

A Bill for an Act Relating to the Aloha Tower Development Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 206J-2, Hawaii Revised Statutes, is amended by amending the definition of "project" to read:

"(5) "Project" means a public undertaking, improvement, or system consisting of a work or improvement including personal property or any interest therein, acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the development corporation, and including public facilities."

SECTION 2. Section 206J-3, Hawaii Revised Statutes, is amended to read:

"[[§206J-3]] **Aloha tower complex; designated boundaries.** Being portions of Honolulu Harbor (Governor's Executive Order No. 1793), Irwin Memorial Park (Governor's Executive Order No. 472), Fort Street and Ala Moana

Being also portions of:

L.P. 8489 L.C.Aw. 11219 to the Hawaiian Government, Sea Boundary of "Kaakaukui" R.P. 4483 L.C.Aw. 7712 Apana 6 No. 1 to M. Kekuanaoa no V. Kama-malu, R.P. 4532 L.C.Aw. 9971 Parts 1 and 2 to W.P. Leleiohoku and L.C.Aw. 784 Parts 1 and 2 to James Robinson,

Exchange Deed: Minister of Interior to Samuel C. Allen dated December 21, 1897 and recorded in Liber 173, Pages 432-434,

Grant 1753 No. 2 to William Miller,

Land Court Application 787

Land situated at Kaakaukui and Waikahalulu, Honolulu, Oahu, Hawaii

Beginning at the most Northerly corner of this piece of land, on the West side of the present Nimitz Highway (Honolulu-Pearl Harbor Road), the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl" being 1,160.55 feet South and 5,210.56 feet West, thence running by azimuths measured clockwise from true South:

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|----|------|-----|--|
| 1. | 6° | 00' | 1.45 feet along the West side of the present Nimitz Highway; |
| 2. | 276° | 00' | 5.50 feet along same; |
| 3. | 6° | 00' | 28.00 feet along same; |
| 4. | 6° | 00' | 50.00 feet along same; |
| 5. | 6° | 00' | 241.10 feet along same; |
| 6. | 6° | 00' | 35.00 feet along same; |

7. Thence along same on a curve to the right with a radius of 110.00 feet, the chord azimuth and distance being
12° 20' 25" 24.30 feet;
8. Thence along same on a curve to the right with a radius of 60.66 feet, the chord azimuth and distance being
26° 18' 40" 16.11 feet;
9. 59° 35' 22.85 feet along the Westerly side of the present Nimitz Highway;
10. 329° 35' 72.15 feet along same;
11. Thence along same on a curve to the right with a radius of 72.00 feet, the chord azimuth and distance being
294° 10' 02" 83.45 feet;
12. 329° 35' 226.07 feet along the Westerly side of the present Nimitz Highway;
13. Thence along same on a curve to the right with a radius of 72.29 feet, the chord azimuth and distance being
11° 12' 30" 96.04 feet;
14. 52° 50' 120.37 feet along the Northerly side of Bishop Street;
15. 52° 50' 69.73 feet along same;
16. 52° 50' 110.32 feet across Ala Moana;
17. 149° 35' 29.33 feet along the remainder of Honolulu Harbor (Governor's Executive Order No. 1793), the true azimuths and distances to a "+" cut on concrete (found and adopted) being (a)
149° 35' 2.36 feet and (b)
239° 35' 2.00 feet;
18. 59° 34' 594.52 feet along same;
19. Thence along same on a curve to the right with a radius of 12.98 feet, the chord azimuth and distance being
116° 17' 45" 21.70 feet;
20. 173° 01' 30" 608.15 feet along the remainder of Honolulu Harbor (Governor's Executive Order No. 1793);
21. 228° 25' 495.96 feet along same;
22. 318° 25' 0.94 of a foot along same;
23. 228° [[25']] 459.72 feet along same to the point of beginning and containing an area of 567,442 square feet or 13.027 acres.

Vehicle access shall not be permitted into and from Nimitz Highway (Honolulu-Pearl Harbor Road) and Bishop Street, over and across Courses 1, 2, 3, 5, 8, 9, 11, 12, 13, and 14 of the above described Aloha Tower [Plaza.] complex."

SECTION 3. Section 206J-5, Hawaii Revised Statutes, is amended to read:
"[[§206J-5]] **Powers; generally.** (a) The development corporation shall have all the powers necessary to carry out its purposes, including the following powers:

- (1) To sue and be sued;
- (2) To have a seal and alter the same at its pleasure;

- (3) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (4) To make and alter bylaws for its organization and internal management;
- (5) To adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, properties, and facilities;
- (6) Through its chief executive officer, to appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, consistent with chapters 76 and 77;
- (7) To prepare or cause to be prepared a development plan for the Aloha Tower complex, incorporating the needs of the department of transportation;
- (8) To own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and to assign, exchange, transfer, convey, lease, sublease, or encumber any project or improvement, including easements, constituting part of a project within the Aloha Tower complex, except that required for necessary maritime purposes;
- (9) By itself, or in partnership with qualified persons, to construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; to own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;
- (10) To arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishing of facilities, the acquisition of property or property rights, or the furnishing of property or services in connection with a project;
- (11) To grant options or renew any lease entered into by it in connection with any project, on terms and conditions as it deems advisable;
- (12[.]) To prepare or cause to be prepared plans, specifications, designs, and estimates of project cost for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, designs, or estimates;
- (13) To provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (14) To procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
- (15) To contract for and accept gifts or grants in any form from any public agency or from any other source;
- (16) [Pledge] To pledge or assign all or any part of the moneys, rents, charges, or other revenues and any proceeds derived by the develop-

ment corporation from proceeds of insurance or condemnation awards, less guarantees to the harbor special fund for the loss of revenues or incurrence of costs and expenses because of any action taken by the development corporation; and

- (17) [Issue] To issue bonds of the development corporation for the purpose of providing funds for any of its corporate purposes[.];

(b) The development corporation shall impose, prescribe [under chapter 91], and collect rates, rentals, fees, or charges for the lease and use and services of its projects[.] at least sufficient to pay the costs of operation, maintenance and repair, if any, of its projects and the required payments of the principal of and interest on all bonds issued to finance its projects."

SECTION 4. Section 206J-6, Hawaii Revised Statutes, is amended to read:

"§206J-6 Limitations on the powers of the developmental corporation. (a) The development corporation shall not sell any fast or submerged lands of the Aloha Tower complex as established by this chapter.

(b) The development corporation shall preserve the Aloha Tower as an historical monument and shall not sell, remove, demolish, deface, or alter the structure in any reasonable degree to lessen its historical value to the community. However, repairs, maintenance, or any essential reconstruction necessary for the preservation of the Aloha Tower as an historical monument shall be permissible.

(c) Irwin Memorial Park shall be retained as a public park subject to the reservations and conditions set forth in the deed of Helene Irwin Fagan to the Territory of Hawaii.

(d) The development corporation or its lessees shall not exercise any jurisdiction over the provided replacement facilities located within the [project,] Aloha Tower complex required for necessary maritime purposes and activities[; jurisdiction]. Jurisdiction over [the] any such replacement facilities shall be in the department of transportation."

SECTION 5. Section 206J-7, Hawaii Revised Statutes, is amended to read:

"[§206J-7] Development rules. The development corporation shall adopt rules under chapter 91 to be followed during the course of the development of the [project,] Aloha Tower complex, which are to be known as development rules in connection with health, safety, building, planning, zoning, and land use, which, upon final adoption of a development plan for the Aloha Tower complex, shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon within the Aloha Tower complex. Rules adopted under this section shall be adopted under chapter 91 and shall follow existing law, rules, ordinances, and regulations as closely as is consistent with standards meeting minimum requirements of good design, pleasant amenities, health, safety, and coordinated development. The rules shall also insure that necessary maritime activities are not impaired."

SECTION 6. Section 206J-12, Hawaii Revised Statutes, is amended to read:

"[§206J-12] Bonds; bonds anticipation notes. (a) The development corporation, with the approval of the governor, may issue bonds in such amounts as authorized from time to time by law and as deemed advisable for any of its corporate purposes. The principal of, premium, if any, and interest on such bonds shall

be payable[; except as limited by section 206J-5(16):], subject to the prior payment to the harbor special fund for the loss of revenues or incurrence of costs and expenses because of any action taken by the development corporation or of any rent payable to the department of transportation for the lease of properties within the Aloha Tower complex:

- (1) Exclusively from the moneys derived from rates, rentals, fees, and charges of the project financed with the proceeds of such bonds[,] imposed under section 206J-5(b), or from such moneys together with any grant from the government in aid of such project; or
- (2) Exclusively from the moneys derived from rates, rentals, fees, and charges of certain designated projects[,] imposed under section 206J-5(b), whether or not they are financed in whole or in part with the proceeds of the bonds; or
- (3) From the¹ moneys derived from rates, rentals, fees, and charges imposed under section 206J-5(b), generally.

The bonds shall be secured by a pledge of such [revenue] moneys and may be additionally secured by a mortgage of any project or other property of the development corporation to the extent of its interest therein. Neither the [[]board members[[] nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(b) Bonds issued pursuant to this chapter may be in one or more issues and in one or more series within an issue and shall be authorized pursuant to resolution of the board. The bonds shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their date or dates, shall have such rank or priority, and may be made redeemable before maturity at the option of the development corporation, at such price or prices and under such terms and conditions, all as may be determined by the development corporation. The development corporation shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and, subject to the approval of the state director of finance, the place or places of payment of principal and interest, which may be at any bank or trust company approved by the state director of finance within or without the State. The bonds may be issued in coupon or in registered form, or both, as the development corporation may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The development corporation may sell bonds in such manner, either at public or private sale, and for such price as it may determine.

(c) Prior to the preparation of definitive bonds, the development corporation may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(d) Should any bond issued under this chapter or any coupon appertaining thereto become [mutliated] mutilated or be lost, stolen, or destroyed, the development corporation may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancel-

lation of such mutilated bond or coupon, or in lieu of and in substitution for, such lost, stolen, or destroyed bond or coupon. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon [has] (1) has paid the reasonable expense and charges in connection therewith, (2) in the case of a lost, stolen, or destroyed bond or coupon, has filed with the development corporation or its fiduciary evidence satisfactory to [such] the development corporation or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof, and (3) has furnished indemnity satisfactory to the development corporation.

(e) The development corporation in its discretion may provide that CUSIP identification numbers shall be printed on such bonds. In the event such numbers are imprinted on any such bonds (1) no such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted, and (2) no liability shall attach to the development corporation or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for such bonds by reason of such numbers or any use made thereof, including any use thereof made by the development corporation, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The development corporation in its discretion may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purposes of this subsection, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

(f) Whenever the development corporation has authorized the issuance of bonds under this chapter, bond anticipation notes of the development corporation may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All bond anticipation notes shall be authorized by the development corporation, and the maximum principal amount of such notes shall not exceed the authorized principal amount of such bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the bonds in anticipation of which the notes are issued and the moneys, rates, charges, and other revenues from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such bonds, the maximum amount of bonds that has been authorized in anticipation of which the notes are issued shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and the details of such notes shall be governed by this chapter with respect to bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this subsection shall mature within five years from the date of the original note.

(g) In order to secure the payment of any of the bonds issued pursuant to this chapter, and interest thereon, or in connection with such bonds, the development corporation shall have the power as to such bonds:

- (1) To pledge all or any part of the moneys, rates, charges, and other revenues derived by the development corporation as provided in this chapter to the punctual payment of bonds and interest thereon, and to

covenant against thereafter pledging any such moneys, notes, charges, and other revenues to any other bonds or any other obligations of the development corporation for any other purpose, except as otherwise stated in the proceedings providing for the issuance of bonds permitting the issuance of additional bonds to be equally and ratably secured by a lien upon such moneys, rates, charges, and other revenues.

- (2) To pledge and assign the interest of the development corporation under any lease and other agreements related to a project and the rights, duties, and obligations of the development corporation thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.
- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default", the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.
- (7) Subject to the approval of the state director of finance, to designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the bonds and to enter into a trust indenture, trust agreement, or indenture of mortgage with such trustee. The trustee may be authorized by the development corporation to receive and receipt for, hold, and administer the proceeds of such bonds and to apply the same to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the moneys, rents, charges, and other revenues derived by the development corporation under a lease or other agreement related to a project, and to apply such moneys, rents, charges, and other revenues to the payment of the principal of and interest on such bonds, or both, and any excess moneys, rents, charges, and other revenues to the payment of expenses incurred by the development corporation in administering such bonds or in carrying out such lease or other agreement. In the event that such trustee shall be appointed, any trust indenture, trust agreement, or indenture of mortgage entered into by the development corporation with the trustee may contain whatever covenants and provisions as may be necessary, convenient, or desirable in order to secure such bonds. The development corporation may pledge and assign to the trustee the interest of the development corporation under a lease and other agreements related to a project and the rights, duties, and obligations of the development corporation thereunder, including the right to receive revenues thereunder. The development corporation may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the

bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the development corporation may deem necessary, advisable, or expedient, including without limitation the holding of the bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary, [or] convenient, or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated in this chapter.

No holder or holders of any bonds issued under this chapter shall ever have the right to compel any exercise of taxing power of the State to pay such bonds or the interest thereon and no moneys other than the revenues pledged to such bonds shall be applied to the payment thereof.

(h) Bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the development corporation. The bonds shall contain a recital that they are issued pursuant to this chapter which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

(i) The development corporation may issue bonds for the purpose of refunding any bonds then outstanding and issued under this chapter whether or not such outstanding bonds have matured or are then subject to redemption. The development corporation may issue bonds for the combined purposes of (1) financing or refinancing the cost of a project, improvement, or expansion thereof, and (2) refunding bonds which shall theretofore have been issued under this chapter and shall then be outstanding, whether or not such outstanding bonds have matured or are then subject to redemption. Nothing in this subsection shall require or be deemed to require the development corporation to elect to redeem or prepay bonds being refunded, or to redeem or prepay bonds being refunded which were issued, in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any proceedings authorizing the issuance thereof, or, in the event the development corporation elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the development corporation with respect to the bonds, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable."

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 to be paid into the Aloha Tower Fund created by Section 206J-17, Hawaii Revised Statutes. The sum appropriated by this Act shall be expended by the Aloha Tower Development Corporation for the purposes of

the Aloha Tower Fund and any balance remaining as of June 30, 1985 shall lapse into the state general fund.

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. This Act shall take effect on July 1, 1982.

(Approved June 14, 1982.)

Note

1. Prior to amendment, the word "its" appeared here instead of "the".