimination and Equal Employment Opportunity. The Developer shall not discriminate in applicable labor practices and shall comply with applicable equal employment opportunity laws.

11.12. Joint Development Agreement. If the Developer determines that it is necessary or desirable for development of the Project, the Developer may request “joint development of two or more adjacent zoning lots” as provided for in the Makai Area Rules, under HAR §15-23-80.

11.13. *Intentionally omitted.*

11.14. Utility Sourcing Agreements. The Developer shall be responsible for obtaining sourcing agreements for all utilities serving the Project, including, but not limited to any and all related fees.

11.15. Evidence of Financing. The Developer shall provide the HCDA with written documentation confirming the Developer’s ability to pay for the development of the Project as may be requested from time to time by the HCDA. The Developer may use commercially reasonable efforts towards obtaining available local, State and federal financing that the Project may qualify for.

11.16. Special Management Area Permit. The Developer shall obtain a Special Management Area (“SMA”) Permit for the Project.

12. “AS IS”; THE PROJECT SITE CONDITIONS. The Developer acknowledges and agrees to all of the following:

12.1. HCDA’s Right to Change Development Plans in Kaka’ako. The HCDA has the right at any time to change any development plan or proposal pertaining to Kaka’ako, and may, without limitation change the design and layout of any projects, including any development or redevelopment project and any proposed off-site infrastructure improvements, except to the extent such development plans (*e.g.*, the Sandbox Project) are integrated with the Plans and Specifications for the Project. The HCDA shall not change any such plans integrated with and affecting the Project after expiration of the Feasibility Period without the Developer’s prior written consent. Except as is expressly set forth in this Agreement, the Developer is not relying on any plans, proposals, renderings or other design or development concept for Kaka’ako, or with respect to any off-site infrastructure improvements such as roads or utility infrastructure systems or any particular existing or proposed use or development of the land in Kaka’ako. Any such plans, proposals, renderings or other design or development concepts do not constitute an express or implied warranty that the same will be developed or constructed at any particular time, or at

all.

12.2. No Representations or Warranties as to Kaka'ako Development. The HCDA is not making any express or implied warranty or representation of any kind or nature as to the actual development and construction of any improvements in Kaka'ako, or the Project on the Project Site, notwithstanding the HCDA's approval of any existing or proposed development plan for Kaka'ako or any proposed development of the Project on the Project Site, including any narrative, picture, rendering or other depiction.

12.3. No Representations or Warranties as to the Project Site. Except as may be expressly set forth in this Agreement, the HCDA is not making any express or implied representations or warranties that the Project Site is suitable for the Developer's intended purpose or any other purpose. The Developer will be responsible to undertake any further or additional studies or investigations that a prudent developer would obtain under the circumstances. The HCDA is not making any representation or warranty that the HCDA will be able to obtain the subdivision approval, easements, titles, permits, and other approvals and authorizations in time or at all, within the Developer's Innovation Hale Project Schedule notwithstanding the HCDA's approval of such Project Schedule.

12.4. No Option to Purchase. The Developer acknowledges that the Developer does not have any option or right to purchase the fee simple interest in the Project Site.

12.5. Reservation of Publicity Rights. The HCDA reserves the right to publicize development and redevelopment activities within Kaka'ako, including in the media and utilizing signs, banners, lighting devices, or other items to identify Kaka'ako or the location of the several development projects within Kaka'ako, including the Project.

12.6. Nuisances. The Developer, on behalf of itself and any other person entering, occupying or using the Project or the Project Site by or through the Developer, acknowledges the existence of the possibility that it may experience noise, dust, pollution and odors, surface water runoff, smoke, soot, light, heat, noxious vapors, chemicals, vibrations, impairment of access, traffic congestion, impairment of light, air and views, and disruptions of utility services, and other nuisances, inconveniences, disturbances and other annoyances that may bother or be deemed a nuisance by the Developer or other person occupying or using the Project Site by or through the Developer.

13. DISCLAIMER OF LIABILITY BY THE HCDA

13.1. No Liability for Third Party Claims Challenging this Agreement. The HCDA will not have any liability or responsibility for any additional Project cost or delay suffered by the Developer, or any person claiming by, through or under the Developer, including the Developer's contractors, lenders, financial partners or affiliates which may be caused by claims or litigation by third parties challenging this Agreement, asserting that the Developer has no legal right to develop the Project.

14. INDEMNIFICATION

14.1. Indemnification by the Developer. The Developer agrees to defend, indemnify and hold harmless the HCDA, and its respective officials, directors, members, employees, and agents, and the State, and all of its agencies and departments from and against any and all losses, liabilities, damages, injuries and claims of any kind whatsoever, that may result from any claim, assertion or imposition against the indemnitees, or any of them, by any person of any liability (or claim therefore) for any matter arising from any negligent action or omission by the Developer and from all penalties, fines and prosecutions, suits for abatement of any public or private nuisance and the imposition against the HCDA or the Project Site of any liens, as well as any costs or expenses related to any such claims, penalties, fines, prosecutions, suits and impositions, including costs of litigation and reasonable attorney's fees, which occur during the term hereof; provided, however, that the HCDA will not be entitled to indemnification for damage caused by reason of the HCDA's own negligence or willful misconduct.

14.2. No Indemnification by HCDA. Except as otherwise stated in this Agreement, the Developer understands and agrees that the HCDA will not and cannot indemnify or hold the Developer harmless for any costs, expenses, damages, including consequential or punitive damages, incurred by the Developer or anyone claiming by, through or under the Developer, including any permitted assignee, arising out of or in connection with this Agreement.

15. FORCE MAJEURE

15.1 Generally. In the event that either the HCDA or the Developer is delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, riots, insurrection, war, civil or criminal proceedings, injunctions, writs, appeals, stays or other reason of a like nature, which is not the fault of or capable of being prevented by the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay. The HCDA or the Developer will notify the other in writing of the date of commencement of any force majeure event upon which the HCDA or the Developer intends to rely for an extension of the period for the performance of any such act (which notice will be given within thirty (30) days of the commencement date of any such force majeure event), and will also notify the other in writing of the date on which any such event ended.

15.2 Termination. If the suspension of performance continues for a period of more than twelve consecutive months as a result of a Force Majeure Event, either party is entitled to terminate this Agreement by giving a notice to the other party pursuant to the notice provisions of this Agreement.

16. TERMINATION

16.1. Developer's Obligations Upon Termination Prior to Execution of a Ground Lease. In the event that this Agreement is terminated by the HCDA or by the Developer pursuant to the terms of this Agreement prior to execution of a Ground Lease for the Project Site, the HCDA may, in its discretion, contact the Developer's consultants and negotiate to acquire any

work product upon terms and conditions acceptable to the HCDA. The HCDA shall be the sole owner of all permits, approvals and other governmental entitlements related to the Project Site and the Project, and the Developer will cooperate with the HCDA in effectuating the transfer of such permits, approvals and entitlements, upon payment by the HCDA of the actual fees and costs for the same. The Developer will execute a release of any right, title or interest in the Innovation Hale Project Site, if any, and such other documents necessary to evidence such release and termination, in recordable form if necessary.

17. DEVELOPER'S DEFAULT

17.1. Default. The Developer will be in default if hereafter:

17.1.1. The Developer repudiates or refuses to perform any material obligation of the Developer hereunder, or intentionally commits any act which renders further performance of this Agreement impossible;

17.1.2. Subject to force majeure and the provisions of Section 15 of this Agreement, the Developer does not proceed with developing and timely completing the Project in accordance with the Project Schedule, free of mechanics and materialmen liens after the Ground Lease has been executed;

17.1.3. The Developer causes, suffers or permits the Project Site or any portion thereof, or the interest of the State therein to be subjected to or encumbered by any lien, encumbrance, writ of attachment, or other process, including without limitation any judgment lien imposed against the Developer, and the Developer fails to remove by bond or otherwise, such lien, encumbrance, writ of attachment or other process within one hundred twenty (120) days after such has attached;

17.1.4. There is any attachment, execution or other judicial seizure of, or otherwise materially affecting all or any part of this Agreement, the Project or the Project Site or any improvements thereon or any other material property or asset of the Developer, or any similar action on account of the Developer's negligence or intentional misconduct, unless, in any such case, such attachment, execution or seizure is set aside, dissolved, bonded off or otherwise eliminated within one hundred twenty (120) days of its occurrence;

17.1.5. Any representation or warranty made by or on behalf of the Developer herein or in any other written submission to the HCDA in connection with the selection of the Developer to develop the Project on the Project Site, that is determined to have been false or

incorrect in any material respect on the date as of which such representation or warranty was made;

17.1.6. A final judgment is entered which alone or with other outstanding final judgment(s) against the Developer (or the Developer's principals), would in the HCDA's sole and reasonable determination have a material, adverse effect on the Developer's financial ability to perform its obligations in connection with this Agreement and: (a) such judgment(s) is not be discharged; or (b) within thirty (30) days after entry of such judgment(s), the execution thereof is not stayed pending appeal; or (c) such judgment(s) is not discharged within thirty (30) days after the expiration of any such stay; or

17.2. Notice of Default. If the Developer is in default, the HCDA will notify the Developer of such default in writing to the Developer's address noted below in Section 20 by any means, including without limitation personal delivery or first-class mail. Any failure, forbearance or delay on the part of the HCDA in exercising any power or right under this Agreement or other documents contemplated by this Agreement, unless such failure, forbearance or delay has directly caused the Developer's default, will not operate as a waiver of the same or as a waiver of any other HCDA power or right. Any action taken by the HCDA pursuant to this Agreement to proceed with the development of the Project despite the Developer's default will not constitute a waiver of any of the conditions precedent which the Developer is required to perform in order to proceed with the development of the Innovation Hale Project. If the Developer is unable to perform or satisfy any such condition precedent, the HCDA will not be precluded from thereafter declaring such inability or failure to cure to constitute an event of default as provided under this Agreement.

17.3. Period for Financial Cure. The Developer will have sixty (60) days to cure a default which can be remedied by financial cure. If a default cannot be remedied by financial cure, the Developer will have one hundred twenty (120) days in which to cure such default. The Developer will immediately proceed with taking all action necessary to cure the default. During such period of default, the Developer will make commercially reasonable efforts to protect the Project and Project Site from loss or damage and will maintain the Project Schedule to the extent that it is practicable to do so. Upon the occurrence of such default, the HCDA may, but is not required to, in the HCDA's sole discretion, advance funds or agree to undertake to advance funds to any third party or for health and safety reasons to eliminate, mitigate or reduce the risk of loss resulting from such default. The Developer will reimburse the HCDA, upon demand, for any such sums paid by the HCDA together with interest at the long-term, annual Applicable Federal Rate (AFR) until the date of reimbursement.

17.4. HCDA's Rights and Remedies. After the Developer has been declared to be in default and the Developer fails to cure such default within the time period allowed, the Developer agrees that the HCDA will have all legal and equitable rights to which the HCDA may be entitled under laws including without limitation the rights and remedies set forth below. The HCDA may:

- 17.4.1. Terminate this Agreement and all of the Developer's right, title and interest in the Project under this Agreement and the Ground Lease, if issued;
- 17.4.2. Take over the completion of the Project and use all Plans and Specifications and Project documents and work product, whether prepared by the Developer or the Developer's consultants and, in the HCDA's sole discretion, negotiate with the Developer's consultants and contractors to complete the Project; and
- 17.4.3. Enter into negotiations with other developers and enter into a development agreement with another developer to complete the development of the Project pursuant to such development agreement.

All rights, powers and remedies are cumulative and not alternative, are in addition to all rights, powers and remedies afforded by statutes or rules of law and may be exercised concurrently, independently or successively in any order whatsoever.

17.5. Transfer of Project Documents and Project. If the Developer is declared in material default and such default is not cured within the time specified under this Agreement, and the HCDA elects to terminate this Agreement:

- 17.5.1. The Developer shall use commercially reasonable efforts (including the payment of any fees) to obtain the requisite authority from its consultants and any other party having an interest therein to deliver to the HCDA all Project documents prepared by Developer or its consultants and, to the extent permitted by law, the HCDA thereafter may use such documents to construct the Project, either by itself or in conjunction with any other person, and the HCDA will be free to enter into any contract or agreement with any of the Developer's partners, consultants, planners, engineers, or employees;
- 17.5.2. The HCDA will be and become the sole owner of all permits, approvals and other governmental entitlements related to the Project Site and the Project to the extent that these rights are transferable, and the Developer will cooperate with the HCDA in effecting the transfer of such permits, approvals and entitlements, upon payment by the HCDA of all costs associated therewith;
- 17.5.3. The HCDA will be free to enter into negotiations with any other party for development of all or any part of the Project Site without participation by the Developer or to take any other action with respect to the Project or the Project Site; and

17.5.4. Within thirty (30) days after termination, the Developer shall provide the HCDA with an accounting of the Project and reconciliation of records in such detail that the HCDA may reasonably require.

18. HCDA'S DEFAULT

18.1. Default. The HCDA will be in default if the HCDA fails to perform or is unable to perform any of the HCDA's responsibilities under this Agreement.

18.2. Developer's Remedies. If the HCDA fails to perform or is unable to perform the HCDA's responsibilities hereunder timely or at all, the Developer shall have the right to terminate this Agreement and shall have all right and remedies provided at law or in equity, including monetary damages.

19. DISPUTE RESOLUTION

19.1. Mediation. Any and all claims, controversies or disputes arising out of or relating to this Agreement, or the breach thereof, which remain unresolved after direct negotiations between the Parties, shall first be submitted to confidential Mediation in accordance with the Rules, Procedures, and Protocols for Mediation of Disputes of Dispute Prevention & Resolution, Inc., then in effect. The parties agree that a good faith attempt to resolve all issues in mediation is a pre-condition to further adversarial proceedings of any kind.

20. NOTICES

20.1. Requirement of a Writing; Permitted Methods of Delivery. Each party giving or making any notice, request, demand or other communication ("**Notice**") pursuant to this Agreement shall: (a) give the Notice in writing; (b) cause the Notice to be signed by authorized representatives of the Party giving such Notice; and (c) use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: (i) Personal delivery, (ii) Registered or Certified Mail, in each case, return receipt requested and postage prepaid, (iii) Nationally-recognized overnight courier, with all fees prepaid, and (iv) E-mail.

20.1.1. Addressees and Addresses. Each party giving Notice shall address the Notice to the appropriate person at the receiving party (the "**Addressee**") at the address listed below or to another Addressee or at another address as designated by a party in a Notice pursuant to this Section.

HCDA: Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813
Attention: Executive Director
Telephone No. (for verification purposes only): 808-594-0300
Fax: 808-594-0299

With a copy to: Department of the Attorney General
State of Hawaii
Commerce and Economic Development Division
425 Queen Street
Honolulu, Hawaii 96813
Attention: Lori K.K. Sunakoda
Telephone No. (for verification purposes only): 808-586-1160
E-mail: lori.kk.sunakoda@hawaii.gov

Developer: SCD KM II LLC
1100 Alakea Street, 27th Floor
Honolulu, Hawaii 96813
Attention: Stanford Carr
Telephone No. (for verification purposes only): (808) 537-5220
E-mail: scarr@stanfordcarr.com

With a copy to: Chang Iwamasa LLP
55 Merchant Street, Suite 2800
Honolulu, Hawaii 96813
Attention: Wesley Y.S. Chang and Chenise K. Iwamasa
Telephone Nos. (for verification purposes only):
(808) 534-4807, (808) 534-4803
E-mail: wchang@lawcic.com; ciwamasa@lawcic.com

20.1.2. Effectiveness of Notice. Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving the Notice has complied with Section 20.1 and if the Addressee has received the Notice. A Notice is deemed to have been received as follows:

20.1.3. Personal Delivery, Mail, and Courier. If a Notice is delivered in person, or sent by Registered or Certified Mail or nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

20.1.4. E-mail. If a Notice is sent by e-mail, Notice shall be deemed given on the date sent (as evidenced by the sender's "sent" email" mailbox) subject to Sections 20.1.5 and 20.1.6 below).

20.1.5. Refusal to Accept Notice. If the Addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal or inability to deliver the Notice.

20.1.6. Exceptions. Despite the other clauses of this Section 20.1, if any Notice is received after 5:00 p.m.: (a) on a Business Day where the

Addressee is located, or (b) on a day that is not a Business Day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located.

21. LENDER PROTECTION PROVISIONS

21.1. Right to Assign for Security. Notwithstanding any provision in this Agreement to the contrary, the Developer shall have the absolute right, without the consent of the HCDA, to assign all or any portion of its respective right, title, and interest in, to and under this Agreement to any lender financing the Developer's development of the Project (the "**Lender**") or to its designee, which agreement with the Lender or designee may contain such terms, conditions and maturity as the Developer may determine, and the Developer may enter into any and all such extensions, modifications or amendments of any such agreements as they respectively may determine. The execution and delivery of any such agreement shall not be deemed to constitute such an assignment or transfer of this Agreement as would require such Lender or designee to assume the observance or performance of any of the terms, covenants or conditions on the part of the Developer to be observed or performed hereunder. The Lender or Lenders or their designees, and their respective assigns, may enforce such agreement and may acquire the Developer's interest in the Project or the rights of the Developer under this Agreement, or both, in any lawful way, and may take possession of the Project and may, without the consent of the HCDA, sell and assign this Agreement by assignment, and any such assignee shall also have the absolute right to assign all or any portion of its right, and interest in, to and under this Agreement to any bank, insurance company, other established lending institution or institutions, or designee, upon the same terms and conditions hereinabove made available to the Developer. Such Lender or designee shall be liable to perform the obligations of the Developer hereunder only during the period such Lender or designee has possession of or title to the Project.

21.2. Lender Protections. If a Developer shall assign this Agreement to a Lender or its designee, the following provisions shall apply and inure to and for the benefit of any such Lender, and its successors and assigns:

21.2.1. Except for expiration or termination of this Agreement as set forth herein, this Agreement shall not be amended, altered, modified, rescinded or terminated without the prior written consent of the Lender, which consent shall not be unreasonably withheld.

21.2.2. The HCDA shall, upon serving the Developer with any notice under the provisions of or with respect to this Agreement, at the same time serve a copy of such notice upon the Lender for whom it has received written request for notice, by registered or certified mail, addressed to it at the address provided by such Lender, and no notice to the Developer shall be deemed to be duly given unless and until a copy thereof shall have been so received by the Lender.

21.2.3. The Lender, if the Developer shall be in default hereunder, shall have the right (but shall not be obligated) within the same period as is given to the Developer therefor, to remedy such default or to cause the same to be remedied, and the HCDA shall accept such performance by or at the instigation of the Lender as if the same were done by the Developer.

21.2.4. No Lender shall become personally liable under the agreements, terms, covenants or conditions of this Agreement unless and until such time as the Lender becomes, and then only for as long as it remains, the owner of the Project; *provided, however*, that this limitation on liability shall not excuse the Lender from such Lender's own gross negligence or willful misconduct or its breach of this Agreement while attempting to effect a cure.

21.2.5. In the event of termination of this Agreement or any succeeding agreement made pursuant to the provisions of this Section 21.2.5 and if such termination results from rejection of this Agreement by the trustee in bankruptcy, the HCDA will enter into a new agreement with respect to the Project with the Lender, or, if there be more than one Lender, then in each case with the Lender entitled under subparagraph (ii) of this Section 21.2.5, effective as at the date of such termination, upon the covenants, agreements, terms, provisions and limitations herein contained, *provided*:

(i) the Lender makes written request upon the HCDA for such new agreement within twenty (20) days from the date of such termination; and

(ii) if more than one Lender makes written request in accordance with the provisions of subparagraph (i) of this Section 21.2.5, the new agreement shall be delivered to the Lender requesting such new agreement in each case whose mortgage on the subject Project is prior in lien, and the written request of any Lender whose mortgage is subordinate in lien shall be void and of no force and effect.

21.2.6. Estoppels. The HCDA will provide the Developer and the Developer's Lender such estoppels relating to this Agreement as reasonably requested by the Developer's Lender from time to time.

22. MISCELLANEOUS PROVISIONS

22.1. Relationship of the Parties. Except for this Agreement, there is no partnership, joint venture, employer and employee, master and servant or other agency relationship between the HCDA and the Developer. The HCDA is not a developer of the Project. The Developer, inclusive of any successor or permitted assignee or any other person acting by,

through, under, or for the benefit of the Developer, will not represent or hold itself as being a partner, joint venturer, employee, servant or agent of the HCDA and does not have any authority to bind, act for or represent the HCDA in any respect.

22.2. Transaction Costs. Each Party shall pay for all fees and expenses that it incurs on its own behalf in connection with this Agreement and the transactions contemplated hereunder.

22.3. Prohibited Discrimination. The Developer will comply with all applicable federal and State laws and regulations prohibiting the exclusion from participation, the denial of benefits, or the subjection to discrimination of any person from or under the work to be performed by the Developer under this Agreement on prohibited grounds, such as race, color, national origin or religion.

22.4. Interpretation.

22.4.1. *Number and Gender*. Any reference in this Agreement to the singular includes the plural where appropriate, and any reference in this Agreement to the masculine gender includes the feminine and neuter genders where appropriate.

22.4.2. *Captions*. The descriptive headings of the sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.

22.4.3. *Dates for Performance*. Should the date for giving of any notice, the performance of any act, or the beginning or end of any period provided for in this Agreement fall on a Saturday, Sunday or other federal or State holiday, such date shall be extended to the next succeeding business day which is not a Saturday, Sunday, or federal or State holiday. As used in this Agreement, the term "business day" means any day other than a Saturday, Sunday, or federal or State holiday.

22.5. Entire Agreement. This Agreement sets forth all of the agreements, conditions and understandings between the HCDA and the Developer relative to the responsibilities for developing and constructing the Project. This Agreement does not provide for regulatory requirements by the HCDA in accordance with Chapter 206E, HRS, including but not limited to, procedural requirements for issuing a Development Permit. The Developer and the HCDA agree that subsequent agreements will be warranted, including but not limited to, agreements addressing site control. There are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, expressed or implied, between the Parties other than set forth or as referred to herein.

22.6. Amendment; Waivers. Any agreement hereafter made will be ineffective to change, waive, modify, discharge, terminate, or effect an abandonment of this Agreement in

whole or in part unless such agreement is in writing and signed by the Party against whom such change, waiver, modification, discharge, termination or abandonment is sought to be enforced. The Parties may amend this Agreement with respect to any non-material terms (*e.g.*, to correct typographical or mathematical errors or to make other non-substantive clarifying or conforming changes) without obtaining HCDA Board approval, provided that such amendment is signed by the Executive Director of the HCDA. No failure or delay: (i) in exercising any right or remedy; or (ii) in requiring the satisfaction of any condition, under this Agreement and no act, omission or course of dealing between the Parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.

22.7. Assignment. Except as provided herein, no Party may assign any of its rights under this Agreement, voluntarily or involuntarily, whether by operation of law or any other manner without the prior written consent of the other Party. Any purported assignment in violation of this paragraph is void.

22.8. Binding Effect. The covenants and agreements herein contained will be binding upon and inure to the benefit of the Developer and the HCDA and their successors and assigns, but the provisions of this paragraph will not be deemed or construed to affect in any way the restrictions on assignment set forth in this Agreement.

22.9. Legal Action and Fees. In the event of any controversy, claim or dispute between the Parties arising out of or relating to this Agreement, each Party shall bear its own costs, including attorneys' fees, unless otherwise specifically stated in this Agreement.

22.10. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of the Agreement, or the implication of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected thereby and each term and provision of this Agreement will be valid and enforced.

22.11. No Party Deemed the Drafter. Each Party has thoroughly reviewed this Agreement and has had the advice of counsel prior to execution hereof. The Parties agree that neither Party will be deemed to be the drafter hereof. In the event this Agreement is ever construed by a court of law, such court will not construe this Agreement or any provision hereof against either Party as the drafter of this Agreement.

22.12. Consents and Approvals. Except as otherwise provided herein, whenever under the terms of this Agreement the consent or approval of a party is required, such consent or approval will not be unreasonably or arbitrarily withheld, and no charge, direct or indirect, will be made therefore other than a reasonable fee reflecting the costs of processing such consent or approval.

22.13. Recording. A memorandum of this Agreement in form mutually satisfactory to the parties, may be recorded in the records of the Bureau of Conveyances of the State or other appropriate State agency.

22.14. Time of the Essence. Time is of the essence with respect to the performance of each and every term, condition, obligation and provision of this Agreement.

22.15. Further Assurances. Each Party shall use all commercially reasonable efforts to satisfy the conditions required to be satisfied by it under this Agreement, to the extent that the conditions are within its control and to take, or cause to be taken, as promptly as practicable, all actions necessary or desirable to consummate and make effective the transactions contemplated by this Agreement.

22.16. Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Hawaii, and the courts of the State will have exclusive jurisdiction over any controversy arising out of this Agreement or involving the interpretation or enforcement hereof.

22.17. Survival. Expiration or termination of this Agreement will not relieve either Party from its obligations arising hereunder prior to such expiration or termination. Rights and obligations of the Parties under this Agreement, which by their nature should survive the termination or expiration of this Agreement will remain in effect after termination or expiration of this Agreement.

22.18. Exhibits and Schedules. The following exhibits and schedules are attached hereto and incorporated by reference herein for all purposes:

Exhibit "A"	Site Plan
Exhibit "B"	Description of Land
Exhibit "C"	Insurance Requirements
Exhibit "D"	Ground Lease Terms

22.19. Counterpart and Electronic Signatures. This instrument may be executed in several counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. Each Party has the right to rely upon a facsimile counterpart or electronic transmission of this instrument signed by the other Party to the same extent as if such Party received an original counterpart. For all purposes, including, without limitation, delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

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

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

HCDA:

**HAWAII COMMUNITY DEVELOPMENT
AUTHORITY, STATE OF HAWAII**

By Garett Kamemoto
Garett Kamemoto
Its Interim Executive Director

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

Developer:

SCD KM II LLC,
a Hawaii limited liability company

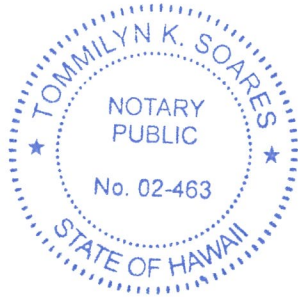
By its Manager:

Stanford Carr Development, LLC,
a Hawaii limited liability company

By [Signature]
Name: Stanford S. Carr
Title: Manager

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

On this 11 day of APRIL, 2018, before me personally appeared
Garrett Kamonito of the HAWAII COMMUNITY DEVELOPMENT AUTHORITY,
State of Hawaii, a body corporate and a public instrumentality of the State of Hawaii and that
said instrument was signed in behalf of said body corporate of the State of Hawaii and
acknowledged said instrument to be the free act and deed of said body corporate of the State of
Hawaii.



Tommilyn K. Soares
Notary Public, State of Hawaii
My commission expires: 9/22/2018

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Development Agreement

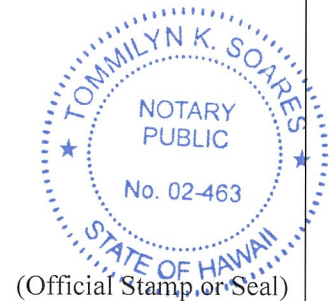
Doc. Date: _____ or Undated at time of
notarization.

No. of Pages: 42 Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

4-11-2018
Date of Notarization and
Certification Statement

Tommilyn K. Soares
Printed Name of Notary



STATE OF HAWAII)
) ss.:
CITY AND COUNTY OF HONOLULU)

On this 5th day of April, 2018, before me personally appeared **STANFORD S. CARR**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).

Lynnette R. Tachi
(Print or Type Name of Notary)

Lynnette R. Tachi
(Signature of Notary)

LS

Notary Public, State of Hawaii
My Commission Expires: 6/11/2018

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Development Agreement

Doc. Date: April 5, 2018 or Undated at time of
notarization.

No. of Pages: 42 Jurisdiction: First Circuit
(in which notarial act is performed)

Lynnette R. Tachi

4/5/18

Signature of Notary

Date of Notarization and
Certification Statement

LS

Lynnette R. Tachi

Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT "C"

CONSTRUCTION CONTRACT INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance. The Developer shall procure, carry, and continuously maintain, or cause to be maintained, at all times from the date of this Agreement until Substantial Completion of the Sandbox Project, at its own cost and expense, commercial general liability insurance to protect against claims for bodily injury or death, or for damage to property, which may arise out of the Developer's products, operations, use, maintenance, and contractual liability assumed by the Developer, or by anyone employed by the Developer, or by anyone for whose acts as the Developer may be liable in connection with the construction of the Sandbox Project.
2. The Developer shall maintain in force and effect the following insurance coverages on an occurrence basis with minimum limits of liability as follows:

General Aggregate Limit (other than products-completed operations)	\$2,000,000.00
Products-Completed Operations Aggregate Limit	\$2,000,000.00
Personal and Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

Except with the HCDA's prior written approval, which shall not be unreasonably withheld, the above shall not have a deductible amount in excess of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for any one occurrence.

3. Workers' Compensation and Employers' Liability Insurance. Workers' Compensation and Employers' Liability Insurance as required by current Hawaii law and regulations thereunder, as the same may be amended from time to time, for all employees, if any, of the Developer. The Developer shall maintain in force and effect the following insurance coverages with minimum limits as follows (but only in the event the Developer has employees, otherwise the Developer will require its contractors to maintain):

Workers' Compensation Employer's Liability	Hawaii Statutory Limits
Bodily Injury By Accident	\$1,000,000.00 Each Accident
Bodily Injury By Disease	\$1,000,000.00 Policy Limit
Bodily Injury By Disease	\$1,000,000.00 Each Employee

4. Business Automobile Liability Insurance. Insurance covering owned, non-owned, leased, and hired vehicles, including contractual liability, written on a current ISO Business Auto Policy form or its equivalent. The Developer shall maintain in full force and effect the following insurance coverages with minimum limits as follows (but only in the event the Developer has employees, otherwise the Developer will require its contractors to maintain):

Bodily Injury Each Person	\$1,000,000.00
Bodily Injury Each Accident	\$1,000,000.00
Property Damage Each Accident	\$1,000,000.00
Personal Injury Protection/No-Fault Hawaii statutory limits or Combined Single Limit	\$1,000,000.00

5. Umbrella/Excess Liability Insurance. Umbrella/Excess Liability Insurance providing excess coverage over Commercial General Liability limits, Liquor Liability (if applicable), Employer’s Liability limits, and Automobile Liability Insurance limits. The Umbrella/Excess Liability policy shall be written on an “occurrence” basis with a limit of liability of not less than FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) per policy year and a self-insured retention or deductible no greater than TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00). The Umbrella/Excess Liability Insurance coverage shall, at a minimum, “follow form” over Commercial General Liability Coverage, Business Automobile Policy Coverage, and Employers’ Liability Coverage. Additionally, it shall specifically provide excess coverage for the same coverage and limits listed under the above subsections relating to Commercial General Liability Insurance, Employers’ Liability (but not Workers’ Compensation), and Business Automobile Liability Insurance. The Developer shall maintain in full force and effect the following insurance coverage with minimum limits as follows:

Each Occurrence Limit	\$5,000,000.00
Aggregate Limit	\$5,000,000.00

6. Builder’s Risk Insurance. Prior to commencement of construction, Developer shall procure, carry and continuously maintain, or cause to be maintained, at all times through Substantial Completion of the Project, at its own cost and expense, builder’s risk insurance. The builder’s risk insurance shall be written on an all risk, replacement cost, and completed value form basis for 100% of the projected completed value of the improvements to be constructed.

EXHIBIT “D”

GROUND LEASE TERMS

1. Ground Lease Term. The term of the Ground Lease will be for 65 years after completion of construction of the Project.
2. Ground Lease Rent. The Ground Lease Rent for the first 35 years of the Ground Lease Term will commence upon the issuance of a certificate of occupancy for the Project. The Ground Lease Rent will increase by 5% for each successive 5-year period; provided, however, that there will be no escalation between the first and second 5-year periods of the Ground Lease Term (*i.e.*, the first 5 increase will take effect in the third 5-year period). The Ground Lease Rent for the first 35 years will be established in accordance with the following schedule:

5-Year Periods of Term	Annual Ground Lease Rent
1 (years 1-5)	\$588,591
2 (years 5-10)	\$588,591
3 (years 10-15)	\$618,021
4 (years 15-20)	\$648,922
5 (years 20-25)	\$681,368
6 (years 25-30)	\$715,436
7 (years 30-35)	\$751,208

The Ground Lease Term for the next 30 years will increase by 10% for each successive 5-year period commencing from year 36. The Ground Lease Rent for the next will be established in accordance with the following schedule:

5-Year Periods of Term	Annual Ground Lease Rent
8 (years 35-40)	\$826,329
9 (years 40-45)	\$908,962
10 (years 45-50)	\$999,858
11 (years 50-55)	\$1,099,844
12 (years 55-60)	\$1,209,828
13 (years 60-65)	\$1,330,811

3. Creation of Condominium Property Regime.
 - a. The HCDA will agree that the Developer will, at Developer’s expense, have the right to record instruments required to create a condominium property regime submitting the leasehold interest in the Project Site to a new condominium property regime established under Chapter 514B of the HRS, thereby creating condominium estates in each of the units and all common elements of the Project (the “**Innovation Hale Condominium Project**”), to obtain a public report for the Innovation Hale Condominium Project, and to sell leasehold interest in the condominium units or lease condominium units to the public.
 - b. At any time following the establishment of the Innovation Hale Condominium Project and thereafter from time to time, Lessee may at its option surrender to Lessor the Ground Lease, or any part thereof, free from any mortgage or other encumbrances and subject to the prior payment in full of all rent, taxes and other charges then payable hereunder, in

consideration of which Lessor shall concurrently deliver to Lessee or its designees, or join in, condominium conveyance documents on all Innovation Hale Condominium Project units (the “**Units**”), provided that no such condominium conveyance document shall be for less than a single unit or for less than the entire remaining term of the Ground Lease. Said documents shall be prepared by or at the expense of Lessee. All condominium conveyance documents shall be dated as of the same date and shall be for a term of sixty-five (65) years, and each shall provide for payment of rentals in the proportions established by the condominium declaration for the Innovation Hale Condominium Project, as set by Lessee, provided that aggregate rents shall be not less than that required under the Ground Lease, and provided further that such condominium conveyance document or such condominium conveyance documents shall contain the same terms and conditions set forth in the Ground Lease, except to the extent of taxes and conditions contained herein as related to development of the Innovation Hale Condominium Project.

- c. All such condominium conveyance documents shall be signed by Lessor and placed in a mutually satisfactory escrow at no expense to Lessor, with instructions to deliver the same upon satisfaction of the following: (1) receipt of evidence that the condominium purchaser has been delivered copies of all public reports in accordance with law; and (2) receipt of all necessary partial releases from the Ground Lease or a cancellation of the Ground Lease, whichever shall be necessary to satisfy the requirements of the Ground Lease with respect to the issuance of said condominium conveyance document.
- d. Except as otherwise expressly provided herein or in any condominium conveyance documents, Lessee shall at all times during such term be deemed to be the owner of all Units for all purposes of the declaration and bylaws of the Innovation Hale Condominium Project, and shall have all the rights, privileges, duties and obligations of such owner including, without limitation, membership and vote in the Association of Apartment Owners of Innovation Hale (the “**Association**”); provided, however, that any vote or other action with respect to construction plans, partition of the project, or any other matter as to which the Ground Lease or any condominium conveyance document requires the approval or consent of Lessor, shall be effective only upon such approval or consent in writing.
- e. Lessee will be responsible for: (i) payment of all costs in connection with the development of the Innovation Hale Condominium Project, including, without limitation, costs of preparing, recording and filing all documents as may be required, such documents to be in a form satisfactory to Lessor, and (ii) all Hawaii conveyance taxes pertaining to the condominium conveyance documents. Lessee will pay to Lessor on demand all costs and expenses incurred by Lessor in connection with the creation of the Innovation Hale Condominium Project and all documentation therefor.
- f. Lessee may sell its interest in the Units to such purchasers and on such terms and conditions as Lessee determines in its sole discretion, and the Units may be mortgaged to recognized lending institutions qualified to do business in the State of Hawaii, or other persons providing purchase money mortgages to purchasers of the Units, and Lessor hereby consents to such assignments and mortgages, provided that Lessee shall cause an executed or certified copy of each such conveyance document and mortgage to be deposited with Lessor promptly upon execution.

SCD KM II LLC
1100 Alakea Street, 27th Floor
Honolulu, HI 96813
Phone: (808) 537-5220 / Fax: (808) 537-1801

February 9, 2023

Hawaii Community Development Authority
547 Queen Street
Honolulu, HI 96813

Attention: Lindsey Doi

Subject: Development Agreement for Kaka'ako Makai Lot C – Phase IB
Innovation Hale

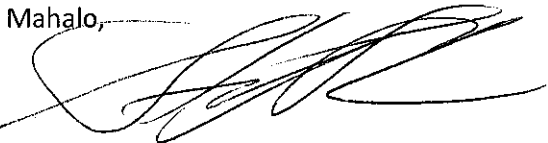
Dear Lindsey,

The Feasibility Period for the subject agreement dated April 11, 2018 is currently scheduled to expire on April 10, 2023.

At present, the economic outlook nationally as well as locally remain uncertain. Although we continue to recover from the impacts of the pandemic, supply chain issues, inflation on goods and services, and weak demand for office space are ongoing challenges. Equally important, the Federal Reserve continues its monetary tightening to bring the inflation rate to its targeted level. Therefore, we request an additional 6 months to reassess our development plans and schedule for the site considering the forces at hand.

We very much appreciate your continued support in this matter.

Mahalo,



Stanford S. Carr
Manager