

AMENDED AND RESTATED  
MASTER PLAN DEVELOPMENT AGREEMENT

For the  
WARD NEIGHBORHOOD MASTER PLAN

Between

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

And

VICTORIA WARD, LIMITED,  
On behalf of itself and related affiliates,

And

BANK OF HAWAII,  
As Trustee under Trust No. 89433.

## AMENDED AND RESTATED

### MASTER PLAN DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED MASTER PLAN DEVELOPMENT AGREEMENT (“Amended and Restated Agreement”) is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), by and between VICTORIA WARD, LTD., a Delaware corporation, whose mailing address is 1240 Ala Moana Boulevard, Suite 200, Honolulu, Hawai‘i 96814 (“VWL”); 1240 Ala Moana, LLC, a Delaware limited liability company; Block G Ward Village, LLC, a Delaware limited liability company; Kalae, LLC, a Delaware limited liability company; The Launiu, LLC, a Delaware limited liability company; Ulana Ward Village, LLC, a Delaware limited liability company; The Park Ward Village, LLC, a Delaware limited liability company; Ward Entertainment Center, LLC, a Delaware limited liability company; and Ward Village Shops, LLC, a Delaware limited liability company (collectively, the “VWL Affiliates”), whose mailing address is 1240 Ala Moana Boulevard, Suite 200, Honolulu, Hawai‘i 96814; the HAWAII COMMUNITY DEVELOPMENT AUTHORITY, a body corporate and a public instrumentality of the State of Hawai‘i (the “Authority” or “HCDA”), whose mailing address is 547 Queen Street, Honolulu, Hawai‘i 96813; and BANK OF HAWAII, as Trustee under Trust No. 89433 (“BOH”), whose mailing address is 111 S. King Street, Honolulu, Hawai‘i 96813. Where applicable, and unless the context otherwise requires, references to “VWL” shall collectively include Victoria Ward, Ltd. and the VWL Affiliates. VWL, HCDA and BOH are hereinafter sometimes collectively referred as the “Parties” and individually as a “Party”.

#### **WITNESSETH:**

WHEREAS, on May 6, 2009, HCDA issued a Nunc Pro Tunc Order Re: Hearing Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit (File No.: PL MASP 13.1.3) adopting an Amended and Restated Hearing Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit effective *nunc pro tunc* to January 14, 2009 (the “D&O”);

WHEREAS, the D&O granted an application submitted by General Growth Properties, Inc. on behalf of its affiliate, Victoria Ward, Ltd., for a master plan permit pursuant to Chapter 206E of the Hawai‘i Revised Statutes (“HRS”) and Title 15, Subtitle 4, Chapter 22 of the Hawai‘i Administrative Rules (the “2005 Mauka Area Rules”) for approximately 59.96 acres of land in the Kaka‘ako Community Development District, O‘ahu, Hawai‘i (“KCDD”) as more fully described in the D&O (the “Ward MP Area”), also known as the Ward Neighborhood Master Plan (“Ward MP”);

WHEREAS, pursuant to Condition No. 16 of the D&O, on June 17, 2009, HCDA, Victoria Ward, Ltd., and BOH (together with other parties, who no longer have an ownership interest in the Ward MP Area), executed and filed a Victoria Ward, Limited Master Plan Permit Memorandum of Decision and Order dated May 29, 2009, filed in the Bureau of Conveyances of the State of Hawai‘i (the “Bureau”) as Document No. 3869623, and recorded in said Bureau as Document No. 2009-093051 (the “Memorandum of D&O”).

WHEREAS, on December 30, 2010, HCDA, Victoria Ward, Ltd. and BOH (together with other parties, who no longer have an ownership interest in the Ward MP Area) entered into a Master Plan Development Agreement pursuant to Condition No. 2 of the D&O (“Development Agreement”);

WHEREAS, pursuant to Condition No. 2 of the D&O, on January 7, 2011, HCDA, Victoria Ward, Ltd., and BOH (together with other parties, who no longer have an ownership interest in the Ward MP Area) executed and filed a Memorandum of Master Plan Development Agreement for the Ward Neighborhood Master Plan dated December 30, 2010, filed in the Bureau as Document No. 4036891, and recorded in said Bureau as Document No. 2011-004171 (the “Memorandum of Ward MP Development Agreement”);

WHEREAS, pursuant to HRS § 206E-7(b), VWL’s development rights under the D&O and Development Agreement are vested under the community development district rules in effect at the time of initial approval by the Authority (specifically, the 2005 Mauka Area Rules), which shall govern development on the lands within the Ward MP Area subject to such permit and agreement;

WHEREAS, pursuant to the D&O, the Development Agreement, and applicable law, VWL has vested development rights for certain planned and completed residential, commercial, industrial, infrastructure, and other projects and/or entitlements, as well as vested development rights for certain planned and completed public facilities, open space, improvements, and other public benefits within the Ward MP Area, all as more fully described in certain planned development permits (each a “PDP”) and other approvals issued by HCDA during the effective period of the Ward MP, D&O, and Development Agreement;

WHEREAS, pursuant to the D&O and the Development Agreement, the effective period of the Ward MP expired on January 14, 2024;

WHEREAS, effective January 12, 2024, the Parties executed a letter agreement extending the effective period of the Development Agreement, which the Parties agreed would continue to be in full force and effect until the Parties executed an amended and restated Development Agreement, or the Parties mutually agreed in writing to terminate the Development Agreement;

WHEREAS, Victoria Ward, Ltd. and the VWL Affiliates, which are all wholly owned entities of The Howard Hughes Corporation (“HHC”), own certain parcels of land within the Ward MP area described in Exhibit A attached hereto and made a part hereof (the “Remaining Ward MP Parcels”) in which Victoria Ward, Ltd. and the VWL Affiliates are in the process of developing and/or improving pursuant to the vested development rights granted during the effective period of the Ward MP, and/or may develop or re-develop in the future after the expiration of the Ward MP;

WHEREAS, during the effective period of the Ward MP, VWL has entitled and/or completed public facilities dedications, open space, and reserved housing units within the Ward MP Area that materially exceed the original vision of the Ward MP and the requirements under the D&O and the Development Agreement;

WHEREAS, in consideration of facilitating VWL’s continued improvement and redevelopment of the original Ward MP Area, VWL is agreeable to providing certain commitments and additional public benefits following the expiration of the Ward MP;

WHEREAS, Section VI. of the Development Agreement provides that VWL and HCDA may negotiate and execute an amended / modified or supplemental Development Agreement to address any additional implementation matters;

WHEREAS, pursuant to HRS § 206E-4, HCDA has the power, among others, to “[m]ake and execute contracts and all other instruments necessary or convenient for the exercise of its power and functions under this chapter”;

WHEREAS, on June 5, 2024, HCDA and VWL executed a letter of intent to document the Parties’ understanding of terms for an amended and restated Development Agreement and a purchase and sale agreement for Block P-3 of the Ward MP Area;

WHEREAS, by amending and restating the Development Agreement in its entirety as provided herein, HCDA and VWL desire and intend to document their agreement regarding the provision and completion of certain public benefits within the Ward MP Area, certain implementation matters relating to VWL’s ongoing rights and entitlements, and certain aspects of VWL’s possible future development or redevelopment on the Remaining Ward MP Parcels, following the expiration of the Ward MP and the D&O;

NOW, THEREFORE, in consideration of the mutual covenants in this Amended and Restated Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to amend and restate the Development Agreement in its entirety as follows:

## **SECTION 1**

### **AUAHI STREET PEDESTRIAN PROMENADE AND RELATED IMPROVEMENTS**

1.1 **Auahi Street Pedestrian Promenade.** Pursuant to the applicable terms and conditions of KAK 18-038 (Ko‘ula), KAK 19-069 (Victoria Place), KAK 21-001 (Ulana), and KAK 21-002 (The Park Ward Village), VWL shall complete Phase 1 and Phase 2 of the Auahi Street Pedestrian Promenade and realignment to connect with the extended Pohukaina Street at Ward Avenue pursuant to the applicable terms and conditions of previously issued decisions and orders. The completion and maintenance of the Auahi Street Pedestrian Promenade and realignment shall satisfy the applicable provisions in the Ward MP, previously issued decisions and orders, and the PDPs for the projects referenced in this Section 1.

1.2 **Auahi Street City Parcel.** VWL shall improve the City and County of Honolulu (“City”) right of way parcel for Auahi Street fronting KAK 21-001 (Ulana), Tax Map Key No. (1) 2-1-056: 011 (“Auahi Street City Parcel”), from the centerline of Auahi Street to the curb fronting Ulana in the area shown in Exhibit B attached hereto.

- (a) Improvements, to the extent consistent with City road repair design standards, are expected to include patching of existing asphalt in the Auahi Street City Parcel so there is a smooth, continuous driving surface between

the Auahi Street City Parcel and the roadways directly adjacent thereto, as well as improvements to curbs, gutter storm drains, streetlights, street trees, and installation of protected bicycle lanes from the entire length of Auahi Street from Koula Street to Kamani Street.

- (b) VWL may also enter into a memorandum of agreement with the Trustees of the Estate of Bernice Pauahi Bishop (the “Trustees”) in which one party constructs the improvements to the entire Auahi Street City Parcel and the other party pays for its share. VWL shall confer with the Trustees in good faith in planning the improvements to the Auahi Street City Parcel to facilitate a cohesive street design.

1.3 **250 Ward Avenue Sidewalk.** VWL shall temporarily widen the sidewalk along Ward Avenue, facing the parcel currently identified as Tax Map Key No. (1) 2-1-053: 030 (“250 Ward Avenue”), to twelve (12) feet to adjoin with the Ward Avenue sidewalk and the walkway for KAK 23-001 (The Launiu) in the area shown in Exhibit C attached hereto prior to the staff approval of the temporary certificate of occupancy (“TCO”) for KAK 23-001 (The Launiu).

1.4 **250 Ward Avenue Improvements.** VWL shall submit a new planned development permit for 250 Ward Avenue upon finalization of plans for that parcel, which shall include plans to provide permanent improvements to the temporary sidewalk area that will be compatible with the planned Auahi Plaza sidewalk and tree improvements in connection with KAK 23-001 (The Launiu).

- (a) The planned development permit for 250 Ward Avenue shall be subject to the then current Mauka Area Rules in effect at the time of submission. Upon demolition of the existing structure at 250 Ward Avenue, VWL shall submit a permit application for a conditional use of vacant land or other relevant permit. As applicable, the application shall specify the expected timeline for temporary construction staging and shall propose a use so that the property is not left vacant or abandoned.

1.5 **888 Ala Moana Boulevard Parcel Frontage.** VWL shall confer in good faith with the Trustees to plan improvements to the portion of the VWL property fronting the parcel at 888 Ala Moana Boulevard (the “888 Ala Moana Boulevard Parcel”) in the area shown in Exhibit D attached hereto to facilitate a consistent experience for pedestrians, bicyclists and vehicular users traversing the sidewalk and roadway along Auahi Street from the 888 Ala Moana Boulevard Parcel to KAK 23-001 (The Launiu).

- (a) Improvements subject to this section may include street trees, lighting, signage, and other improvements, as mutually agreed upon and as applicable.
- (b) The improvements subject to this section shall be completed at the time improvements are made to the Auahi Street City Parcel as described above, or prior to HCDA staff approval of the TCO for KAK 23-001 (The Launiu), whichever is later. Upon request, the HCDA Executive Director

may consider and grant additional time for the completion of the improvements subject to this section.

1.6 **Launiu Street Network and Off-Street Improvements.** The Parties acknowledge that the street network and off-street improvements required as part of KAK 23-001 (The Launiu) are designed to facilitate the connection between the Diamond Head portion of the Ward MP (the area east of Ward Avenue) and the other Ward MP areas (the area west of Ward Avenue) (“The Launiu Street Network”).

- (a) If KAK 23-001 (The Launiu) is not constructed, VWL shall provide interim on- and off-street improvements to facilitate the intent of The Launiu Street Network, to be mutually agreed upon between VWL and the HCDA Executive Director. These improvements may include the extension of the bicycle lanes on Auahi Street and Kamani Street, installation of the pedestrian crosswalks on Auahi Street and Kamani Street, and construction of the shared use path from Auahi Street to Ward Avenue.

1.7 **Maintenance.** VWL or its designated successors and assigns shall continuously maintain and manage the areas of the Auahi Street Pedestrian Promenade, including the Launiu Street Network and associated off-street improvements, that are not dedicated to the City, at VWL’s (or its designated successors’ and assigns’) sole cost and expense.

- (a) Maintenance and management for purposes of this section means reasonable day-to-day maintenance, repairs and replacements, and security consistent with the standard of use and operations, conduct, maintenance, and appearance generally prevailing in Ward Village.

## **SECTION 2**

### **OTHER IMPROVEMENTS AND MAINTENANCE WITHIN WARD VILLAGE**

2.1 **Halekauwila Private Driveway.** VWL shall complete the Halekauwila private driveway through Land Block 1 from Ward Avenue to Kamake‘e Street as proposed in the Ward MP and pursuant to the applicable terms and conditions of previously issued decisions and orders, including the PDP for KAK 21-002 (The Park Ward Village), in the area shown in Exhibit E attached hereto.

2.2 **Lot F-3 Cultural Preserve.** VWL shall consult with the State of Hawai‘i, Department of Land and Natural Resources Historic Preservation Division (“SHPD”) and the O‘ahu Island Burial Council (“OIBC”) with respect to the planned cultural preserve depicted in the PDP application for KAK 23-027 (Mahana Ward Village) at Exhibit 3 (attached hereto as Exhibit F) and shall submit to the HCDA Executive Director a plan to provide perpetual preservation and maintenance for the cultural preserve.

2.3 **Gateway Signage.** VWL shall complete the five planned district-wide gateway signage. Subject to City requirements, the design and proposed signage shall be approved by the HCDA Executive Director. Gateway signs should welcome people to the edge of the community, and be accompanied by landscaping, art / architectural features, and / or public

amenities such as a post clock to the extent permitted by City requirements. The five gateway signs proposed by VWL shall be completed as follows:

- (a) Gateway Sign (B) at Ala Moana Boulevard and Ward Avenue prior to issuance of the TCO for KAK 22-024 (Kalae);
- (b) Gateway Sign (A) at Auahi Street and Kamani Street prior to issuance of the TCO for KAK 23-001 (The Launiu);
- (c) Gateway Sign (N) at Halekauwila Street and Ward Avenue prior to issuance of the TCO for KAK 23-027 (Mahana Ward Village);
- (d) Gateway Sign (D) at Ala Moana Boulevard and Kamakee Street prior to issuance of the TCO for KAK 23-037 (Melia); and
- (e) Gateway Sign (K) at Queen Street and Queen Lane prior to issuance of the TCO for KAK 22-024 (Kalae).

2.4 **Other Master Plan Commitments.** Prior to the issuance of the TCO for the last project issued a PDP during the effective period of the Ward MP, VWL shall:

- (a) Complete all required improvements, reserved housing, public facilities, and public open spaces required by the decisions and orders issued during the effective period of the Ward MP; and
- (b) Record and/or file any public facilities dedications required by the decisions and orders issued during the effective period of the Ward MP with the Bureau of Conveyances and/or the Assistant Registrar of the Land Court of the State of Hawaii, as appropriate.

2.5 **Maintenance of Parks.** VWL or its designated successors and assigns shall, at its sole cost and expense, continuously maintain and manage the Ewa Plaza (Ka La'i o Kukuluāe'o Park), the Central Plaza (Victoria Ward Park - Mauka and Makai), and the Diamond Head Plaza Park (Ka Lei Park). Maintenance and management means reasonable day-to-day maintenance, repairs and replacements, and security consistent with the standard of use and operations, conduct, maintenance, and appearance generally prevailing in Ward Village.

### **SECTION 3** **RESERVED HOUSING**

3.1 **Accounting.** A true and accurate accounting of the reserved housing units for the Ward MP as of the Effective Date pursuant to Condition No. 9 of the D&O is attached hereto as Exhibit G (the "Reserved Housing Accounting") and incorporated herein by reference.

3.2 **Completion of Required Reserved Housing.** Pursuant to the terms and requirements of the D&O and PDP Nos. KAK 18-038 (Kō'ula), KAK 19-069 (Victoria Place), KAK 21-001 (Ulana Ward Village), KAK 21-002 (The Park Ward Village), KAK 22-024 (Kalae), KAK 23-001 (The Launiu), KAK 23-027 (Mahana Ward Village), KAK 23-037 (Block

D), and KAK 23-038 (Block E) (collectively, the “Reserved Housing Credited Projects”), VWL shall complete the reserved housing required for each of the Reserved Housing Credited Projects through the construction and completion of KAK 21-001 (Ulana Ward Village) as required by the respective PDPs for the Reserved Housing Credited Projects (the “Required Reserved Housing”). As reflected in the Reserved Housing Accounting, the completion of the reserved housing units at KAK 21-001 Ulana Ward Village shall result in a total of 1,222 reserved housing units in the Ward MP, and shall fully satisfy the applicable provisions of the Ward MP, Condition No. 9 of the D&O, and the relevant condition(s) of the PDPs for the Reserved Housing Credited Projects.

3.3 **Reserved Housing Credits.** Pursuant to the Reserved Housing Accounting, VWL shall have fifty-three (53) reserved housing unit credits after satisfaction of the Required Reserved Housing (the “Reserved Housing Credits”). Subject to all of the provisions of this Amended and Restated Agreement, VWL may, in perpetuity, use or transfer the Reserved Housing Credits on a one-for-one basis to satisfy all or a portion of the reserved housing requirement for any future development(s) and/or re-development(s) within the Ward MP area or within the KCDD.

- (a) “One-for-one basis” shall continue to mean one Reserved Housing Credit to satisfy the requirement for one reserved housing unit, without regard to the size, type and/or number of bedroom(s) of the reserved housing units, or any other proportionality standards or metrics, or the equivalent monetary value in lieu thereof.
- (b) Except as may otherwise be agreed to by the Parties, the Reserved Housing Credits shall be applied in accordance with the number of reserved housing units required, if any, by the then-current Mauka Area Rules in effect at the time the applicable planned development permit for a future project is granted by HCDA. The PDP application for the project shall state the number of Reserved Housing Credits being applied to the project, if any, and shall state the remaining balance of the Reserved Housing Credits, if any.
- (c) Upon notice to HCDA, VWL may elect to transfer any of the Reserved Housing Credits to any VWL Affiliate or a third party upon the condition that the Reserved Housing Credits shall be used as provided in this Amended and Restated Agreement and only for projects within the KCDD.

3.4 **Reserved Housing Credit Adjustments.** In the event that any PDP previously granted by HCDA during the effective period of the Ward MP is amended, withdrawn, expires, or is otherwise terminated prior to the completion of the development authorized by the PDP, the number of Reserved Housing Credits shall commensurately increase or decrease to reflect the commensurate increase or decrease in the associated requirements for reserved housing units under the 2005 Mauka Area Rules, resulting from the amendment, withdrawal, expiration, or termination of such PDP. VWL shall submit the amended accounting and calculation of the



adjusted Reserved Housing Credits to the HCDA Executive Director for verification and approval.

#### **SECTION 4** **INDUSTRIAL FLOOR AREA**

4.1 **Accounting.** A true and accurate accounting of the industrial floor area for the Ward MP as of the Effective Date is attached hereto as Exhibit H (the “Industrial Floor Area Accounting”). As reflected in the Industrial Floor Area Accounting, by maintaining 279,437 square feet of floor area for industrial use during the effective period of the Ward MP (inclusive of 70,019 square feet of industrial floor area credit from the Land Block P-1 sale to HCDA (the “P-1 Industrial Credit”) and 30,404 square feet of industrial floor area approved for KAK 21-005 (Ulana Ward Village) (the “Ulana Industrial Floor Area”)) (collectively, the “Ward MP Industrial Floor Area”), VWL received a density bonus of 188,861 square feet of floor area for industrial use within the Ward MP (the “Industrial Floor Area Bonus”). Subject to this Section 4, VWL or its designated successors and assigns may re-develop or re-lease the Ward MP Industrial Floor Area for non-industrial uses.

4.2 **Minimum Industrial Floor Area.** Inclusive of the Ulana Industrial Floor Area of 30,404 square feet, but exclusive of the P-1 Industrial Credit of 70,019 square feet, VWL shall maintain a net minimum of 100,000 square feet of industrial uses on land owned by VWL (the “Minimum Industrial Floor Area”); provided that for purposes of maintaining the Minimum Industrial Floor Area:

- (a) Industrial uses as permitted and defined by the 2005 Mauka Area Rules (i.e. HAR § 15-22-32(4) and HAR § 15-22-34(4)) shall control for all purposes;
- (b) VWL may re-lease floor area used for other purposes (i.e. retail) for industrial use and vice versa as long as the Minimum Industrial Floor Area is maintained; and
- (c) Upon request by VWL, the HCDA Executive Director, at his or her discretion, may permit VWL to re-develop any or all of the Minimum Industrial Floor Area for other uses, provided that the HCDA Executive Director may consider: (i) the current and reasonably foreseeable market conditions and demand for non-industrial uses; and (ii) that industrial uses are an integral part of the mixed-use vision for the Kaka‘ako Mauka Area. Any reduction in the Minimum Industrial Floor Area permitted by the HCDA Executive Director shall be subject to the Industrial Floor Area Reduction Payment as defined in Section 4.3 below.

4.3 **Industrial Floor Area Reduction Payment.** Subject to the Minimum Industrial Floor Area as required in Section 4.2 above, and in consideration of VWL’s utilization of the Industrial Floor Area Bonus during the effective period of the Ward MP, VWL, upon the actual

net reduction of the Ward MP Industrial Floor Area, shall pay to HCDA the Industrial Floor Area Reduction Payment pursuant to the following methodology:

- (a) Upon acceptance of a permit application, VWL and HCDA will calculate the net percent reduction in the Ward MP Industrial Floor Area for non-industrial uses (the “Net Percentage of Industrial Floor Area Reduction”);
- (b) The Industrial Floor Area Bonus shall be multiplied by the Net Percentage of Industrial Floor Area Reduction, the product of which shall be expressed in square feet, and shall represent the commensurate amount of the Industrial Floor Area Bonus that VWL realized through the maintenance of the former industrial floor area within the Ward MP (the “Attributed Industrial Density Bonus Area”);
- (c) The Attributed Industrial Density Bonus Area shall be multiplied by \$75.00 per square foot (the “Base Bonus Value”), which shall be subject to an annual adjustment to reflect changes in inflation as measured by the Honolulu Area Consumer Price Index for All Urban Consumers (CPI-U) published by the U.S. Bureau of Labor Statistics (the “Honolulu CPI-U”), which shall be calculated on each anniversary of the effective date of this Agreement, and shall remain in effect for all purposes until the next annual adjustment.
- (d) The Base Bonus Value shall be multiplied by the ratio of the Honolulu CPI-U as published for the month immediately preceding the applicable anniversary of the effective date of this Agreement to the Honolulu CPI-U as published for the month immediately preceding the effective date of this Agreement, the product of which shall be expressed in dollars (the “Attributed Industrial Density Bonus Value”).
- (e) The Attributed Industrial Bonus Area shall be multiplied by the Attributed Industrial Density Bonus Value, the product of which shall be expressed in dollars, and shall constitute the Industrial Floor Area Reduction Payment, which shall be payable by VWL to HCDA upon the actual net reduction of the Ward MP Industrial Floor Area.

4.4 **Example of Industrial Floor Area Reduction Payment.** By way of example, but not limitation, the following is an illustration of the application of the foregoing methodology for a hypothetical re-development of a portion of the Ward MP Industrial Floor Area in which VWL proposes a net industrial floor area reduction of 27,944 square feet, and a hypothetical 1.1 CPI-U ratio:

Reference	Description	Calculation
A	Ward MP Industrial Floor Area	279,437 sf
B	Industrial Floor Area Bonus	188,861 sf
C	Existing Industrial Floor Area on Project Site	40,000 sf
D	Industrial Floor Area in Hypothetical Mixed Use Development	12,056 sf
E = A - (A - C + D)	Net Industrial Floor Area Reduction (sf)	27,944 sf
F = E / A	Net Industrial Floor Area Reduction (percentage)	10%
G = B * F	Attributed Industrial Density Bonus Area	18,886 sf
H	Attributed Industrial Density Bonus Value (\$75.00 + hypothetical 1.1 CPI Ratio)	\$82.50
I = G * H	Industrial Floor Area Reduction Payment	\$1,558,095

## **SECTION 5** **PDP AMENDMENTS**

5.1 **PDP Amendments; Consistency.** To ensure consistency with the existing Ward MP developments, the provisions of the 2005 Mauka Area Rules shall apply to the processing, consideration, and final disposition of any petition or other request submitted by VWL to the HCDA or the Executive Director to amend or withdraw any PDP for any vested project that was previously approved during the effective period of the Ward MP, including, but not limited to, any amendment of a previously-approved PDP arising from any written agreement between VWL and the HCDA to provide additional public benefits within the original Ward MP area; provided, however, that nothing in this section shall be construed as requiring VWL and the HCDA to consider, negotiate, or enter into such an agreement. Provided further that the 2005 Mauka Area Rules shall not apply to individual tenant storefront improvements, which shall be governed by the Mauka Area Rules in effect at the time of those storefront improvements.

## **SECTION 6** **ANNUAL REPORT**

6.1 **Annual Report.** VWL shall provide HCDA an annual report demonstrating the status of, and compliance with, any remaining public facilities dedication, open space, and reserved housing requirements of the Ward MP under the 2005 Mauka Area Rules. The annual report shall also include the amount of floor area dedicated and utilized as industrial use, and an accounting for all of the provided and required off-street parking spaces for all VWL developments within the Ward MP.

## **SECTION 7** **MISCELLANEOUS**

7.1 **Entire agreement.** This Amended and Restated Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and shall supersede and replace all prior understandings, negotiations, discussions and agreements between the Parties,

whether written or oral. There are no written or oral agreements or understandings between the Parties, nor any representation made by any Party relative to the subject matter hereof, which are not expressly set forth herein.

7.2 **Authority.** HCDA and VWL each represent and warrant that they each have the full power and authority to execute, deliver, and perform their respective obligations under this Amended and Restated Agreement.

7.3 **Compliance.** HCDA acknowledges and agrees that, as of the Effective Date, VWL is not in default of, and is in full compliance with, all the terms, conditions, and requirements of the D&O, Development Agreement, Ward MP, the PDPs for all projects within the Ward MP, and all other HCDA directives, permits, and orders related thereto.

- (a) HCDA acknowledges and agrees that except for the conditions, terms, and requirements of the D&O, Ward MP, and/or applicable PDPs that are necessary to implement VWL's vested rights with respect to the Ward MP Area pursuant to the express terms of this Amended and Restated Agreement, VWL has fully and completely satisfied all conditions, terms, and requirements of the D&O, Development Agreement, Ward MP, all PDPs for all projects within the Ward MP, and all HCDA directives, permits, and orders related thereto.
- (b) Notwithstanding anything to the contrary in this Section 7.3, VWL acknowledges and agrees to comply with this Amended and Restated Agreement, and shall comply with all conditions of the PDPs for all vested projects and related improvements within the Ward MP Area that are in the process of being constructed as of the Effective Date.

7.4 **Satisfaction of commitments.** The completion of the improvements and/or construction described in Section 1, Section 2, and Section 3 hereof shall fully satisfy the relevant provision(s) of the Ward MP, the D&O, and the relevant condition(s) of the PDPs for the projects referenced in those sections as applicable.

7.5 **Joint Development Agreements.** The HCDA Executive Director and VWL shall cooperate in amending or terminating any existing joint development agreements covering or relating to the Remaining Ward MP Parcels as necessary to facilitate the development and/or redevelopment of those parcels.

7.6 **Amendment.** This Amended and Restated Agreement may be amended only by a written instrument executed by the Party or Parties to be bound thereby.

7.7 **Headings.** The captions and headings used in this Amended and Restated Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Amended and Restated Agreement.

7.8 **Governing law.** This Amended and Restated Agreement shall be governed by the laws of the State of Hawai‘i without regard to principles of conflicts of laws.

7.9 **Agreement binding; assignment.** This Amended and Restated Agreement shall bind and inure to the benefit of VWL, HCDA, and BOH in its capacity as trustee as aforesaid and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns.

- (a) This Amended and Restated Agreement shall be freely assignable or transferrable by Victoria Ward, Ltd., any VWL Affiliate, and BOH in its capacity as trustee as aforesaid as applicable without the consent of HCDA or any other Party; provided, however, that the assigning or transferring Party shall promptly provide written notice to HCDA of such an assignment or transfer.
- (b) Each VWL Affiliate and BOH in its capacity as trustee as aforesaid, hereby grants to Victoria Ward, Ltd., and Victoria Ward, Ltd. reserves unto itself, its designees and assigns, the right to enter into any amendment, termination, or other modification of this Amended and Restated Agreement (the “Reserved Rights”) without the consent or joinder of any VWL Affiliate and BOH in its capacity as trustee as aforesaid, or any subsequent owner or holder of any interest in any of the parcels in the Ward MP Area.
- (c) Reserved Rights shall remain vested in Victoria Ward, Ltd. except to the extent specifically assigned by Victoria Ward, Ltd. in a recorded written instrument.
- (d) Except as provided herein, this Amended and Restated Agreement may be assigned by HCDA upon the written consent of VWL, and such consent by VWL shall not be unreasonably withheld or delayed.

7.10 **Severability.** If any provision of this Amended and Restated Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Amended and Restated Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Amended and Restated Agreement; and the remaining provisions of this Amended and Restated Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Amended and Restated Agreement.

7.11 **Benefitted and encumbered premises.** This Amended and Restated Agreement shall benefit and encumber the Remaining Ward MP Parcels. The terms and conditions of this Amended and Restated Agreement shall run with the land that is described herein as the Remaining Ward MP Parcels during the effective period of this Amended and Restated Agreement. Within thirty (30) days of the execution of this Amended and Restated Agreement, the Parties, with respect to the Remaining Ward MP Parcels, shall execute and record with the Bureau: 1) a memorandum of this Amended and Restated Agreement (“Memorandum of

Amended and Restated Agreement”); 2) a release of the Memorandum of Ward MP Development Agreement; and 3) a release of the Memorandum of D&O.

7.12 **Commercial properties.** Notwithstanding anything to the contrary herein, except in the event any additional benefits or entitlements are available in connection with any restoration, development or re-development of the properties set forth on Exhibit I attached hereto (the “Ward Commercial Properties”), nothing herein shall burden, restrict or impose obligations (monetary or otherwise) upon any of the Ward Commercial Properties, or adversely impact an existing restoration, development or redevelopments rights, or entitlements that benefit the Ward Commercial Properties as of the Effective Date.

7.13 **Termination.** This Amended and Restated Agreement shall not be terminated, extinguished, or cancelled without the express written approval of both the HCDA Executive Director and Victoria Ward, Ltd., which approval shall not be unreasonably withheld by either Party. Within thirty (30) days of the termination of this Amended and Restated Agreement pursuant to this Section 7.13, the Parties shall execute and record with the Bureau a release of the Memorandum of Amended and Restated Agreement.

7.14 **Electronic distribution and execution.** This Amended and Restated Agreement and any amendment hereto may be distributed and executed by email or other electronic means, and a copy of this Amended and Restated Agreement and any amendment thereto executed and distributed electronically shall be deemed fully binding and an original for all purposes.

7.15 **Multiple counterparts.** This Amended and Restated Agreement may be executed electronically and via email in counterparts, each of which shall be an original, but all of which shall constitute one and the same Amended and Restated Agreement.

7.16 **No third party beneficiaries.** This Amended and Restated Agreement is not intended, and shall not be deemed or construed, to confer any rights, powers or privileges on any person, firm, partnership, corporation, or any other entity not a party hereto, except as otherwise expressly provided herein.

7.17 **No party deemed drafter.** The Parties agree that none of the Parties shall be deemed to be the drafter of this Amended and Restated Agreement, and further, that in the event that this Amended and Restated Agreement is construed by a court of law, such court shall not construe this Amended and Restated Agreement or any provision hereof against any Party as the drafter of this Amended and Restated Agreement.

7.18 **No partnership.** The Parties hereto are not and shall not be considered joint venturers or partners and none of the Parties shall have the power to bind, obligate or represent any other Party except as and to the extent expressly set forth herein.

7.19 **Cooperation.** Each Party agrees to timely execute and deliver, or cause to be timely executed and delivered, such additional or further instruments or documents as may reasonably be requested by any other Party for the purpose of carrying out and facilitating the intentions of the Parties hereto, including, but not limited to, documenting compliance with the terms and conditions of the Ward MP, D&O, PDPs, orders and directives issued by HCDA, and this Amended and Restated Agreement. Any reasonable out-of-pocket expenses associated with

preparing or obtaining the requested material shall be borne by the requesting Party. Each Party agrees to cooperate with all other Parties in effecting the transactions contemplated hereunder.

7.20 **Trustee not personally liable.** This Amended and Restated Agreement is made by BOH not personally or individually, but solely as trustee as aforesaid, and it is expressly understood and agreed by and between the Parties hereto, anything in this Amended and Restated Agreement to the contrary notwithstanding, that each and all of the covenants, warranties, representations, and agreements contained in this Amended and Restated Agreement or in any amendments thereto, are made and intended not as personal covenants, warranties, representations, undertakings, and agreements of BOH or any of its respective officers, agents, or employees, but this Amended and Restated Agreement is made by BOH solely as trustee as aforesaid and no personal liability or personal responsibility is assumed by, or shall at any time be asserted or enforced against BOH, its respective officers, agents, or employees on account of any covenants, warranties, representations, undertakings, or agreements contained in this Amended and Restated Agreement or in any amendments thereto, or otherwise, either express or implied, all such personal liability, if any, being hereby expressly waived and released; it being understood that HCDA, VWL or anyone claiming by, through, or under HCDA, VWL, or claiming any rights under this Amended and Restated Agreement or any amendments thereto shall look solely to the trust property for the enforcement or collection of any such liability.

7.21 **Trustee's disclosure of fiduciary capacity.** In accordance with the exception clause of Section 554D-1010(a) HRS, as amended, any liability of BOH as trustee as aforesaid which may arise as a result of said trustee's executing this instrument is a liability of the trust estate established under the BOH land trust described above and not the respective personal liability of BOH. Any recovery against BOH in its capacity as trustee as aforesaid based upon this Amended and Restated Agreement shall be limited solely to the assets of BOH land trust referred to hereinabove.

7.22 **Waiver of trial by jury.** EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDED AND RESTATED AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS (1) RECEIVED ADEQUATE CONSIDERATION TO AFFECT SUCH WAIVER, (2) ACTED IN RELIANCE ON THE OTHER'S WAIVER AND INTENDS THAT THE SAME BE ENFORCED TO THE FULLEST EXTENT ALLOWED BY LAW, AND (3) BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL OF ITS CHOICE PRIOR TO EFFECTING THIS WAIVER.

7.23 **Notices.** All notices, demands, and requests that may be given or that are required to be given by any Party to any other Party pursuant to this Amended and Restated Agreement shall be in writing and shall be mailed to the address(es) first stated above for the

applicable Part(ies), or shall be delivered by the means and at the address(es) subsequently agreed upon the Parties in writing.

7.24 **Exhibits.** The following exhibits attached hereto as incorporated herein as through fully set forth herein. In the event of any discrepancy, conflict, or inconsistency between the written text of this Amended and Restated Agreement and/or the written text of the exhibits on one hand, and the graphic or visual representations in the exhibits, on the other hand, the Parties agree that the written text shall control:

<u>Exhibit</u>	<u>Title</u>
Exhibit A	Legal Descriptions of Remaining Ward MP Parcels owned by VWL and the VWL Affiliates (the “Remaining Ward MP Parcels”).
Exhibit B	Description of Area for Improvement to the City and County of Honolulu Right of Way on Auahi Street Pursuant to Section 1.2.
Exhibit C	Description of Area for Widening of Sidewalk Facing 250 Ward Avenue Pursuant to Section 1.3.
Exhibit D	Description of Area for Improvements to the Portion of the VWL Property Fronting the 888 Ala Moana Boulevard Parcel Pursuant to Section 1.5.
Exhibit E	Description of Halekauwila Private Driveway Through Land Block 1 from Ward Avenue to Kamake‘e Street Pursuant to Section 2.1.
Exhibit F	Description of Lot F-3 Cultural Preserve (KAK 23-027 (Mahana Ward Village) at Exhibit 3) Pursuant to Section 2.2.
Exhibit G	Accounting of the Reserved Housing for the Ward MP as of the Effective Date (the “Reserved Housing Accounting”) Pursuant to Section 3.1.
Exhibit H	Accounting of Industrial Floor Area for the Ward MP as of the Effective Date (the “Industrial Floor Area Accounting”) Pursuant to Section 4.1.
Exhibit I	Ward Commercial Properties Pursuant to Section 7.12.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, the Parties hereto have executed this Amended and Restated Agreement as of the date first set forth above.

**HCDA:**

**HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

**A body corporate and a public instrumentality of the State of Hawaii**

\_\_\_\_\_

By: \_\_\_\_\_

Its: Executive Director

**VWL:**

**VICTORIA WARD, LIMITED**

**A Delaware corporation**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**THE VWL AFFILIATES:**

**1240 ALA MOANA, LLC**

**A Delaware limited liability company**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**BLOCK G WARD VILLAGE, LLC**

**A Delaware limited liability company**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**KALAE, LLC**

**A Delaware limited liability company**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**THE LAUNI, LLC**

**A Delaware limited liability company**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ULANA WARD VILLAGE, LLC**

**A Delaware limited liability company**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**THE PARK WARD VILLAGE, LLC**

**A Delaware limited liability company**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**WARD ENTERTAINMENT CENTER, LLC**

**A Delaware limited liability company**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**WARD VILLAGE SHOPS, LLC**

**A Delaware limited liability company**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**BOH:**

**BANK OF HAWAII, as Trustee aforesaid and not individually**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_

By: \_\_\_\_\_

Deputy Attorney General

State of Hawaii

DRAFT

**Exhibit A**

**Legal Descriptions of Remaining Ward MP Parcels owned by VWL and  
the VWL Affiliates (the “Remaining Ward MP Parcels”)**

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**Exhibit B**

**Description of Area for Improvement to the City and County of Honolulu Right of Way on  
Auahi Street Pursuant to Section 1.2**

DRAFT

**Exhibit C**

**Description of Area for Widening of Sidewalk Facing 250 Ward Avenue Pursuant to Section 1.3**

DRAFT

**Exhibit D**

**Description of Area for Improvements to the Portion of the VWL Property Fronting the  
888 Ala Moana Boulevard Parcel Pursuant to Section 1.5**

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**Exhibit E**

**Description of Halekauwila Private Driveway Through Land Block 1 from Ward Avenue  
to Kamake'e Street Pursuant to Section 2.1**

DRAFT

**Exhibit F**

**Description of Lot F-3 Cultural Preserve (KAK 23-027 (Mahana Ward Village) at Exhibit  
3) Pursuant to Section 2.2**

DRAFT

**Exhibit G**

**Accounting of the Reserved Housing for the Ward MP as of the Effective Date (the  
“Reserved Housing Accounting”) Pursuant to Section 3.1**

DRAFT

**Exhibit H**

**Accounting of Industrial Floor Area for the Ward MP as of the Effective Date (the  
“Industrial Floor Area Accounting”) Pursuant to Section 4.1**

DRAFT

**Exhibit I**

Ward Commercial Properties Pursuant to Section 7.12.

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