

**Developer  
Request for  
Proposals**

**No. DEV-RFP-18-001**

**KEAWE STREET  
APARTMENTS  
AT THE VILLAGES OF LEIALI'I  
AFFORDABLE FAMILY  
RENTAL HOUSING PROJECT  
LAHAINA, MAUI, HAWAII**

**RFP Issued: 8/29/18**

**Questions Due: 10/10/18**

**Proposals Due: 10/31/18, 2:00 p.m.**

## NOTICE TO INTERESTED PARTIES

Request for Proposals (RFP) No. DEV-RFP-18-001

### KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALI'I AFFORDABLE FAMILY RENTAL HOUSING PROJECT

The HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION (HHFDC) is requesting proposals from qualified persons or firms who meet the qualifications described herein to enter into a real estate development agreement for the planning, design, financing, construction, ownership and operation of an affordable family rental housing project on a State-owned parcel located at the Villages of Leialii in Lahaina, Maui, Hawaii, identified as Tax Map Key (2) 4-5-021:003 (portion of).


Copies of the RFP shall be made available as follows, beginning **August 29, 2018**:

1. **Electronic copy on the HHFDC website.** A copy of the RFP documents can be reviewed and downloaded online at no cost. Go to <http://hawaii.gov/dbedt/hhfdc/>. Locate and click on the RFP link to download the documents. **Any Offeror who downloads the solicitation documents online is advised to register by e-mail or fax to the RFP Contact.** If Offeror does not register with the RFP Contact, Offeror will not be sent notification of any changes or addenda to the RFP. Such changes or addenda, however, will be posted on the HHFDC website.
2. **Hard copy picked up at the HHFDC Office.** Notify the RFP Contact to schedule a pick up during business hours (Monday through Friday from 7:45 a.m. to 4:30 p.m., except State holidays). A fee of \$100 per copy will be assessed for administrative and printing costs. The HHFDC Office is located at 677 Queen Street, Suite 300, Honolulu, Hawaii.
3. **Hard copy by U.S. Postal Service first class mail, Fedex, or equivalent.** Notify the RFP Contact to arrange mailing of the solicitation documents. Must have carrier account number or documents will be mailed via USPS First Class Mail. A fee of \$500 per copy will be assessed for administrative and printing costs. The fee shall be in the form of a cashier's check or certified check made payable to the "Hawaii Housing Finance and Development Corporation".

A **Pre-Proposal Conference** will be held on **September 19, 2018** at 10:00 a.m. in the HHFDC Board Room, 677 Queen Street, Suite 300, Honolulu, Hawaii.

Statements made by HHFDC representatives at the Pre-Proposal Conferences, Site Inspection, or otherwise during the solicitation process shall not be binding on HHFDC unless confirmed by written addendum. Direct all questions regarding the RFP, in writing, to the RFP Contact, Stan Fujimoto, Project Manager, HHFDC, Email: stanley.s.fujimoto@hawaii.gov, Fax: (808) 587-0600. The deadline for questions is **October 10, 2018**.

**Proposals must be received and time-stamped no later than 2:00 PM HST on October 31, 2018 by HHFDC at its office located at 677 Queen Street, Suite 300, Honolulu, Hawaii 96813. A non-refundable application fee of \$500 must accompany the proposal.**

  
Craig K. Hirai, Executive Director  
Hawaii Housing Finance and Development Corporation

Honolulu Star-Advertiser: August 29, September 5 and 12, 2018

Maui News: August 29, September 5 and 12, 2018

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# 1. EXECUTIVE SUMMARY

<b>Opportunity</b>	1. The Hawaii Housing Finance and Development Corporation (HHFDC) is seeking proposals from qualified persons or firms who meet the qualifications described herein to enter into a real estate development agreement for the design, financing, construction and operation of an affordable family rental housing project on State-owned land that will help to address the State's affordable rental housing needs.
<b>Proposed Project</b>	2. The Project involves the development of vacant State-owned property into affordable rental housing, parking and ancillary amenities.
<b>Site</b>	3. The State-owned property is the southwest portion of 435.918 acres of land at the Villages of Leialii, in Lahaina, Maui, Hawaii, identified as Tax Map Key (2) 4-5-021:003 (portion of). The property is in the Wahikuli ahupuaa, West Maui, bordered by the Wahikuli, Village 1A and Upper Kapunakea Houselots subdivisions and the Lahaina Civic Center to the west, Kahoma Stream and Kelawea subdivision to the south, State and various privately-owned land to the east, and the future expansion of Kaanapali Resort (Kaanapali 2020) to the north.
<b>Existing Use and Zoning</b>	4. The property is currently vacant but was used in the past for sugar cane cultivation, and is zoned Agriculture.
<b>Selection Process</b>	5. Following this Request for Proposals, a pre-proposal conference and submission of proposals, qualified development teams will be evaluated by a selection committee in <u>November–December 2018</u> , after which the committee will recommend a development team for exclusive negotiations and approval by the HHFDC Board of Directors in <u>January 2019</u> .
<b>Reference Materials</b>	<p>6. The Villages of Leialii Affordable Housing Final Environmental Impact Statement (October 2012)(Leialii Final EIS), which includes the Project site was prepared in accordance with Chapter 343, Hawaii Revised Statutes (HRS). The Governor accepted the Leialii Final EIS by letter dated December 7, 2012 and the notice of acceptance was published in the Environmental Notice on December 23, 2012. The Leialii Final EIS included all appropriate studies including Community Outreach; Botanical Survey; Survey of Avian and Terrestrial Mammalian Resources; Phase 1 Environmental Site Assessment; Archaeological Survey and Cultural Impact Assessment; Offsite Road System Costs; Drainage Report; Water System Assessment; Sewer Master Plan; Solid Waste Management Plan; Socio-Economic Impact Assessment; Traffic Impact Assessment Report; Blackburn's Sphinx Moth Survey; Supplemental Cultural Impact Assessment; and Comments on the Draft EIS.</p> <p>Proposers should be aware that there are non-residential limitations for exemptions under Chapter 201H, HRS, as provided under Section 201H-44, HRS, and General Excise Tax (GET) exemptions under HAR Section 15-306-2. In addition, there are restrictions on the rental of affordable units under</p>

	<p>subchapter 6 of Chapter 15-307, Hawaii Administrative Rules (HAR). Finally, this Project must comply with the accessibility guidelines and standards under Section 103-50, HRS; minimum prevailing wages under Chapter 104, HRS; and the requirements relating to employment of State of Hawaii Residents under Chapter 103B, HRS.</p>
<p><b>Non-Mandatory Pre-Proposal Conference</b></p>	<p>7. <b>10:00 a.m. on September 19, 2018</b> in the Boardroom at HHFDC's office located at:</p> <p style="padding-left: 40px;">677 Queen Street, Suite 300 Honolulu, Hawaii 96813</p> <p>Interested parties are invited to attend; however attendance is not mandatory.</p>
<p><b>Notice of Intent to Submit an Offer</b></p>	<p>8. No later than <b>2:00 p.m. on October 10, 2018</b>. Completed <b>Notice of Intent to Offer</b> form (<b>Attachment 1</b>) must be submitted with Corporate Resolution.</p>
<p><b>Deadline for Written RFP Questions</b></p>	<p>9. Accepted beginning on <b>August 29</b> through <b>October 10, 2018 at 2:00 p.m.</b> Questions should be emailed to the RFP Contact, Stan Fujimoto, at stanley.s.fujimoto@hawaii.gov. Answers will be emailed to all registered Offerors.</p>
<p><b>Proposals Due</b></p>	<p>10. No later than <b>2:00 p.m. on Wednesday, October 31, 2018</b>. A non-refundable application fee of \$500 must accompany the proposal.</p>
<p><b>RFP Response Format</b></p>	<p>11. Submit one (1) original marked "ORIGINAL", six (6) copies marked "COPY" (seven total), and one (1) electronic copy on compact disc, including the pro forma sheet in Microsoft Excel format to:</p> <p style="padding-left: 40px;">Craig K. Hirai Executive Director Request for Proposals No. DEV-RFP-18-001 Hawai'i Housing Finance and Development Corporation 677 Queen Street, Suite 300 Honolulu, Hawai'i 96813</p>
<p><b>Priority Offer List Determination</b></p>	<p>12. <b>Date to be determined.</b></p>
<p><b>Discussion with Priority Listed Offerors</b></p>	<p>13. <b>Date to be determined.</b></p>
<p><b>Best and Final Offer Due</b></p>	<p>14. <b>Date to be determined.</b></p>
<p><b>Estimated Selection of Successful Offeror</b></p>	<p>15. <b>January 2019 (subject to change)</b></p>

A **Pre-Proposal Conference** will take place at the date, time and place noted above. Attendance is recommended but not mandatory. Interested Offerors may submit written inquiries to the RFP Contact to be answered at the Pre-Proposal Conference by the date specified. These inquiries, and new oral questions as time permits, will be answered at the Pre-Proposal Conference. Spontaneous answers to oral questions may be provided by HHFDC; however, Offerors are informed that responses to the oral questions will not be binding. If an Offeror wishes to receive a formal answer to oral questions raised at the Pre-Proposal Conference, the Offeror shall submit such questions to the RFP Contact by the deadline for written questions. All official responses will be provided in writing via addendum to this RFP. A walk through of the Property will not be held.

**Written Questions** concerning this RFP after the Pre-Proposal Conference must be submitted to HHFDC as indicated and up until the date specified above. Questions shall be directed to the RFP Contact.

Interested Offerors shall submit a mandatory **"Notice of Intent to Offer"** letter (**Attachment 1**) together with a corporate resolution or "authorization to sign" no later than the date specified above addressed to the RFP Contact. The Intent to Offer will form the official list of interested Offerors, and the recipient list of any communication and/or addenda relating to this RFP.

**The terms and requirements of this RFP cannot be changed** prior to the date for receipt of proposals except by duly issued and written addendum from HHFDC which will be sent to registered interested Offerors and posted on the HHFDC website. Offerors on the official list of Interested Offerors will be notified of the addenda that are posted. Offerors will be responsible for obtaining any issued addenda from the HHFDC website.

**One (1) original and six (6) copies along with one (1) electronic CD or USB drive of Offeror's proposal are due** by the date and time specified above. Timely receipt of offers shall be evidenced by the date and time registered by the HHFDC time stamp clock. Offers received after the deadline shall be returned unopened. Proposals shall be placed in a sealed envelope(s) or container(s). A completed "Offer Form" (Attachment 2) with original wet signature shall be enclosed in the proposal package.

**An Offeror may modify or withdraw their proposal** prior to the established proposal due date in writing to the RFP Contact. The modification or withdrawal may be mailed, faxed, hand-delivered or e-mailed. Modifications or withdrawals must be accompanied by a duly executed certificate of resolution authorizing the signer to modify or withdraw the proposal.

**This RFP may be cancelled** and any or all proposals may be rejected in whole or in part, without liability, when it is determined to be in the best interest of the State. The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

This RFP is issued by the HHFDC. The Executive Director's name and contact information are as follows:

Craig K. Hirai, Executive Director  
Hawaii Housing Finance and Development Corporation

677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
Ph: (808) 587-0641  
Email: [craig.k.hirai@hawaii.gov](mailto:craig.k.hirai@hawaii.gov)

All communications regarding this RFP during this solicitation by the Offeror, consultants and agents shall be directed to the RFP Contact as follows:

Stan S. Fujimoto, Project Manager  
Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
Ph: (808) 587-0541 Email: [stanley.s.fujimoto@hawaii.gov](mailto:stanley.s.fujimoto@hawaii.gov)



## 2. INTRODUCTION AND PURPOSE

### TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

The following terms and acronyms have the same meaning throughout this RFP, unless specifically stated otherwise or clearly inappropriate in the context.

Addendum	= A written document issued by HHFDC during the solicitation period clarifying or establishing changes to the RFP, which will be considered and made a part of the RFP.
Award	= Written notification of the approval of the Offeror's proposal.
BAFO	= Best and Final Offer
Contract	= All types of agreements (e.g., the Development Agreement, Lease Agreement, and/or any other agreement) executed as a result of this RFP.
Contractor	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, awarded a contract as a result of this solicitation.
Development	= Successful completion of the project that is the subject of this RFP.
Development Agreement:	= The contract executed by HHFDC and the Successful Offeror as a result of this RFP.
HAR	= Hawaii Administrative Rules
HHFDC	= Hawaii Housing Finance & Development Corporation
HRS	= Hawaii Revised Statutes
Offeror	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation. The terms "Proposer", "Offeror", "Respondent", and Developer" are used interchangeably in this RFP.
Priority List	= Those Responsible Offerors who: (1) have submitted a proposal in response to this RFP which the HHFDC evaluation committee determines to be acceptable or potentially acceptable and among the most qualified to perform and complete the Project. If more than three acceptable or potentially acceptable proposals have been submitted, the Priority List will be limited through evaluation and ranking to no more than three (3) acceptable or

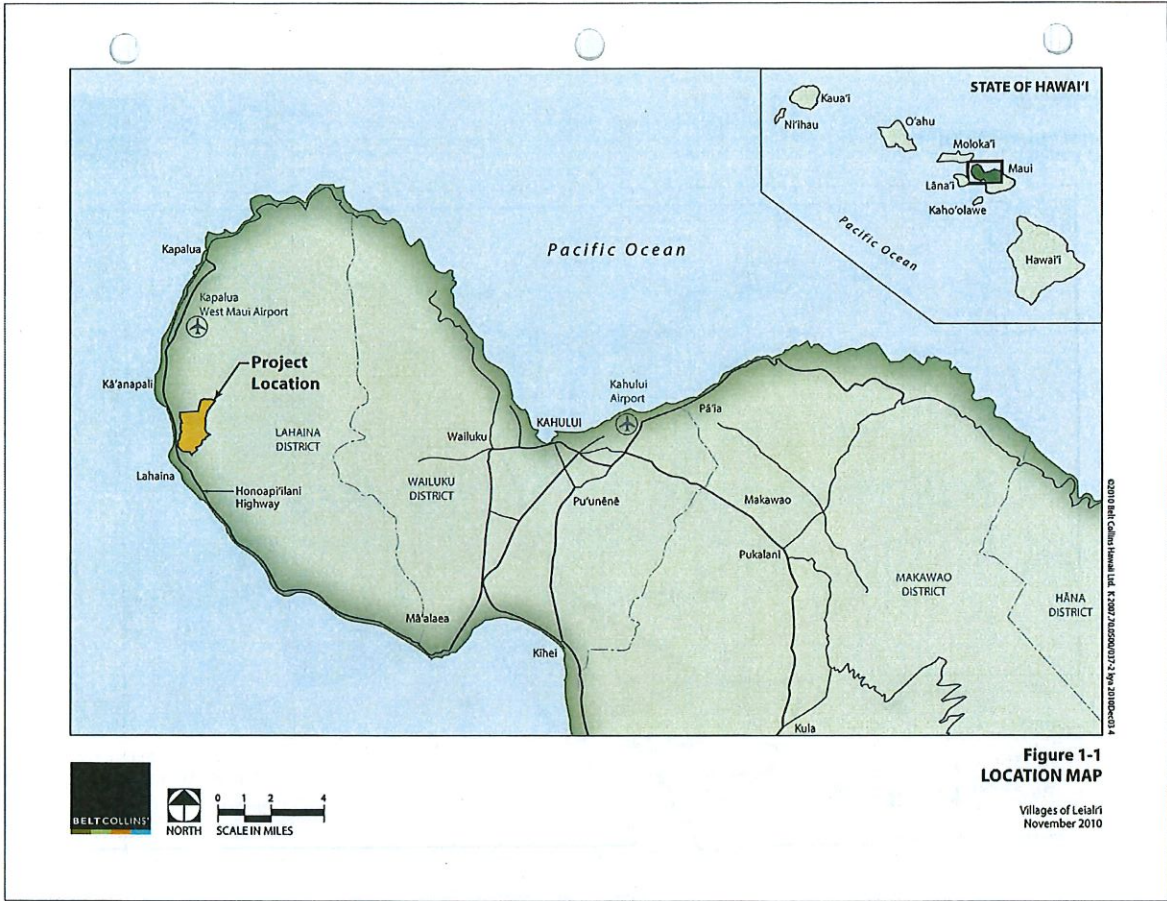
	potentially acceptable Offerors who submitted the highest-ranked proposals.
Responsible Offeror	= An Offeror who has submitted a complete proposal and the HHFDC evaluation committee determines has: (1) the capability in all respects to design and construct the Project and (2) the integrity and reliability that will ensure good faith performance.
RFP	= Request for Proposals, referring to all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
RFP Contact	= The person designated by HHFDC to receive various communications in writing relating to the RFP.
State	= State of Hawaii, including all departments, attached agencies, and political subdivisions
Successful Offeror	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, awarded a contract by the HHFDC as a result of this solicitation

This Request for Proposals ("RFP") is being issued by the Hawai'i Housing Finance and Development Corporation ("HHFDC") for the purpose of soliciting proposals from interested developers or development teams who meet the qualifications described herein and to enter into a development agreement for the leasehold development of a low rise multi-family affordable family rental housing project of approximately 200 units affordable to households at or below 60% of the U.S. Department of Housing and Urban Development area median income, with a public access road providing access from the Keawe Street Extension to the project site and lands beyond the project site, which will be dedicated to the County of Maui, on lands owned by HHFDC at the Villages of Leialii, in Lahaina, Maui, Hawaii, TMK: (2) 4-5-021:003 (portion of)(hereinafter referred to as "Project"). See **Figures 1 and 2**, Villages of Leialii Location Map. The Project shall be named, Keawe Street Apartments at the Villages of Leialii, unless otherwise approved by HHFDC. The purpose of the RFP is to give qualified developers an opportunity to demonstrate a workable planning and business framework for their approach to developing the Project consistent with the vision and other principles described in this RFP.

In this RFP, each proposer will be required to use State of Hawaii licensed architects and engineers to prepare the design and will be expected to adhere to all State of Hawaii requirements and requirements of other authorities having jurisdiction.

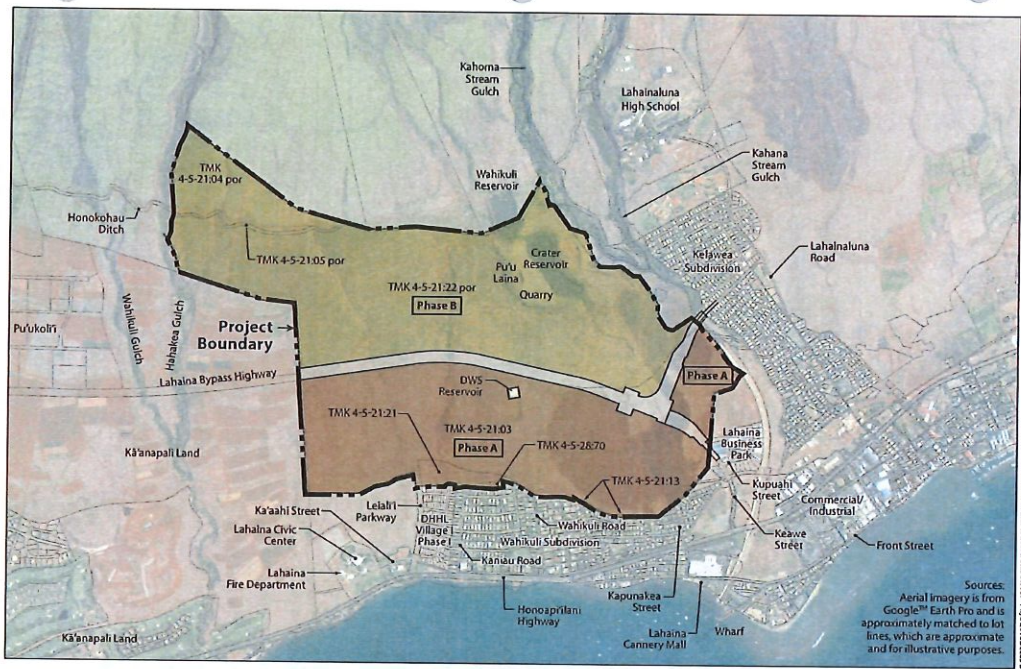
After reviewing proposals and potentially interviewing parties who submit responsive proposals, HHFDC anticipates selecting a preferred development entity to design, finance, build, own and operate the Project ("Offeror" or "Developer") and entering into negotiations for a Development Agreement ("DA") and long-term lease of the Property. The process and criteria that will be used to make the selection are described later in the RFP. In reaching agreement on the terms of the DA, the Successful Offeror and HHFDC will negotiate, in good faith, terms for the parties to move forward together and will clarify respective roles and responsibilities including pre-development activities and budgets, as well as key terms and conditions of the ground lease and related development, financial and operational considerations.

**Figure 1: Project Location Map**



Source: Leialii Final EIS (2012)

**Figure 2: Lahaina Regional Map**

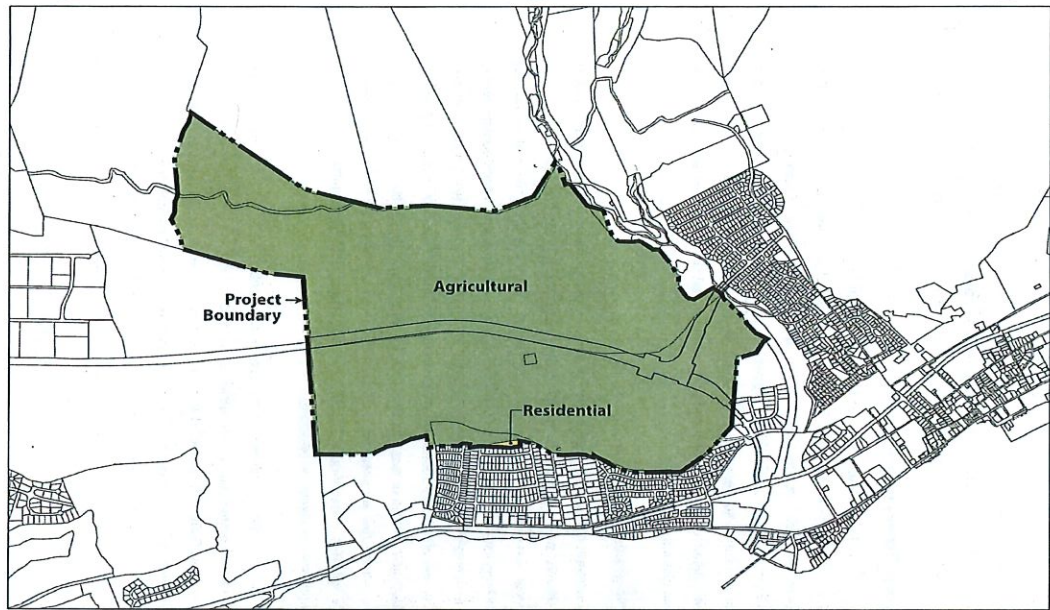


**Figure 1-3 LAHAINA REGIONAL MAP**

Villages of Leialī'i  
 November 2010

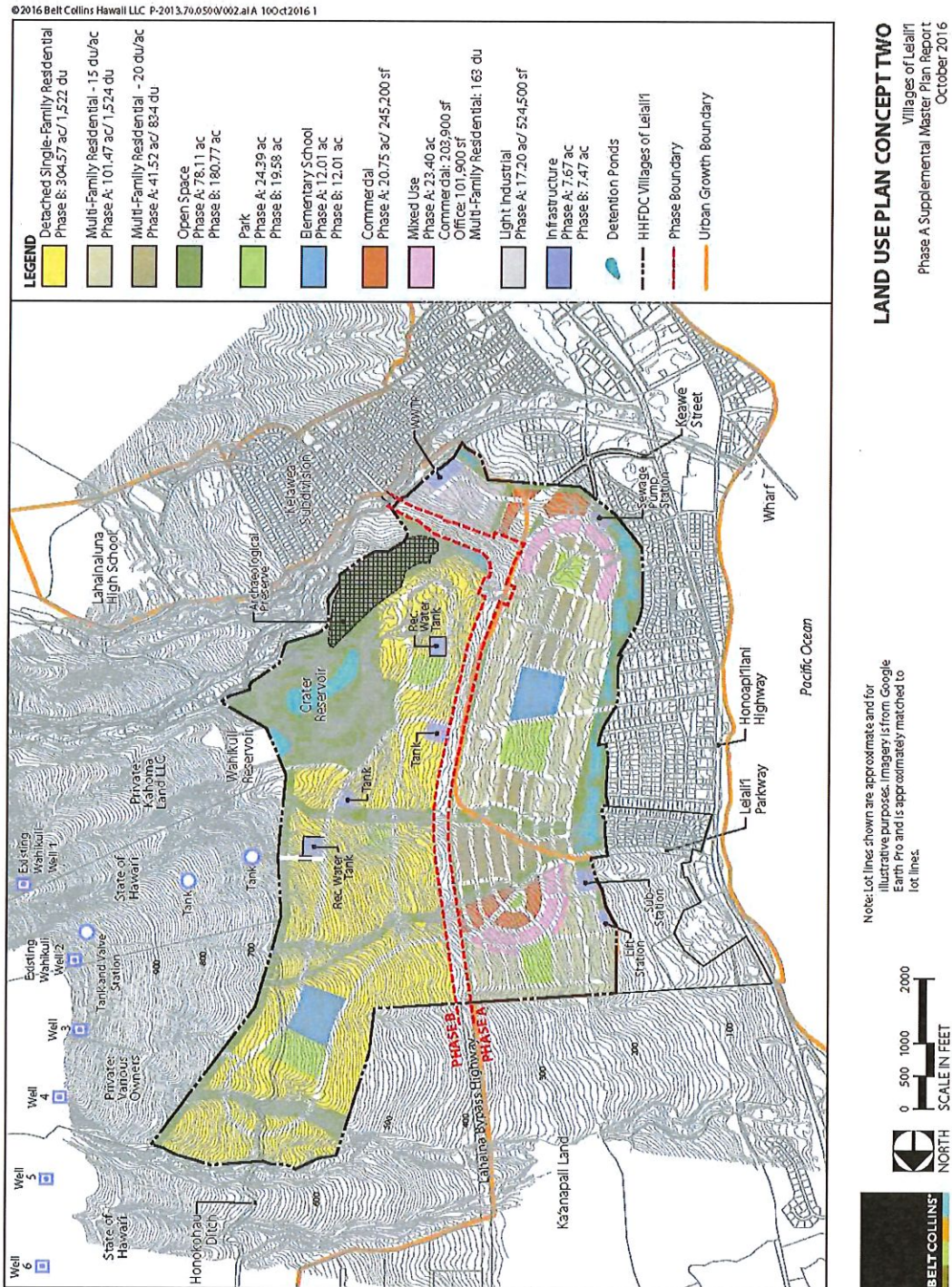
Source: Leialī'i Final EIS

**Figure 3: County Zoning**



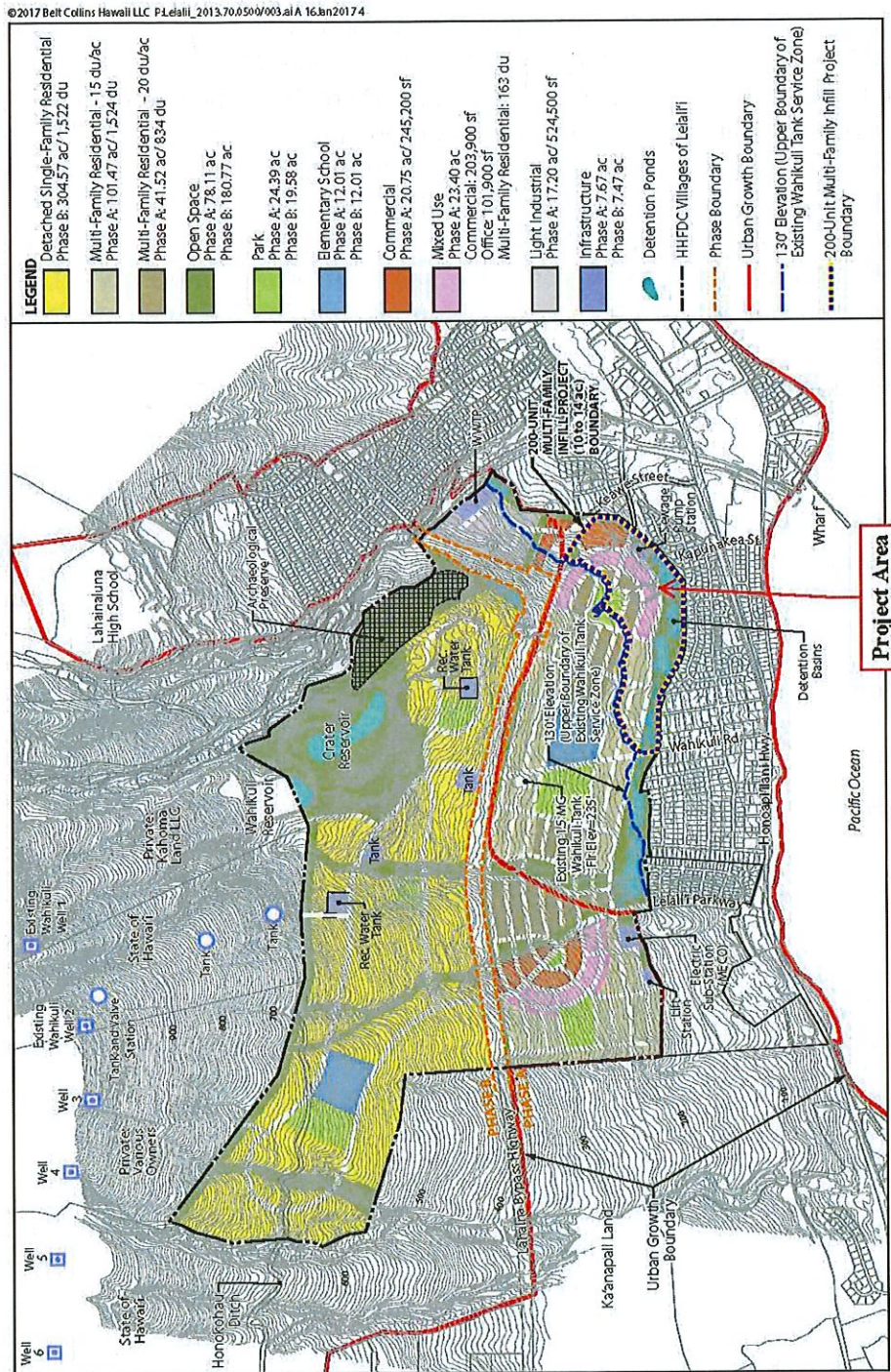
Source: Leialīʻi Final EIS

**Figure 4: Urban Growth Boundary**



Source: HHFDC plans

Figure 5: 130' Elevation



**LAND USE PLAN CONCEPT TWO**  
 Villages of Leialii  
 200-Unit Multi-Family Infill Project  
 January 2017

Source: HHFDC plans

### 3. PROJECT OVERVIEW

The Hawaii Housing Finance and Development Corporation owns 435.918 acres of land at Tax Map Key (2) 4-5-021: 003 at the Villages of Leiali'i in Lahaina, Maui, Hawaii. This RFP proposes the leasehold development of a low rise multi-family affordable family rental housing project of approximately 200 units at the southwest portion of the property, below the 130' elevation. See **Figure 5**. The property is in the Wahikuli ahupua'a, West Maui, bordered by the Wahikuli, Village 1A and Upper Kapunakea Houselots subdivisions and the Lahaina Civic Center to the west, Kahoma Stream and Kelawea subdivision to the south, State and various privately-owned land to the east, and the future expansion of Kaanapali Resort (Kaanapali 2020) to the north. See Project Location Map, **Figure 2**. The site information is summarized in the following table.

#### Project Information Summary

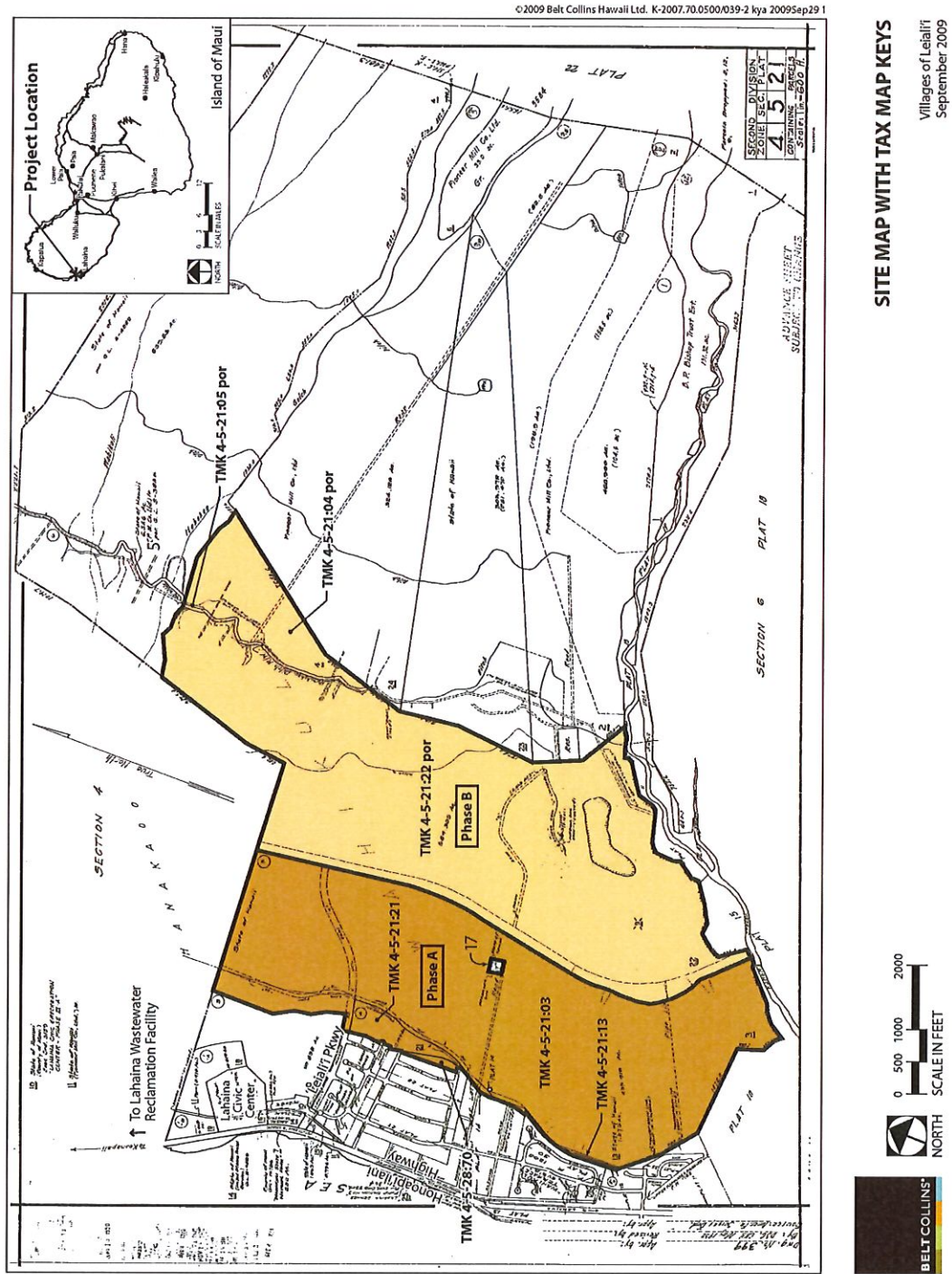
<b>Name:</b>	Keawe Street Apartments At The Villages of Leiali'i
<b>Project Location:</b>	North of Keawe Street Extension, Wahikuli, Lahaina, Island and County of Maui, Hawai'i (See Figures 1 and 2)
<b>Tax Map Key:</b>	(2) 4-5-021: 003 (portion of)(See Figure 6)
<b>Land Area:</b>	TBD
<b>Landowner:</b>	Hawaii Housing Finance and Development Corporation ("HHFDC"), formerly known as Housing Finance and Development Corporation ("HFDC"), and Housing and Community Development Corporation of Hawaii ("HCDCH")
<b>State Land Use Classification:</b>	Urban
<b>Ceded Land:</b>	The Property IS ceded land.
<b>County Zoning:</b>	Agriculture (See Figure 3)
<b>Development Plan:</b>	Villages of Leiali'i (1,120 acres, 4,813 housing units) acknowledged as a master planned affordable housing development in the 1996 West Maui Community Plan
<b>Maui Island Plan:</b>	Within the Urban Growth Boundary (See Figure 4)
<b>Special District:</b>	None



**Special Management Area:** Not within SMA  
**Existing Use:** Vacant Land  
**Infrastructure:** Undeveloped.

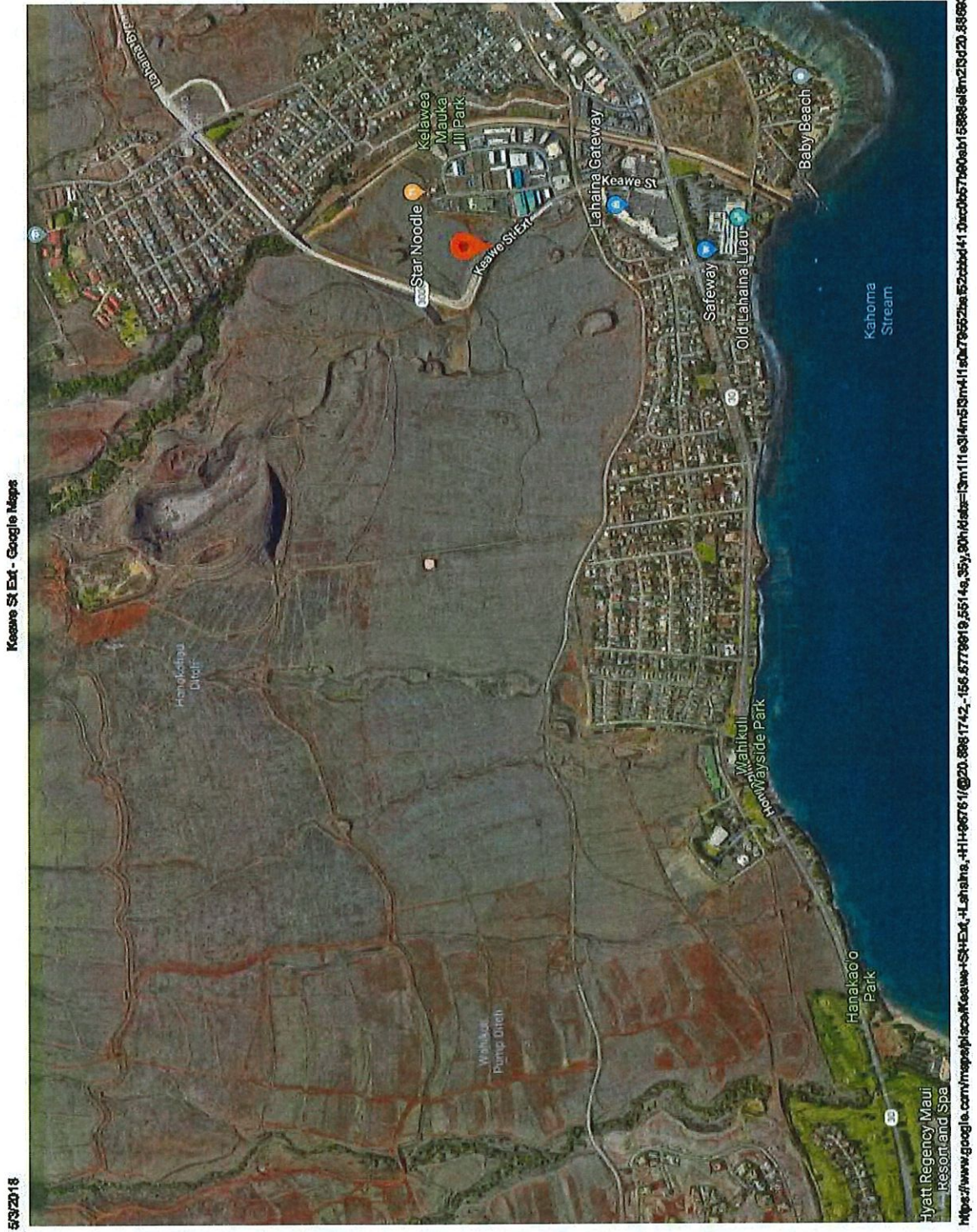
The Project site will be subdivided from a parcel of land, Tax Map Key No. (2) 4-5-021: 003 (por.), below the 130' elevation at the southwest portion of the Villages of Leialii project located in the Wahikuli ahupua'a, West Maui, near the town of Lahaina. The property is bordered by the Wahikuli, Village 1A and Upper Kapunakea Houselots subdivisions and the Lahaina Civic Center to the west, the Kahoma Stream and Kelawea subdivision to the south, State and various privately-owned land to the east, and the future expansion of Kaanapali Resort (Kaanapali 2020) to the north. The Project site is vacant but has been used in the past for sugar cultivation. The Project site is makai (west) of the proposed Lahaina Bypass Highway.

Figure 6: Existing TMK Map



Source: HHFDC plans

Fig. 7: Satellite Photo of Project Area



Source: Google Maps.

The Project involves obtaining final subdivision approval of the Project site and a public access road, planning, designing and constructing the access road and all offsite and onsite improvements necessary for a low rise multi-family affordable family rental housing project of approximately 200 units at 60% or below the U.S. Department of Housing and Urban Development area median income with parking and ancillary open spaces and amenities, and dedicating the public access road to the County of Maui.

The Villages of Leialii Affordable Housing Final Environmental Impact Statement (October 2012) was published in The Environmental Notice by the State Office of Environmental Quality Control on October 23, 2012 (**Appendix 1a**)("Leialii Final EIS"). The Governor of the State of Hawaii approved the Leialii Final EIS on December 7, 2012 (**Appendix 1b**) and notice of the Governor's approval was published in The Environmental Notice on December 23, 2012. The Leialii Final EIS includes three conceptual plans for the Villages of Leialii of varying densities.

After subdivision by the Successful Offeror, HHFDC intends to transfer the subdivided Project site in leasehold at \$1/year for 75 years to the Successful Offeror in an "as is" condition with no implied warranties or representations, and HHFDC shall incur no expenditures and liability in connection with the condition of the property or the development and operation of the Project.

## 4. RFP DOCUMENTS

The documents included in this RFP (collectively, the "RFP Documents") consist of Sections 1 through 10 herein, the exhibits and attachments contained or identified in such sections, any and all addendums to the RFP Documents, and the following appendices, attached with this RFP:

<b>Appendices</b>	<b>Document</b>
1a	Villages of Leiali'i Affordable Housing Final Environmental Impact Statement (October 2012)(Leiali'i Final EIS)
1b	Governor's approval of the Leiali'i Final EIS (December 7, 2012)
2	Site Assessment Report, Villages of Leiali'i, 200-Unit Multi-Family Infill Project, Belt Collins Hawaii LLC (January 18, 2017)
3	Letter of Guaranty to the County of Maui Department of Public Works dated June 16, 1994
4	Subdivision Agreement dated July 19, 1994 with the County of Maui recorded at the State of Hawaii Bureau of Conveyances as Document No. 94-130947
5	Subdivision Requirements Agreement with the Board of Water Supply of the County of Maui dated July 27, 1994 recorded at the State of Hawaii Bureau of Conveyances as Document No. 96-003302
6	January 8, 2009 HHFDC For Action
7	Land Patent Grant No. S-15,792
8	Land Use Commission Decision and Order for the Villages of Leiali'i dated May 18, 1990
9	Villages of Leiali'i Declaration of Covenants, Conditions & Restrictions
10	County of Maui Department of Environmental Management letter to HHFDC dated January 27, 2017
11	Villages of Leiali'i Topographic Map, Warren S. Unemori – Engineering, Inc. dated December 12, 1995
12	Soils Investigation, Lahaina Planned Community Project, Village I, Phase IA and Offsite Sewer Line, Lahaina, Maui, Hawaii, Ernest K. Hirata & Associates, Inc., May 6, 1991
13	Preliminary Title Report for Tax Map Key No. (2) 4-5-021: 003, dated August 25, 2006
14	HHFDC For Action dated June 14, 2018
15	Governor's Executive Order No. 3212 for the Wahikuli Reservoir
16	Governor's Executive Order No. 2189 for a County Reservoir
17	Munekiyo Hiraga Scope of Work
18	Office of Hawaiian Affairs letter dated July 26, 2018
19	Act 150 Session Laws of Hawaii 2018

## 5. HHFDC OBJECTIVES

This section details HHFDC's vision and business objectives for development of the proposed Project at the Villages of Leialii.

### A. HHFDC Vision for the Site

Recognizing the need for affordable housing in Lahaina, HHFDC is seeking to develop the southwest portion of the Villages of Leialii, north of the Keawe Street Extension of the Bypass Highway below the 130' elevation at Tax Map Key No. (2) 4-5-021: 003 (portion of), in accordance with a Site Assessment Report, Villages of Leialii, 200-Unit Multi-Family Infill Project, Belt Collins Hawaii LLC (January 18, 2017) ("Site Assessment Report"), attached as **Appendix 2**. As envisioned, the proposed Project would result in the construction of approximately 200 affordable family rental housing units in low-rise multi-family buildings, adjacent parking for residents, employees and visitors, and outdoor landscaping and recreation areas. The Offeror has the flexibility to propose an alternative to the conceptual design provided herein, provided the following project objectives are addressed:

- 1. Affordable Rental Housing Project.** The Project shall include approximately 200 affordable multi-family rental housing units, parking and incidental uses, such as management office, lobby area, multi-purpose room, in low-rise buildings. The rental units shall be targeted to households with incomes of no more than 60 percent of the U.S. Department of Housing and Urban Development area median income (AMI),<sup>1</sup> with unit types that may range from studios to three-bedroom units. The units shall remain affordable for the term of the ground lease.
- 2. Public Access Road.** The Project shall include one or more public collector road accesses from the Keawe Street Extension which will provide access to the Project as well as other lands of the Villages of Leialii located north of the Project as shown in the Leialii Final EIS. The public roadway providing access to the Project shall be created by the Successful Offeror, built to County standards and dedicated to the County of Maui. The rights-of-way over the Project site of any future roadways providing access to the Project and the Villages of Leialii as shown in the Leialii Final EIS shall be set aside and designated by easement until dedicated to the County of Maui. Dedication of land to the County, including roadways, shall be subject to Legislative approval requirements pursuant to Section 171-64.7, HRS.

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<sup>1</sup> For County of Maui, 60% AMI in 2018 is: 1 person - \$39,660; 2 persons - \$45,360; 3 persons - \$51,000; 4 persons - \$56,640. Maximum monthly rents, including an allowance for utilities, are: studio - \$991; 1-bedroom unit - \$1,062; 2-bedroom unit - \$1,275; 3-bedroom unit - \$1,473; 4-bedroom unit - \$1,644.

The Maui utility allowance schedule is available at:

[https://www.mauicounty.gov/DocumentCenter/View/103466/Utility-Allowance-LOW-RISE-SCHEDULES?bidId=.](https://www.mauicounty.gov/DocumentCenter/View/103466/Utility-Allowance-LOW-RISE-SCHEDULES?bidId=)

3. **Parking.** There shall be parking with sufficient parking stalls for residents, employees and visitors. There should be space within the Project for secure, on-site bicycle parking and vehicle charging stations.
4. **Outdoor Project Amenities.** The Project shall be landscaped and include such features as an outdoor recreation area available to residents of the Project, shade trees, seating areas, well-lit walkways, and bicycle parking.
5. **Other Project Objectives.** Additional objectives include:
  - a. **Sustainable Development Standards** – To the extent possible, the Project shall comply with Chapter 196-9, HRS, regarding energy efficiency and environmental standards for state facilities.
  - b. **Hawaiian Plants** – The Project shall utilize Hawaiian plants (see [OHA Native Plant Poster](#)) for its landscaping pursuant to Section 103D-408, HRS (see [section 103D-408, HRS](#)).
  - c. **Placemaking Elements** – The Project may include placemaking elements such as community gathering spaces, public art, activated streets, or other elements that will facilitate dynamic and unique public spaces, such as those that integrate Hawaii’s island environment with fine art, artisanship and native vegetation. Outdoor spaces are considered to be important to the overall site design.
  - d. **Complete Streets** –The Project should embrace the “Complete Streets” design approach, creating conditions that encourage walkability and facilitate transportation choices by providing safe and convenient pedestrian and bicycle access to community amenities and public transportation services.
  - e. **Advanced Sustainable Design** – Project proposals shall consider sustainable and energy efficient practices such as solar power, advanced metering, “daylighting” (i.e., light from windows penetrating interior spaces), natural ventilation, water conservation initiatives, passive solar heating, efficient building systems and products, vehicle charging stations, and rooftop gardening, among others.

## **B. Project Delivery and Disposition Objectives**

Subject to the need to establish a feasible business plan and Project, HHFDC’s known expectations and objectives are described below and will be incorporated into the DA. Note that **Section 7 part F** of the RFP requests that respondents provide feedback, exceptions or alternative proposals considered absolutely necessary, with respect to the objectives and terms described below:

1. **Project Development.** HHFDC is seeking a Developer to develop, finance, own and manage the Project under the terms of the contract award, DA and ground lease. The development structure would involve a private non-profit or for-profit development entity or developer-led team where the developer will be the prime contractor with full responsibility to complete the Project as described herein. The developer-led team would design the Project, obtain financing for the Project and ancillary parking (using typical

low-income rental housing financing sources), and construct, own and operate the Project under a ground lease from HHFDC.

The Successful Offeror will obtain subdivision approval of the Project site and HHFDC will enter into a ground lease of the Project site with the Successful Offeror at \$1/year for 75-years at the time that the Successful Offeror is ready to close with all of its construction financing for the Project. A form of the ground lease is attached as **Exhibit B**.

The Offeror has the flexibility to propose an alternative to the development structure provided herein, provided it meets the objectives of the Project whereby the Project can be developed pursuant to a single Development Agreement and HHFDC will maintain oversight of the operations through terms defined in the Development Agreement. HHFDC reserves the right to reject all alternatives in its sole discretion.

The key elements of the project delivery structure described above are as follows:

- a. Development Agreement.** A Development Agreement or Contract between HHFDC and the Successful Offeror to develop the Project; a form of the Development Agreement is attached as **Exhibit A**.
  - b. Subdivision Approval.** Successful Offeror to obtain County approval of the subdivision of the Project site, public road access to the Project site and easements approved by HHFDC necessary to develop the Project;
  - c. Financing of Affordable Housing.** Financing of the Project and appurtenant parking by the Successful Offeror utilizing existing financing resources, such as tax-exempt revenue bonds, Low-Income Housing Tax Credits, and Rental Housing Revolving Fund loans;
  - d. Completion of Project.** Delivery of a completed design-build Project in accordance with the terms and conditions of the Contract;
- 2. Project Completion.** The Project shall be completed by **December 31, 2021**, unless otherwise extended at the sole discretion of HHFDC.
  - 3. Affordable Housing Exemptions Under Chapter 201H, HRS**

Section 201H-38, HRS, provides a process whereby an affordable housing project may be granted exemptions from statutes, ordinances and rules of any governmental agency relating to planning, zoning and construction standards, provided the project primarily includes affordable housing units, meets minimum health and safety requirements, and does not contravene safety standards, rates and fees by various public utilities or the DWS.

The Successful Offeror will be responsible to apply for any needed exemptions specific to the approved Project and obtain approval by the Maui County Council pursuant to Section 201H-38, HRS. HHFDC makes no representation that any exemption will be approved.



Furthermore, approval of the award under this RFP does not obligate the HHFDC to support any exemptions proposed by the Successful Offeror.

4. **DURF and RHRF Appropriation.** On June 14, 2018, the HHFDC Board of Directors approved \$5.0 million from the Dwelling Unit Revolving Fund (DURF) funds appropriated by the 2018 Legislature<sup>2</sup> for pre-development and interim financing for development of the Project, subject to DURF program requirements (**Appendix 14**).<sup>3</sup> The 2018 Legislature also appropriated out of the Rental Housing Revolving Fund (RHRF) the sum of \$30 million or so much thereof as may be necessary for gap equity financing to expedite and complete the construction of the Project by 2021 (**Appendix 19**),<sup>4</sup> subject to encumbrance of the RHRF funds with the execution of the Development Agreement by **May 31, 2019**, compliance with the RHRF program requirements, approval by the HHFDC Board and release of funds by the Governor. Should design and construction costs exceed the allotted DURF and RHRF funds, the Successful Offeror shall be responsible for seeking outside financing for such excess costs.
5. **Development Agreement.** The Successful Offeror and HHFDC shall negotiate and execute a Development Agreement (**Exhibit A**) by **May 31, 2019**, subject to extensions as may be approved by HHFDC, in its sole discretion. HHFDC reserves the right to require the execution of a Memorandum of Understanding by **May 31, 2019** to encumber the \$30 million in RHRF funds should it become apparent that execution of the Development Agreement will not occur by **May 31, 2019**.
6. **Deadlines.** The DA will include deadlines for commencement of construction and completion of the Project.

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<sup>2</sup> H.B. No. 2748, H.D. 2, S.D. 2, C.D. 1, Twenty-Ninth Legislature, 2018; Act 39 Session Laws of Hawaii 2018; Act 039 Session Laws of Hawaii 2018.

<sup>3</sup> The Governor approved the release of DURF funds for the \$5 million DURF loan on July 30, 2018.

<sup>4</sup> S.B. No. 2293, S.D. 2, H.D. 3, C.D. 1, Twenty-Ninth Legislature, 2018; Act 150 Session Laws of Hawaii 2018.

## 6. PROJECT REQUIREMENTS

The submission of a proposal shall constitute representation by the Offeror of compliance with all requirements of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

1. **Offeror Requirements.** Except as otherwise provided in this RFP, the Offeror ultimately selected and awarded the Contract ("Successful Offeror") shall be responsible for all onsite and offsite costs and expenses associated with the applicable design, development, financing, management and operation of the Project, including but not limited to the following:

- a. **Project Site.** The Project site includes a portion of the following parcel in Phase A of the Villages of Leiali'i, north of the Keawe Street Extension, mauka of Honoapiilani Highway and makai (west) of the proposed Lahaina ByPass Highway in Lahaina, Maui, Hawaii, below the 130' elevation in accordance with the Site Assessment Report (**Appendix 2**), as approved by HHFDC—

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The Successful Offeror shall obtain County approval of the subdivision of the Project site, public road access to the Project site prior to dedication to the County, and easements approved by HHFDC necessary to develop the Project. In creating the Project site, the Successful Offeror shall not create remnant parcels for ownership by HHFDC.

The Project site is subject to encumbrances and agreements, including but not limited to the following (HHFDC does not represent or warrant that this is a complete list):

- (1) HHFDC's predecessor agency, the Housing Finance and Development Corporation ("HFDC") executed a Letter of Guaranty to the County of Maui Department of Public Works dated June 16, 1994 (**Appendix 3**) covering 583.202 acres of the Villages of Leiali'i below the proposed Bypass Highway, including the Project site, stipulating that all subdivision improvements required by the County for road access and utility purposes shall be fully completed by HHFDC in accordance with the County's subdivision standards prior to the start of onsite development of the large-lots or subdivided parcels within the subject project and areas with the exception of Lots 2 and 3 (Villages 1A and 1B).
- (2) Subdivision Agreement dated July 19, 1994 recorded at the State of Hawaii Bureau of Conveyances as Document No. 94-130947, which indicates that

HHFDC shall have each large lot conform to the County general plan, community plans, land use ordinances, the provisions of the Maui County Code and other laws relating to the use of the land then in effect upon the actual development of the large lots, or future subdivision into lots which do not fall within the large lot definition (**Appendix 4**).

- (3) Modification of Subdivision Requirements Agreement with the Board of Water Supply of the County of Maui dated July 27, 1994 recorded at the State of Hawaii Bureau of Conveyances as Document No. 96-003302, which indicates that improvements for the Villages of Leialii (except Villages 1A and 1B) must be completed prior to BWS' approval of any building permit application, any water service application, and any re-subdivision of the Villages of Leialii (**Appendix 5**).
- (4) On January 8, 2009, HHFDC's Board of Directors approved a For Action for a 15' easement to the Department of Water Supply (DWS) for a new 8" waterline between Wahikuli and Fleming Roads (**Appendix 6**). The new waterline was installed, however, DWS has not followed-up with the creation of the easement they requested. HHFDC reserves the right to issue this easement to DWS if, and when requested by DWS.

The following information is included with this RFP:

- (1) Villages of Leialii Topographic Map, Warren S. Unemori – Engineering, Inc., December 12, 1995 (**Appendix 11**).
- (2) Soils Investigation, Lahaina Planned Community Project, Village I, Phase IA and Offsite Sewer Line, Ernest K. Hirata & Associates, Inc., May 6, 1991 (**Appendix 12**).
- (3) Preliminary Title Report for the Project Site, dated August 25, 2006 (**Appendix 13**).
- (4) Executive Order No. 3212 for the Wahikuli Reservoir Site and easements for access and pipeline purposes (**Appendix 15**).
- (5) Executive Order No. 2189 for a Wahikuli County Tank Site and Easements A and B (**Appendix 16**).

HHFDC has procured a community planning consultant, Munekiyo Hiraga, to identify development requirements for the Project, draft conceptual site layouts for a preliminary site plan to identify subdivision boundaries, process plans for subdivision approval, conduct an ALTA topographic survey and geotechnical soils investigation of the suggested project area, as authorized by HHFDC, for use by the Successful Offeror as such work may be completed. See **Appendix 17** for Munekiyo Hiraga's Scope of Work with HHFDC. If all or a portion of the work is completed, HHFDC intends to provide this information to the Successful Offeror

for its information. HHFDC does not warrant that this contract will be consummated, or that any or all of this work will be authorized, completed, or will satisfy the requirements of the Successful Offeror.

To avoid the appearance of any unfair advantage, Munekiyo Hiraga and its subconsultants shall not be eligible to serve as members or consultants on, or communicate with, or assist any development team in the preparation or submittal of a proposal in response to this RFP. HHFDC reserves the right to disqualify any proposal in response to this RFP that was prepared in violation of this restriction. After approval of the Successful Offeror by HHFDC, Munekiyo Hiraga or its subconsultants may serve as members or consultants on the development team of the Successful Offeror.

- b. "As Is, Where Is".** The Successful Offeror shall accept the Property in an "AS IS, WHERE IS" condition, without any express or implied warranties or representations of any kind whatsoever. HHFDC shall incur no liability or expenditures in connection with the transfer of the Project site to the Successful Offeror or the development or operation of the Project.
- c. RFP Conditions.** This RFP shall be subject to the following—

  - (1) Terms and conditions of Land Patent Grant No. S-15,792 (**Appendix 7**);
  - (2) Conveyance of ground lease to the Selected Offeror;
  - (3) Reservation for conveyance of a 15-foot wide easement to the DWS for an 8" waterline along Easements A and B of E.O. No. 2189 as approved by the HHFDC Board of Directors on January 8, 2009 (**Appendix 6**);
  - (4) Requirements of the Leiali'i Final EIS (October 2012) and Governor's approval letter dated December 7, 2012 (**Appendices 1 and 2**);
  - (5) Requirements of the Land Use Commission Decision and Order for the Villages of Leiali'i dated May 18, 1990 (**Appendix 8**); and
  - (6) Final subdivision approval of a public collector access road and the Project site from the balance of the property.
- d. Development Pursuant to Development Agreement.** Development of the Project site and the Project shall be governed by a Development Agreement between HHFDC and the Successful Offeror, substantially in the form included with this RFP as **Exhibit A**.
- e. Conveyance of Land by Ground Lease.** Unless otherwise permitted by this RFP, conveyance of the Project site to the Successful Offeror for development, ownership and operation of the Project shall be by ground lease for 75 years at

\$1.00/year lease rent fixed, plus additional lease rent, substantially in the form attached as **Exhibit B**, which shall include the following:

- (1) Twenty per cent (20%) of all funds Successful Offeror derives from the premises, other than rent from affordable housing as approved by HHFDC, shall be paid quarterly to HHFDC, by the end of the calendar month following the quarter for which such amount is based. The amount shall be submitted in arrears with an itemized list of all funds the Successful Offeror derives from the premises, other than rent from leases of affordable housing, for the quarter upon which such amount is based.
- (2) The Project shall include a public collector access road for dedication to the County and an affordable family rental housing project of approximately 200 low-rise multi-family units affordable to households at or below 60% of the U.S. Department of Housing and Urban Development area median income, at maximum rents as posted on the HHFDC website, and all offsite and onsite improvements necessary for the development and operation of the Project that is not dedicated to the County of Maui. The duration of affordability shall be the term of the ground lease.
- (3) At any time during the term of the ground lease, HHFDC shall have the right to terminate the ground lease if the premises or any part of the premises, appurtenances or improvements are used, or intended to be used, in any manner or in part, to commit or to facilitate the commission of a crime.
- (4) HHFDC's fee simple interest shall not be used as security for any financing.
- (5) Dedication of land to the County of Maui in fee simple shall comply with Section 171-64.7, HRS, after a community meeting, appraisal, and two-thirds vote approval by both houses of the legislature.

**f. Conditions for Transfer of Title to Successful Offeror.** Issuance of a ground lease from HHFDC to the Successful Offeror shall be subject to the following:

- (1) Final subdivision approval of the applicable portion of the site to be conveyed shall have been completed.
- (2) HHFDC reserves the right to convey title in phases and to withhold conveyance of the title until after the approval of the last discretionary approval for the Project, e.g., rezoning, zoning exemptions, and/or Special Management Area.
- (3) HHFDC reserves the right to withhold conveyance of title until after all the offsite improvements necessary for the development of the parcel for which title is requested have been completed, or are likely to be completed within two years of such conveyance of title.

- (4) HHFDC reserves the right to convey the Project site together with a non-exclusive access easement over the public collector access road.
- (5) Title to the Project site shall be subject to the Villages of Leialii Declaration of Covenants, Conditions & Restrictions dated December 6, 2004 and recorded at the State of Hawaii Bureau of Conveyances as Document No. 2004-246863 ("VOL DCCR's") as it may be amended and recorded by HHFDC, or any other similar or associated governance documents approved by HHFDC. A copy of the VOL DCCR's is included as a part of this RFP as **Appendix 9**. If not already recorded on the property at the time of the transfer of the ground lease to the Successful Offeror, the Successful Offeror agrees to execute a consent to annex the Project site to the VOL DCCR's for recordation at the State of Hawaii Bureau of Conveyances. The master association under the VOL DCCR's has not been activated. HHFDC reserves the unilateral right to activate the master association, or amend, supplement, or repeal the VOL DCCR's in whole or in part, at any time, at its sole discretion.
- (6) The Successful Offeror shall be responsible for preparation of the legal descriptions of the parcel(s) to be conveyed to the Successful Offeror, as well as the balance of the property not conveyed to the Successful Offeror.
- (7) HHFDC reserves the right to convey title simultaneously with the closing of the Successful Offeror's construction financing for the development of the Project.
- (8) The Successful Offeror shall be responsible for all closing costs.

**g. Ownership and Operation of Common Areas; Dedication to the County.**

The Successful Offeror shall be responsible for the creation, improvement to standards of the County and the Leialii Final EIS, and dedication to the County of a public collector road accessing the Project site and the balance of the Villages of Leialii from the Keawe Street Extension conceptually in the location and as described in the Leialii Final EIS. A secondary collector access road over the Project site for a future access from the Bypass Highway shall be designated by easement. The Successful Offeror shall be responsible for the ownership, operation and maintenance of any roads, streets, parks, open space, and other common areas not dedicated to the County of Maui. Dedication of common areas to the County of Maui shall be subject to Legislative approval requirements pursuant to Section 171-64.7, HRS.

- h. Entitlement Approvals.** The Successful Offeror shall be responsible for all entitlement approvals necessary for development of the Project, including working with the County of Maui or HHFDC to obtain approvals of any land use planning, zoning, subdivision or building code exemptions required for this Project. The Successful Offeror shall also be responsible for any further consolidation or subdivision and the preparation of any legal descriptions of the Project site as may be required by HHFDC.

- i. **Rental Housing Project.** The Successful Offeror shall, on its own behalf or in conjunction with a non-profit or other entity acceptable to HHFDC, own, operate and manage the rental housing Project.
- j. **Hazardous Waste Cleanup.** The Successful Offeror shall be responsible for cleaning up and remediating the Project site of any hazardous or toxic material or substance as such terms have been, or may be, defined by any rule or law. See Belt Collins, Phase I Environmental Site Assessment of Phases A and B of the Villages of Leiali'i project (September 2008) that is included as Appendix D to the Leiali'i Final EIS. The Successful Offeror shall not cause or permit the escape, disposal or release of any hazardous materials, nor allow the storage or use of such materials in any manner not permitted by law or by the highest standards prevailing in the industry for the storage and use of such materials.
- k. **Leiali'i Revised Master Plan.** The Leiali'i Revised Master Plan as described in the Leiali'i Final EIS is included as a part of this RFP as a reference.

Development of the Project shall accommodate any off-site drainage and/or utilities from adjacent properties in accordance with County requirements. The Successful Offeror shall be responsible for the development, operation and maintenance of any off-site improvements required for development of the Project.

The Successful Offeror shall consent to easements in the future for utility purposes, including but not limited to, water, sewer, electrical, storm drainage, and other similar uses, through, over, and across the project site; provided that the location and dimensions of the easements shall be agreed to by HHFDC and the Successful Offeror, and shall be aligned so as to minimize any disruption or negative impact to the Project site; provided further that HHFDC shall bear all reasonable administrative costs related to the conveyance of title of said easements, including surveying, recordation, and attorneys' fees. Thereafter, the locations and dimensions of the easements may be changed from time to time by mutual agreement of HHFDC and the Successful Offeror, provided, however, that relocation costs shall be borne by the party proposing relocation.

- l. **Drainage Facilities.** The Successful Offeror and the Project site shall be responsible for developing and maintaining a collection and retention basin system within the Project site for accepting and accommodating drainage flows from the drainage basin mauka (east) of the Villages of Leiali'i project, as required by the County of Maui.

The Successful Offeror shall also be responsible for construction and maintenance of any temporary or permanent detention basin and/or other drainage collection and control measures onsite or offsite required for development or protection of the Project site.

No additional storm water runoff from the Project site will be permitted onto the State highway rights-of-way, including either the planned Lahaina Bypass Highway or Honoapiilani Highway.

The Successful Offeror shall be responsible for mass grading of the Project site to prevent sheet flow or other drainage from flowing from the Project site onto existing communities located makai (west) of the Project site.

The Successful Offeror shall be responsible for the maintenance of any drainage improvements that are located outside of the road rights of ways that are not dedicated to the County.

The Project shall comply with the County's Rules for the Design of Storm Drainage Facilities.

- m. Elementary Schools.** The Successful Offeror shall be responsible for compliance with any school impact fee requirements pursuant to Chapter 302A-1601, et seq, HRS. The impact fee law requires the identification of impact districts where the DOE will be required to build or enlarge schools to meet increasing enrollment demand.
- n. Lahaina Bypass Highway.** The Successful Offeror shall reserve sufficient right-of-way of at least 150 feet for construction of six lanes of the Lahaina Bypass Highway, as well as for cut and fill slopes and turning lanes at intersections.

The Successful Offeror shall include sufficient buffers in the Project's land use plan to mitigate any potential noise impacts to residential uses adjacent to the Bypass Highway.

Signalized intersections on roads which access the Bypass Highway should be at least 1,200 feet from build-out intersections with the Bypass Highway. Unsignalized intersections also require sufficient spacing. The Successful Offeror shall coordinate plans for intersections with the Bypass Highway with both the DOT and the County of Maui Department of Public Works.

- o. Onsite Roadway System.** The Successful Offeror shall be responsible for development and maintenance of a public collector road to access the Project site and the balance of the Property from the Keawe Street Extension, and roads within the Project site, until dedicated to the County of Maui. The Successful Offeror shall be responsible for dedicating the public collector access road to the County of Maui.

The Successful Offeror is advised that due to maintenance, sight distance and ADA compliance concerns, the County will not accept any street trees or medians within roadways which will be dedicated to the County.



Landscape plantings along and within road rights of way shall be provided with root barriers.

The Successful Offeror is encouraged to use energy saving Light Emitting Device ("LED") street lights. LED streetlights produce "white" light, saves as much as 70% of the energy that conventional lights use and projects no maintenance required for at least ten (10) years. (DPW comment to EISPN 4/8/10).

The Successful Offeror shall include an appropriate number and locations of bus pull-ins and shelters into the design of the Project.

- p. Electrical System.** The Successful Offeror shall be responsible for any on- or off-site electrical requirements for the Project.
- q. Telephone and Cable TV Systems.** The Successful Offeror shall be responsible for any on- or off-site telephone and cable TV requirements for the Project.
- r. Compliance with all Laws.** The Project shall comply with the rules, regulations, ordinances, codes and standards of the County of Maui, and any Federal and State requirements. If there is a conflict between requirements, the more restrictive requirement shall control.

(1) The Villages of Leiali'i includes individual isolated archaeological sites identified for further data recovery and/or preservation pending the results of the data recovery work, burial testing and, if applicable, treatment in accordance with a burial treatment plan approved by the State Historic Preservation Division of DLNR ("SHPD") and the Maui Island burial Council, as described in the Archaeological Survey and Cultural Impact Assessment, Villages of Leiali'i (Phases A and B) Master Planning Project, by Paul H. Rosendahl, Ph.D., Inc. (May 2008)("Leialii Archaeological Survey May 2008"), which is included as Appendix E to the Leiali'i Final EIS.

Sites of cultural concern have already been identified as archaeological sites, to be covered by data recovery and, as appropriate, preservation with interpretive development. Since elders in the region recognize at least one of the sites as the Pali family cemetery, consultation with descendants would be appropriate before any plans for development in the immediate vicinity are finalized. The site is within the Archeological Preserve in all three Concept Plans.

The Successful Offeror shall observe and comply with the requirements and rules of SHPD and the Leiali'i Archaeological Survey May 2008 for the preservation of burial and significant archaeological sites at the Project site.

Continued access through the Project area may also be important for families visiting sites. The Successful Offeror shall maintain such access and work with representatives of the Pali and Haia 'Ohana, as well as archaeologists, to

develop preservation strategies sensitive to their concerns, especially with regard to SIHP 2485 and 2486.

In the event that any sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered during construction, the Successful Offeror and its contractors shall stop work and contact the State Historic Preservation Division and comply with its requirements.

The Successful Offeror shall also comply with the recommendations of the Supplemental Cultural Impact Assessment, Cultural Surveys Hawaii, Inc. (CSH)(January 2012) that is included as Appendix N to the Leialii Final EIS.

See Office of Hawaiian Affairs letter dated July 26, 2018 (**Appendix 18**) regarding Native Hawaiian burials and other archaeological and cultural sites found within and accessed through the Project area.

- (2) The Successful Offeror shall observe and comply with the requirements and rules of the Division of Forestry and Wildlife of DLNR and, if applicable, the U.S. Fish and Wildlife Service for the mitigation and preservation of threatened and endangered plant species at the Project site.

In the event that endangered or threatened plants are discovered on the Project site, the Successful Offeror and its contractor shall stop work that would affect such plants and consult with DLNR's Division of Forestry and Wildlife, and (as applicable) the U.S. Fish and Wildlife Service on mitigative actions.

- (3) The Successful Offeror shall shield streetlights and exterior lights from migrating seabirds and mitigate the seabird's attraction to exterior lights and is referred to DLNR's website for suggested exterior lighting prescriptions for mitigation: <http://www.state.hi.us/dlnr/dofaw/fbrp/shearwaterlights.htm>.
- (4) The Successful Offeror shall eliminate single-pass, water-cooled systems per Maui County Code Subsection 14.21.20. Although prohibited by code, single-pass water cooling is still manufactured into some models of air conditioners, freezers, and commercial refrigerators. Such models should be avoided.
- (5) The Successful Offeror shall utilize low-flow water fixtures and devices in faucets, showerheads, water closets, and hose bibs per Maui County Code Subsection 16.20A.680.
- (6) The Successful Offeror shall comply with the County's Soil Erosion and Sedimentation Control requirements per Maui County Code Chapter 20.08.

- s. Community and Governmental Input.** The Successful Offeror shall be responsible for project presentations to the Selection Committee, the HHFDC

Board of Directors and the applicable community organizations, as requested by HHFDC. The Successful Offeror shall conduct a public informational briefing on its proposed Project in the community within three calendar months of HHFDC Board approval of the Successful Offeror and the Project.

- t. **LUC Conditions.** The Successful Offeror shall be bound by the conditions imposed by the Land Use Commission (LUC) Decision and Order (D&O) Docket No. A89-652 for the Villages of Leialii (**Appendix 8**). The Successful Offeror shall be responsible for obtaining LUC approval of revisions to the D&O in the event that the Project does not comply with the LUC D&O.
- u. **Water System.** The Successful Offeror shall be responsible for obtaining potable water for the Project, including all offsite water improvements, and the payment of any County Department of Water Supply's ("DWS") water facilities charges required for development of the Project.

The Successful Offeror shall be responsible for any revisions to the water master plan described in the Leialii Final EIS to incorporate the subject Project, as required by DWS.

The Successful Offeror shall use alternative water sources where possible.

The Successful Offeror shall coordinate with the County of Maui Planning Department and/or DWS to incorporate this Project into the County's Water Use and Development Plan.

The Successful Offeror shall coordinate with the State DLNR Engineering Division to incorporate this Project into the State Water Projects Plan.

The Successful Offeror shall promote the efficient use of Hawaii's water resources through conservation measures and appropriate resource management. The Successful Offeror shall utilize water efficient fixtures and implement water efficient practices throughout the Project to reduce the increased demand on the area's freshwater resources, and is referred to a listing of fixtures certified by the U.S. Environmental Protection Agency as having high water efficiency at <http://www.epa.gov/watersense/pp/index.htm>.

- v. **Wastewater Facilities.** In accordance with the County of Maui Department of Environmental Management letter to HHFDC dated January 27, 2017 (**Appendix 10**), the Project shall not be permitted a permanent connection to the County's sewer system. The Successful Offeror shall be responsible for the design, approval, construction and operation of an onsite package wastewater treatment plant for the Project, as approved by the State of Hawaii Department of Health, and the proper utilization or disposal of its solid waste and effluent.

- w. **Rights-of-Entries and Easements.** The Successful Offeror shall be responsible for obtaining all rights-of-entries, rights-of-ways, and easements necessary for the development and operation of this Project.
- x. **Maintenance of Project Site.** The Successful Offeror shall be responsible for any maintenance of the Project site as well as the area from the Project boundary to the adjacent public street curb.

Maintenance shall include the monthly trimming of weeds and vegetation for rodent and fire hazard control, for a distance of 50 feet outward from the Project boundary and around the Project site to the extent such property to be maintained is vacant, adjacent to and owned by HHFDC or the State of Hawaii, until such vacant property is developed.

The Successful Offeror shall be responsible for the operation and maintenance of all offsite systems or improvements required for the development, operation or for the benefit of the Project, not dedicated to the County of Maui, including but not limited to, the public collector access road, offsite drainage systems, temporary or permanent retention basins, potable and non-potable water reservoirs and transmission lines, and the package sewage treatment plant and sewer lines.

- y. **Dust Control.** The Successful Offeror shall be responsible for compliance with HAR Chapter 11-60.1, Air Pollution Control, Section 11-60.133 on Fugitive Dust, implementation of adequate dust control measures during all phases of the Project, and for the impacts of emissions of fugitive dust from construction activities at or near the Project site upon other homes at the Villages of Leialii and the surrounding community. It is suggested that a dust control management plan be developed which identifies and addresses activities that have significant potential for fugitive dust to be generated and Successful Offeror's contractors should provide adequate means of controlling dust from all areas under construction during the various phases of construction activities. These measures include, but are not limited to:

- (1) Planning the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing material transfer points and on-site vehicular traffic routes, and locating potential dust equipment in areas of the least impact, e.g., development phasing from the source of the trade winds, northeast, could minimize the trade winds from blowing fugitive dust onto newly constructed homes.
- (2) Providing an adequate water source at the site prior to startup of construction activities.
- (3) Landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase.

- (4) Controlling of dust from shoulders, project entrances, and access roads.
- (5) Providing adequate dust control measures during weekends, after hours, and prior to daily startup of construction activities.

**z. Compliance with EIS Requirements.** The Successful Offeror shall be responsible for compliance with the Leialii Final EIS and Chapter 343, HRS. The Successful Offeror shall be responsible for complying with mitigation measures imposed on or required of HHFDC or the Successful Offeror in the Leialii Final EIS. The Successful Offeror shall provide supplemental information to update the information in the Leialii Final EIS to the extent required by HHFDC, the Office of Environmental Quality Control or any permitting agency. Compliance requirements based upon comments received during the process leading up to the Leialii Final EIS include, but are not limited to the following:

- (1) All wastewater plans must conform to applicable provisions of the Department of Health's Hawaii Administrative Rules (HAR), Chapter 11-62, Wastewater Systems. The Department of Health Wastewater Branch reserves the right to review the detailed wastewater plans for conformance with applicable rules (DOH WWBr. comments, 1/4/11).
- (2) Bus pull-ins and shelters should be factored into the overall design of the Project (Maui DOT comments, 1/7/11).
- (3) Note County of Maui Department of Fire and Public Safety requirements of Uniform Fire Codes' (UFC) Articles 9-10 "GENERAL PROVISIONS FOR SAFETY", (9) "Fire Department Access and Water Supply" and (10) "Fire Protection Systems and Equipment", and County of Maui's amendments to the UFC at: <http://www.municode.com/Library/clientCodePage.aspx?clientID=6780> (Maui DFPS comments, 1/12/11).
- (4) The Project shall comply with all laws concerning ceded lands. The Project shall be leasehold or otherwise comply with Act 176 Session Laws of Hawaii 2009 (Vicki McCarty email, 2/7/11).
- (5) The Successful Offeror shall comply with all laws, including the Department of Health's rules affecting potential impacts to State waters as follows (DOH CIWBr. comments, 2/10/11):
  - (a) Antidegradation policy HAR Section 11-54-1.1; designated uses, HAR Section 11-54-3; and water quality criteria, HAR Sections 11-54-4 through 11-54-8;
  - (b) National Pollution Discharge Elimination System (NPDES) permit under a Notice of Intent (NOI) for certain wastewater discharges into Class A or Class 2 State waters, or an individual permit for discharges not listed for an NOI or wastewater discharging into Class 1 or Class AA waters;
  - (c) Compliance with State's Water Quality Standards pursuant to HAR Chapter 11-54;

- (d) Reference Department of Health Clean Water Branch website at:  
<http://www.hawaii.gov/health/environmental/water/cleanwater/index.html>.
- (6) The Successful Offeror is referred to the comments of the Commission on Water Resource Management (CWRM) dated January 18, 2011, as follows:
  - (a) The Successful Offeror shall coordinate with the County Planning Department and/or Department of Water Supply to incorporate this Project into the County's Water Use and Development Plan;
  - (b) The Successful Offeror shall coordinate with the State of Hawaii Department of Agriculture to incorporate the reclassification of agricultural zoned land and the redistribution of agricultural resources into the State's Agricultural Water Use and Development Plan;
  - (c) The Successful Offeror shall install water efficient fixtures and implement water efficient practices throughout the Project to reduce the increased demand on the area's freshwater resources;
  - (d) The Successful Offeror shall use best management practices for storm water management to minimize the impact of the Project to the existing area's hydrology while maintaining on-site infiltration and preventing polluted runoff from storm events; and
  - (e) The Successful Offeror shall use alternative water sources, wherever practicable.
- (7) The Successful Offeror shall be responsible for securing and maintaining the Project area with appropriate perimeter fences, notices and signage against trespassing onto adjacent lands, including the mauka lands, ditches and reservoirs, by the general public and children who may be attracted to any hazards and nuisances thereon (DLNR DAR comments, 1/11/11).
- (8) The Successful Offeror shall comply with County of Maui Department of Public Works requirements (Maui DPW comments, 1/26/11):
  - (a) The Successful Offeror shall submit drainage plans affecting Kahoma Stream to the Corps of Engineers for review and comment, and copies of comments from the Corps shall be provided to the Department of Public Works;
  - (b) The Successful Offeror shall be responsible for all required improvements as required by Hawaii Revised Statutes, Maui County Code and rules and regulations;
  - (c) As applicable, construction plans shall be designed in conformance with Hawaii Standard Specifications for Road and Bridge Construction dated 2005 and Standard Details for Public Works Construction, 1984, as amended;
  - (d) As applicable, worksite traffic-control plans/devices shall conform to Manual on Uniform Traffic Control Devices for Streets and Highways, 2003;
  - (e) The Successful Offeror shall consider the use of Light Emitting Diode street lights if approved by the Outdoor Lighting Committee; and

- (f) The Successful Offeror shall consider putting street trees within front yards rather than in narrow street corridors, where permitted by Maui subdivision standards.
- (9) The Successful Offeror shall comply with the requirements of the Department of Transportation (DOT) described in their comments dated March 7, 2012:
- (a) Prior to submittal of a request for LUC reclassification or rezoning, a revised Traffic Impact Assessment Report (TIAR) based on the selected conceptual plan to be developed shall be submitted to the DOT for review and approval;
  - (b) For the TIAR, an internal capture rate of up to 15% is acceptable to DOT with justification;
  - (c) Connections to the Bypass Highway shall not cause operational issues or queuing on the Bypass Highway;
  - (d) The Successful Offeror shall complete all required traffic improvements to support each phase of the Project as recommended by the revised TIAR prior to completion of the first residential unit or building in such phase;
  - (e) The revised TIAR shall be updated every 3-years for DOT review and approval, until completion of the Project;
  - (f) The Successful Offeror shall provide its fair share contribution toward the cost of regional transportation improvements along the state highways—Honoapiilani Highway and the Bypass Highway;
  - (g) The proposed peak drainage flow rates shall not be greater than existing peak drainage flow rate at each culvert crossing of state highways.
- (10) The Successful Offeror shall comply with the recommendations of the Supplemental Cultural Impact Assessment, Cultural Surveys Hawaii, Inc. (CSH)(January 2012) included as Appendix N to the Leiali'i Final EIS:
- (a) CSH recommends that mauka to makai access routes through the project footprint, to Haia and Pali family cemeteries and into Kahoma and Kanaha Valleys are either maintained or redeveloped. In an effort to develop access solutions that are culturally appropriate and respectful to the families utilizing them, CSH further recommends that these families are included in the planning and design of these access routes.
  - (b) CSH recommends consideration be given to reserving segments of the lands of the proposed project for utilization as community gardens and/or traditional Hawaiian dryland crops. This would be consistent with traditional Hawaiian cultural practices as well as historic agricultural pursuits in the area.

The Successful Offeror shall be responsible for obtaining any updates and supplements to the EIS or a new Environmental Assessment or a new EIS required by the Project and any off-site improvements for the Project.

- aa. Design Services.** The Successful Offeror's development team (defined in Sec. 7-B(1)(b)) shall provide complete architecture and engineering services necessary to implement the objectives of this RFP, and shall conduct meetings with the

HHFDC project staff to refine the design plans and costs for the Project, including interior and exterior spaces, through schematic design, design development and construction document phases. The HHFDC shall approve the final plans for the Project.

The Successful Offeror is encouraged to consider the following in the Project design—

- (1) The range of architectural styles which reflects the unique traditional architectural values of the West Maui Community Plan area. The Successful Offeror acknowledges Objective 3 of core theme J, Promote Sustainable Land Use and Growth Management, of Section IV, Goals, Objectives, and Policies, of the Countywide Policy Plan of the Maui County General Plan 2030 to “Design all developments to be in harmony with the environment and to protect each community’s sense of place” and Policy C of Objective 3 to “Protect and enhance the unique architectural and landscape characteristics of each Community Plan Area, small town, and neighborhood.”
  - (2) Review by the Maui County Urban Design Review Board in a publicly noticed meeting to allow for a discussion of Project design in accordance with the Maui County’s General Plan Urban Design Policy to “encourage expansion in the process to require all non-single family development to be reviewed by the Urban Design Review Board” to accomplish the General Plan Urban Design Objective “to see that all developments are well designed and are in harmony with their surroundings.”
- bb. Notice Under the Hawaii Right to Farm Act.** The Successful Offeror shall cause all prospective occupants to be informed of (a) possible odor, noise, and dust pollution resulting from any surrounding farming operation, and (b) the Hawaii Right-to-Farm Act, Chapter 165, HRS, which limits the circumstances under which farming activities may be deemed a nuisance.
- cc. Completion Deadline.** All the affordable units in the Project shall be completed by **December 31, 2021**, unless extended at the sole discretion of HHFDC.
- dd. Inconsistency with other Program Requirements.** The Successful Offeror shall be responsible for ensuring that there are no inconsistencies between this RFP and any proposed programs. If there are any inconsistencies between the requirements of this RFP and other program requirements, the more restrictive requirement shall control.
- ee. RFP Information.** Information provided in this RFP are obtained from available resources and are provided for information and reference purposes only. HHFDC shall not be responsible for the accuracy of the information provided herein, or the absence of any other relevant information not provided hereunder. The Successful Offeror shall be responsible for verifying actual conditions in the field or with applicable government agencies.



- ff. Compliance with Federal, State and County Requirements.** The Project shall comply with the rules, regulations, ordinances, codes and standards of the County of Maui, and any Federal and State requirements.
- gg. Funding Project Costs.** On June 14, 2018, the HHFDC Board of Directors approved \$5.0 million from the DURF funds appropriated by the 2018 Legislature for pre-development and interim financing for development of the Project, subject to program requirements (**Appendix 14**).<sup>5</sup> In accordance with the HHFDC Board approval, the DURF loan shall be repaid by the Project's permanent financing sources, except to the extent allowed to be allocated to offsite infrastructure as approved by HHFDC.

The 2018 Legislature also appropriated out of the RHRF funds, the sum of \$30 million or so much thereof as may be necessary for gap equity financing to expedite and complete the construction of the Project by 2021 (**Appendix 19**). HHFDC will make available the sum of \$30 million from the RHRF funds or so much thereof as may be necessary for development of the Project, subject to encumbrance of the RHRF funds with execution of the Development Agreement by **May 31, 2019**, program requirements, approval by the HHFDC Board of Directors and release of funds by the Governor.

Should design and construction costs exceed the allotted DURF and RHRF funds, the Successful Offeror will be responsible to seek additional financing to fully fund all remaining costs associated with the overall land development of the Property, including infrastructure, land improvement, and other pre-development and land development costs. The Successful Offeror will also be required to fund vertical development costs. Pre-development costs will include costs associated with due diligence, master planning and infrastructure studies (e.g., TIAR updates), negotiations, and obtaining necessary permits and approvals.

- hh. Compliance with SHPD.** The Successful Offeror shall be responsible for compliance with the requirements of the State Historic Preservation Division of the Department of Land and Natural Resources ("SHPD") to mitigate any adverse effect caused by the Project on significant archaeological and cultural resources. SHPD has recommended archaeological monitoring to be conducted due to the sensitive location and the potential of encountering unidentified historic properties during the developmental of the Project. All mitigation measures shall be coordinated with SHPD.
- ii. Minimum Prevailing Wages.** The Successful Offeror shall comply with Chapter 104, HRS, for the payment of minimum prevailing wages to mechanics and laborers employed on the Project for the corresponding work classifications as determined by the Department of Labor and Industrial Relations.

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<sup>5</sup> See note 3.

- jj. Disability and Communications Access Board.** The Project shall be accessible to and usable by persons with disabilities in compliance with Section 103-50, HRS, and the Successful Offeror shall submit written evidence to HHFDC that the Project plans have received final document review by the Disability and Communication Access Board, prior to start of construction. This requirement is in addition to any other applicable requirement for accessibility such as the Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) and the Fair Housing Accessibility Guidelines (24 CFR Chapter 1).
- kk. Market Analysis.** HHFDC may require the Successful Offeror to submit a current comprehensive market analysis substantiating the feasibility of the rental housing component. The specifications and scope of the market study shall be subject to HHFDC's review and approval.
- II. GET Exemptions.** The Project may qualify for General Excise Tax ("GET") exemptions for all work qualified for exemption, as permitted by law. To be eligible for exemptions from GET, non-residential uses, including any commercial space shall be limited to incidental or de minimis uses that are intended to directly benefit the residents of the Project. See Section 15-306-2, HAR. For the purposes of this RFP, use of GET exemptions shall not be considered as a State of Hawaii resource.

**2. Minimum Risk to HHFDC.**

- a. Risk During the RFP Solicitation.** HHFDC assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All such costs shall be borne solely by each Offeror and its team members.
- b. Risk During the Term of Contract.** The Successful Offeror shall assume sole and complete risk and liability for the development of the Project during the term of the Contract period, and shall indemnify, defend and hold harmless HHFDC, the State of Hawaii, and their officers, employees, directors, agents, representatives, officials, successors and assigns from and against any and all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, relating to, arising out of or resulting from: (a) the acts or omissions of the Successful Offeror or its employees, officers, agents, or subcontractors; (b) this RFP, the DA or ground lease; (c) the design, construction, repair, renovation, or defects of the Project or Project site and/or lease, use, occupation or operation of the Project or Project site; and/or (d) the enforcement of the DA or ground lease (whether or not suit is brought therefore). This provision shall survive the expiration or earlier termination of this RFP, the DA or ground lease, notwithstanding any other provision to the contrary. The Successful Offeror shall maintain insurance acceptable to HHFDC in full force and effect throughout the term of the Development Agreement and ground lease.

## 7. SUBMITTAL REQUIREMENTS

Respondents are asked to submit one (1) original proposal and six (6) copies along with one (1) electronic CD or USB drive copy including pro forma sheet in Microsoft Excel format to:

Craig K. Hirai  
Executive Director  
Request for Proposals: No. DEV-RFP-18-001  
Hawai'i Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawai'i 96813

Proposals must be received and time-stamped at HHFDC by **2:00 p.m. Hawaii Time on October 31, 2018**. The proposals should present the information described below and should adhere to the format described below.

**Transmittal Letter.** Provide a one- to two-page transmittal letter that summarizes Offeror's proposal and confirms that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP. The transmittal letter should be in the form of a standard business letter on official business letterhead and signed by an authorized representative of Offeror.

If development partners, consultants and/or subcontractors will be used, append a statement to the transmittal letter from each subcontractor signed by an individual authorized to legally bind the subcontractor and stating, in addition to the paragraph above:

- a. The general scope of work to be performed by the subcontractor; and
- b. The subcontractor's willingness to perform the indicated work in accordance with the RFP.

Note that those Offerors selected as priority-listed offerors may be required to generate more detailed information as requested for the BAFO.

### A. Offer Form

**Offer Form OF-1.** Provide a signed Offer Form OF-1 (see **Attachment 2**) with the complete name and address of Offeror's firm and the name, mailing address, telephone number, and e-mail address of the person the State should contact regarding the Offeror's proposal.

Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and indicate exact legal name in the appropriate spaces on the Offer Form. Failure to do so may delay proper execution of the contract.

The authorized signature on Offer Form OF-1 shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating Offeror's intent to be bound.

The Offeror must submit a non-refundable application fee of \$500 with their proposal. The fee shall be in a form of a cashier's or certified check made payable to "Hawaii Housing Finance and Development Corporation".

## **B. Offeror Qualifications**

### **1. Development Entity**

- a. Offeror Description.** Provide an accurate description of the Offeror including narrative and quantitative metrics such as number of employees, dollar volume per year, and office locations, among other descriptive information.
- b. Development Team.** Identify the development team, including the general contractor, major subcontractors and consultants, to be involved in the planning, financing, design, construction, and management of the Project, including without limitation, planners, all structural and architectural elements, mechanical, electrical and plumbing services, HVAC and sprinkler systems, security, financial partners, legal counsel, and property manager. Indicate whether the architect(s) and engineers on the team possess current Hawaii professional licenses for the services which they intend to provide. The property manager shall be a Hawaii licensed real estate broker.
- c. Team Roles.** Identify the roles and submit resumes for the project manager and key individuals who will be involved in the design, construction, operation and management of the Project.

### **2. Financial Qualifications.** Note that HHFDC will maintain the confidentiality of all financial information provided by Offerors as part of the review process. Offerors may provide proprietary financial information under separate cover.

- a. Summary of Financial Capacity.** Provide a description of Offeror's financial capacity and backing, including general financial capabilities and partnerships. Describe the Offeror's need for and ability to raise equity and additional capital sources. Describe how pre-development costs will be funded.
- b. Detailed Financial Qualifications.** In order to demonstrate access to equity and financing resources to carry out development of the Property, provide the information listed below:
  - (1) Composition of current real estate portfolio.
  - (2) Recent history (last five to seven years) in obtaining financing commitments, detailing type of project, financing source, and amounts committed.
  - (3) Projects in the pipeline, including status, development schedule and financial commitment required of developer, a description of project financing methods, sources, and amounts.
  - (4) Audited (or reviewed by an independent party CPA) financial statements for the past three years. The financial statements must be prepared in

conformance with generally accepted accounting principles and shall include a balance sheet, income statement, statement of cash flows and footnotes. Place in separate, sealed envelope marked "Confidential" if Offeror would like HHFDC to maintain the confidentiality of this portion of the response.

- (5) Specific sources of debt/equity capital that may be used for this Project, (multi-family tax-exempt revenue bonds, Low Income Housing Tax Credits, Rental Housing Revolving Fund, outside lender, parent company, affiliates, etc.).
- (6) Adverse actions taken by any funding sources or financial institutions against the developer or joint venture partner, such as terminating or restricting the use of funds anytime during the past five years, if any.
- (7) Litigation in which developer (and any related affiliated entities) is involved or settled litigation over the last five years, if any.

### 3. Experience

- a. **Offeror's Experience.** Describe the relevant development experience of the Offeror. Provide relevant examples of projects with similar entitlement and development requirements that are in progress, have been successfully completed, or are in the development pipeline. Similar projects include those with one or more of the following types of attributes: (1) affordable rental housing project to households at 60% or below the U.S. Department of Housing and Urban Development area median income; (2) partnerships with public agency landowners; (3) sustainability and smart growth principles; (4) affordable rental housing; and (5) government agency project.

For each project identified, provide the following information:

- (1) Project name and type.
- (2) Location, including address and photograph(s).
- (3) Size and mix of uses.
- (4) Development timeline (from developer selection/site control, to financing approvals/closing, to securing permits, and to commencement/completion of construction, indicating phasing as relevant). Note whether the project was started and completed on schedule. If delayed, provide explanation and length of the delay.
- (5) Project cost and financing sources used.
- (6) General description including role of development team and key project personnel, unique challenges of project, occupancy and history.

Project descriptions, including photos, should not exceed 3 pages per project.

- b. Development Team Members' Experience.** Provide relevant experience of the Offeror's development team members. Provide no more than three projects per team member, and no more than 2 pages per project. Provide information including the project name, location, description, services provided, dates of service, and outcome of work effort. These projects may be the same as those submitted under section 3.a. above. For the property manager, provide the number of projects managed in Hawaii involving State, local, or Federal assistance programs.
- c. References.** Provide at least five references for the Offeror, including public and private entities. Provide name of reference, company name and address, phone number and email address. Reference interviews will involve inquiries related to Offeror's performance in successfully planning, financing, entitling, and developing a similar project.

### **C. Development Concept and Strategy**

HHFDC acknowledges that the development concept plan, project delivery strategy and the financial projections and terms proposed for the Project will be refined over time and through additional due diligence and negotiations. However, the information provided in response to this RFP will describe the Offeror's current intent and will serve as a major consideration in the selection of a Successful Offeror. As such, all future adjustments to the proposed concept, financial terms, and development structure must be justified as a result of additional information or input received during the planning and negotiation process.

Provide, in a narrative and graphic description, the development concept for the Project. This concept must correspond with the financial proposal (described in **Subsection D**). The concept should, to the maximum extent practicable, be based upon the design and sustainability principles articulated in this RFP. The submittal should include tabular and narrative descriptions as well as supporting maps and graphics. At a minimum, the development concept should include the following elements (not necessarily in this order):

- 1. Development plan.** Provide a narrative description and diagram(s) that clearly indicate property lines, the proposed building orientation and layout, roadway pattern, open space system, pedestrian walkways, bicycle paths, landscaping elements, and distribution of land uses, keyed to a table which quantifies:
  - a. The mix and distribution of proposed land uses (i.e., number of dwelling units by unit types, average size for each type of unit, non-residential uses and square footage for each type of non-residential use, parking, etc.), including projected net and gross densities for the Project.
  - b. The utilization of land, in square feet, by land use (i.e., The residential use, outdoor recreation areas, roadways, etc.).

The following drawings and outline specifications should be included:

- c.** Site plan at 1" = 20' scale.

- d. Typical floor plans scaled at 1/16" or 1/8" = 1'- 0" General, 1/4" = 1' - 0" Detail. Plans shall show all necessary dimensions and indicate the proposed architectural arrangements, such as stairways, elevators, corridors, machine rooms, etc.
  - e. Building cross and longitudinal sections and exterior elevations at 1/16" or 1/8" = 1'-0" scale.
  - f. No less than three (3) and no more than six (6) colored vignettes, perspectives and/or renderings of the proposed development illustrating its relationship to the surrounding areas, key elements, amenities and features, character and scale.
  - g. The outline specifications shall specify compliance with the requirements of this RFP, sufficiently far enough advanced to allow the Offeror to obtain bona fide bids or estimates and quotes for the entire Project. These specifications shall generally describe the following:
    - (1) Project's site, architectural design, buildings, and type of construction;
    - (2) Structural system, including materials and systems, subsurface conditions, and substructure;
    - (3) Mechanical and electrical systems conceptually;
    - (4) Any special systems, such as building mechanical, electrical, plumbing, and roofing systems that are designed to improve energy performance, special exhaust systems, special lighting and security systems, etc.; and
    - (5) Finishes at a gross level, indicating type and quality level.
- 2. Rental Housing Project.** A diagram, supporting table, and narrative describing the proposed affordable rental housing Project, including but not limited to, the total number of units, number of units by unit types and target income levels, unit sizes, accessible units, project amenities (e.g., playground, tot lot, picnic areas, pool, community meeting room, laundry facilities, computer room, bike racks, vehicle charging stations, solar water heating), and any social or special services and programs proposed for the rental housing Project.
- 3. Property Operation and Maintenance.** Narrative describing the approach to operate and maintain the Project, or portion thereof. Describe the contractual structure, including leasehold ownership of the Project, management agreements, debt leveraging revenue streams (i.e., public and private revenue sources), CAM, risk allocation, cost-efficiency benefits, etc.
- 4. Community Benefits.** Narrative explaining any community benefits proposed in the Project (other than fulfilling HHFDC's affordable rental housing needs), which may include physical amenities or programmatic elements that benefit the future residents of the Project as well as the larger community. Describe the Project's relationship to the County of Maui's transit plan and the measures taken to promote transit ridership.

- 5. Development Strategy.** Describe the development strategy, including how the development concept described above will be implemented. At a minimum, the development strategy should include the following elements:
- a. Predevelopment and Development Periods.** Include a schedule and narrative of the key steps that the Offeror intends to take to complete the predevelopment and development processes, including the attainment of all entitlements, approvals, and agreements with third parties; refinement of all plans and engineering; the refinement of budgets, pro formas, and cost projections; the attainment of funding commitments; the commencement of construction, and the completion of the entire Project. This section should make clear which activities will take place sequentially and which will take place concurrently.
  - b. Infrastructure Approach.** Background infrastructure information has been provided in the Leiali'i Final EIS. Please provide a narrative describing the types of needed improvements, if any. Note that the Successful Offeror will be responsible for all negotiations and approvals with relevant agencies for access improvements and other infrastructure for the Project.
  - c. Expectations and Commitments for Timely Development.** Describe how the Successful Offeror will ensure that development is initiated and completed in a timely manner, including any suggestions of performance guaranties (e.g., liquidated damages) or other terms that can benefit HHFDC in the event of delays. The final terms of such guaranties will be negotiated after selection of the Successful Offeror, but this information will provide a sense of the Offeror's initial position. Please provide your proposed deadlines to be incorporated in the DA for the following:
    - (1) Commencement of construction; and
    - (2) Substantial completion of each phase of the entire Project.

## **D. Financial Proposal**

Development teams are requested to provide as much detail as possible on the financial aspects of their development concept, including a pro forma. The pro forma should provide a full set of project economics based on available information and the Offeror's own judgment recognizing that the pro forma will be refined as the development plan is developed. The ultimate business deal will be based on a refined pro forma, to be developed as part of negotiations with the Successful Offeror.

Key financial aspects of the proposal will include:

### **1. Development Costs, Revenues, and Funding Strategy Narrative.**

- a. Development Costs.** Provide narrative to describe estimated predevelopment costs, conceptual infrastructure costs, vertical building costs, maintenance costs (if applicable) and other identified costs for the Project. Make note of major uncertainties that may lead to significantly different costs than those estimated.



- b. *Project Sources of Funds.* Describe all anticipated project sources of funds and revenues, including projected building rents and parking fees, and anticipated absorption rates. Provide a development cashflow and pro forma operating budget to summarize the sources of funds and revenue expected for the full term of financing. Please identify the utility allowances applicable to each type of unit in the Project and the utilities that the tenants will be responsible to pay for.

2. **Development Financing Plan.** Provide an explanation of the likely interim and permanent financial structure of the Project, including potential sources and amounts of equity and debt financing, as well as any expected public financing (e.g., for DURF and RHRF funding for the Project), revenues received and retained. Identify the minimum preferred return on investment requirements for the Offeror as well as its financing partners. Specifically, describe how the predevelopment costs and the initial phases of infrastructure investments will be funded and how the interim financing will be repaid. The proposed financing plan shall include tables for both construction (interim) and permanent financing. The totals for construction and permanent financing must equal Total Development Cost.

As previously noted, the HHFDC Board has approved \$5.0 million from the DURF funds appropriated by the 2018 Legislature for pre-development and interim financing for the Project, subject to program requirements (**Appendix 14**),<sup>6</sup> and will make available the sum of \$30 million from RHRF funds appropriated by the 2018 Legislature or so much thereof as may be necessary for gap equity financing for the Project (**Appendix 19**), subject to encumbrance of the RHRF funds with the execution of the Development Agreement by **May 31, 2019**, compliance with the RHRF program requirements and HHFDC Board of Directors and Governor's approval.

3. **Development Cashflow.** The Development Cashflow provides an opportunity for Offeror teams to illustrate how to maximize development feasibility while meeting the goals and business objectives of HHFDC. A preliminary forecast of the expenses and sources of funds for the proposed Project in the form of a cashflow for each year up to expected coverage of the debt service should be provided. Please fill out the Excel document provided in **Attachment 4**. The attachment provides a framework; therefore, the organization and line items can be modified and expanded to best illustrate your estimated development cashflow. Be sure to consider all known project costs, including predevelopment and development costs, and management expenses, and make note of assumed funding that is contingent on another agency's action (e.g., tax credits for affordable housing). Note that the purpose of the pro forma is to allow HHFDC to understand the Offeror's approach and expectations of project economics and to provide a basis for business terms to be negotiated later.
4. **Pro Forma Operating Budget.** Please fill out the Excel pro forma operating budget provided in **Attachment 5**.

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<sup>6</sup> See note 3.

- 5. Use of State of Hawaii Resources.** Provide a description of the Offeror's proposed use of State of Hawaii resources. Please identify all sources. However, for purposes of scoring proposals under this RFP, "use of State of Hawaii resources" shall not include use of the parcel, use of the \$5.0 million DURF appropriation for the Project, use of up to \$30 million RHRF appropriation for the Project, State of Hawaii general excise tax exemption, State of Hawaii tax exempt bond authority, use of non-competitive 4% tax credits, and use of 201H exemption authority.
- 6. Financial Commitment.** With respect to financial commitment, provide an estimate of the amount of money that will be invested by the Successful Offeror before the Project begins to produce positive cash flows, including predevelopment and operational costs as well as investments in capital improvements. Please identify the anticipated source of the Offeror's up-front funding.

## **E. Construction Management Proposal**

Provide a construction management plan that demonstrates a knowledgeable and experienced design-build management approach to construct and complete the Project, in all respects, with integrity and reliability that will ensure good faith performance. The approach should identify the composition of the management team, including the names and roles of key personnel and the percentage of their time devoted to this Project, and the decision-making process within the organization.

## **F. Exceptions or Alternative Proposals**

If applicable, describe any exceptions or proposal alternatives to HHFDC's key business objectives described in **Section 5**. Innovative, creative, or cost saving proposals that meet or exceed the objectives and requirements in the RFP are encouraged and will receive consideration accordingly. Each alternative shall include an explanation of what the benefits are and why the Offeror believes the alternative is in the best interest of the State.

## **G. Submittal Format**

Respondents are asked to submit one (1) original proposal and six (6) copies along with one (1) electronic CD copy (or USB flash drive) including pro forma sheet in Microsoft Excel format. The completed Offer Form (**Attachment 2**) shall accompany the submittal and shall have an original, authorized signature of the Offeror. Proposals shall be organized into sections, following as closely as possible the format as presented in this **Section 7**, with tabs separating each section.

## **H. Late Proposals**

Any proposal, request for withdrawal, or modification of a proposal that is not received at the designated location, time and date set forth herein will be deemed late and therefore not be considered. Delivery of the proposal to the specified location by the prescribed time and date is the sole responsibility of the Offeror. Exceptions may be authorized, at the sole discretion of the Procurement Officer, when the reason for the late proposal, late request for withdrawal or late modification of a proposal is due to the action or inaction of the HHFDC.

Withdrawal of, or modifications to, proposals are effective only if written notice thereof is submitted to HHFDC prior to the time proposals are due. A notice of withdrawal or modification

to a proposal must be signed by an officer with the authority to commit the company. Withdrawal or modifications will not be accepted after the time proposals are due.

## 8. SELECTION CRITERIA

HHFDC is interested in comprehensive and clear responses to the submittal requirements. Criteria for evaluation of proposals will include the following:

Criteria	Max Points
<p><b>A. Offeror Qualifications</b></p> <ol style="list-style-type: none"> <li>1. Legal Offeror entity and team members.</li> <li>2. Offeror's relevant project experience and its specific personnel and team members, including work on similar type projects and projects involving public/private partnerships.</li> <li>3. Financial capacity to develop the Project, including its financial record and success in obtaining equity and debt capital for funding past projects.</li> <li>4. Capacity to manage the Project.</li> </ol>	<b>25</b>
<p><b>B. Project Design Concept and Strategy</b></p> <ol style="list-style-type: none"> <li>1. Well thought-out development concept with strong rationale.</li> <li>2. Achievement of HHFDC objectives for the Project, including maximum number of affordable rental housing units and range of affordability, budget, sustainability, and provision of safe and convenient pedestrian and bicycle access to public transportation services.</li> <li>3. Realistic and creative approach to achieving successful vertical development (i.e., compactness and efficiency of building design to minimize sprawl and energy use), including approach to overall management, marketing and tenanting residential units, and maintenance of facilities.</li> </ol>	<b>15</b>
<p><b>C. Ability to Meet Time and Budget Requirements</b></p> <p>Expectations and commitments to initiate and complete the Project in a timely manner, including the Offeror's suggested guaranties or penalties (i.e., liquidated damages). Offeror's description of schedule risks, critical path issues and track record of meeting deadlines set by financing awards for affordable housing projects. Demonstrated ability to manage costs and provide the best value for the given budget for the Project.</p>	<b>15</b>

<p><b>D. Number of Affordable Units Proposed and Community Benefits</b></p> <p>Number of affordable units by income levels served, and additional physical or programmatic elements proposed to benefit the future and existing community.</p>	<b>15</b>
<p><b>E. Financial Proposal</b></p> <ol style="list-style-type: none"> <li>1. Well-thought out approach to and assessment of predevelopment and infrastructure costs, including identification of potential challenges and uncertainties and corresponding mitigation/risk management strategies.</li> <li>2. Complete Project budget and financial pro forma demonstrating a feasible Project.</li> <li>3. Minimum use of State of Hawaii resources.*</li> </ol>	<b>15</b>
<p><b>F. Management Proposal</b></p> <ol style="list-style-type: none"> <li>1. Demonstrated understanding of the challenges and opportunities associated with the Project.</li> <li>2. Demonstrated understanding of the qualifications necessary to design, construct and complete the Project in all respects.</li> <li>3. Demonstrated understanding of how the Offeror's project delivery approach will contribute to the success of the Project and meet HHFDC's goals.</li> <li>4. Commitment to providing HHFDC with a high quality Project.</li> </ol>	<b>15</b>
<b>Total</b>	<b>100</b>

\* For purposes of scoring proposals, "use of State of Hawaii resources" shall not include use of the Property, use of up to \$5.0 million in DURF funds appropriated for the Project, use of up to \$30 million RHRF funds appropriated for the Project, use of State of Hawaii tax exempt and bond authority, use of non-competitive 4% tax credits, use of 201H exemption authority, and use of GET exemptions.

## 9. SELECTION AND AWARD PROCEDURE

### A. RFP Selection

1. The RFP solicitation process begins with the issuance of the RFP, a non-mandatory pre-proposal conference, and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
2. Interested Offerors shall submit a "Notice of Intent to Offer" letter (**Attachment 1**) together with a corporate resolution or "authorization to sign" no later than the date specified in the Selection Schedule below. The Intent to Offer will form the official list of interested Offerors, and the recipient list of any communication and/or addenda relating to this RFP.
3. Only proposals received on or before the required due date will be considered. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more government officials. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award. All proposals and other materials submitted by Offerors become the property of the State and may be returned only at the State's option.
4. Proposals which do not fully comply with the submittal requirements of **Section 7** may be deemed "nonresponsive" on the basis of evaluation deficiencies and result in disqualification by HHFDC in its sole discretion. All nonresponsive proposals will be returned to the Offeror, with the deficiency(ies) noted. The decision by the HHFDC evaluation committee shall be final, and no appeal will be considered.
5. The HHFDC evaluation committee shall evaluate the proposals in accordance with the evaluation criteria in **Section 8**. Members of the evaluation committee will consist of personnel from HHFDC, and may include personnel from other agencies and/or outside technical or legal experts. The proposals shall be classified initially as "acceptable", "potentially acceptable", or "unacceptable".
6. Proposals may be accepted on evaluation without discussion. However, if discussions are deemed necessary by the HHFDC evaluation committee, then prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The Priority List Offerors ("PLO") may be limited to a minimum of three (3) responsible Offerors who have submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal.
7. If, during discussions, there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. After the PLO is generated, addenda to the RFP shall be distributed only to PLO who submit acceptable or potentially acceptable proposals, and may include without limitation a bid security, verification of key personnel, and letter of commitment from surety(ies) for Payment and Performance Bonds.

8. Following any discussions, PLO may be invited to submit a Best and Final Offer (“BAFO”), if necessary. The HHFDC evaluation committee reserves the right to have additional rounds of discussions with the PLO prior to the submission of the BAFO.
9. The date and time for PLO to submit their BAFO, if necessary, is indicated in the RFP Selection Schedule below. This date is an estimate only. PLO’s will be notified by duly issued addendum of the due date and time. If Offeror does not submit a notice of withdrawal or a BAFO by the date indicated in the request for BAFO, the Offeror’s immediate previous offer shall be construed as its BAFO.

## **B. Award**

1. After receipt and evaluation of Proposals or BAFOs in accordance with the evaluation criteria in **Section 8**, the HHFDC evaluation committee will make its recommendation to the HHFDC Board of Directors for approval. Upon approval, the Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation criteria.
2. The award shall allow the Successful Offeror to enter into exclusive negotiations with the HHFDC for the development of the Project. The HHFDC Board of Directors may impose a deadline from the date of its approval of the Successful Offeror for the execution of a development agreement. If necessary, the Successful Offeror’s proposal may be amended. If the HHFDC and the Successful Offeror do not execute the development agreement by the end of such deadline, the HHFDC may terminate negotiations and thereafter consider proposals submitted by the next highest ranked Offeror.
3. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. All development proposals are government records which cannot be released to the public before HHFDC has successfully completed its negotiation and execution of a lease and development agreement with the Successful Offeror. Once the lease and development agreement are executed, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary in accordance with all applicable laws should be identified by the Offerors and shall be excluded from public inspection.
4. The HHFDC evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
5. The RFP, any addenda issued, and the Successful Offeror’s proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

## **C. Selection Schedule**

HHFDC has established the timeline summarized in **Table 1** for selecting a Successful Offeror for exclusive negotiations.

**Table 1: Selection Schedule Summary (subject to modification)**

Milestone	Date or Timeframe
<p><b>1. RFP Advertised and Issued</b></p>	<p><b>August 29, 2018</b></p>
<p><b>2. Pre-Proposal Conference</b></p>	<p><b>10:00 a.m. on September 19, 2018</b> in the Boardroom at HHFDC’s office located at:</p> <p style="text-align: center;">677 Queen Street, Suite 300 Honolulu, Hawaii 96813</p> <p>Interested parties are invited to attend; however attendance is not mandatory.</p>
<p><b>3. Deadline for Notice of Intent to Offer</b></p>	<p>Interested Offerors shall submit a mandatory “Notice of Intent to Offer” form (Attachment 1) together with a corporate resolution or “authorization to sign” no later than <b>2:00 p.m. on October 10, 2018.</b></p>
<p><b>4. Deadline for Receipt of RFP Questions</b></p>	<p>Questions must be made in writing and will be accepted through <b>October 10, 2018, at 2:00 p.m.</b> Questions may be emailed to Stan S. Fujimoto at <a href="mailto:stanley.s.fujimoto@hawaii.gov">stanley.s.fujimoto@hawaii.gov</a>. Responses will be prepared as addenda and emailed to the shortlisted teams. Addenda will also be posted to the HHFDC website at <a href="http://dbedt.hawaii.gov/hhfdc/">http://dbedt.hawaii.gov/hhfdc/</a></p>
<p><b>5. Proposals Due</b></p>	<p><b><u>October 31, 2018, at 2 p.m., HST.</u></b></p> <p>Submit one (1) original marked “ORIGINAL” and six (6) copies marked “COPY” (seven total), and one (1) electronic CD copy (or USB flash drive) of the response including pro forma worksheets in Microsoft Excel format to:</p> <p>Craig K. Hirai Executive Director Request for Proposals No. DEV-RFP-18-001 Hawai’i Housing Finance and Development Corporation 677 Queen Street, Suite 300 Honolulu, Hawai’i 96813</p> <p>Proposals shall include a non-refundable application fee of \$500. The fee shall be in a form of a cashier’s or certified check made payable to “Hawaii Housing Finance and Development Corporation”.</p>



<b>6. Discussion with Priority Listed Offerors (if needed)</b>	November 2018
<b>7. Best and Final Offers Due (if needed)</b>	TBD
<b>8. Selection of Successful Offeror</b>	January 2019
<b>9. Award Contract</b>	January 2019

**NOTE:** HHFDC reserves the right to deviate from this timeline.

## 10. TERMS AND CONDITIONS

This RFP and all responses are subject to the following terms and conditions.

### **A. Reservation of Rights**

HHFDC, in its sole discretion, reserves the right to:

1. Change or cancel this RFP;
2. Amend, supplement, or waive any RFP requirements, guidelines, or materials at any time before or after the date and time by which proposals must be submitted;
3. Accept and/or reject any or all proposals received in response to this RFP, and may exercise such right without notice and without liability to any Respondent or other parties for their expenses incurred in the preparation of a proposal;
4. Determine whether a proposal submitted in response to this RFP fails to meet the requirements of the RFP in some material respect;
5. Obtain modification or clarification necessary to properly evaluate a proposal;
6. Obtain references or other INFORMATION regarding any Offeror's past performance from any source; and
7. Execute a Contract or Development Agreement with a Successful Offeror in the form required by HHFDC. HHFDC reserves the right without liability to disqualify and/or cease negotiations with the Successful Offeror if it determines, at its sole discretion, to be in the best interest of the State. The Successful Offeror assumes the sole risk and responsibility connected with the negotiation process.

Neither issuance of this RFP nor evaluation of any proposal(s) obligates HHFDC to award a Contract from this RFP.

### **B. Submission of Proposal**

By submission of a proposal, Offerors warrant and represent that they have read and are familiar with the contractual requirements set forth in the RFP and its attachments and exhibits, the provisions of which are expressly incorporated into this RFP by reference as though fully set forth in its entirety herein. Furthermore, the submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a proposal, each Offeror must:

1. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any appendices, attachments, exhibits, addenda, plans referred to herein, and any other relevant documents; and

2. Be familiar with State, local, and federal laws, statutes, ordinances, rules, and regulations that may, in any manner, affect cost, progress, or performance of the work.

All submitted proposals shall become the property of the HHFDC and be subject to public disclosure in accordance with Hawai'i's Uniform Information Practices Act, Chapter 92F, HRS.

If the Offeror takes exception to any of the requirements specified in the RFP, the Offeror shall clearly identify and explain each exception in the proposal. RFP requirements are not necessarily negotiable and exceptions may render an Offeror's proposal unacceptable and ineligible for award.

All development proposals are government records which cannot be released to the public before HHFDC has successfully completed its negotiation and execution of a lease and development agreement with the Successful Offeror. Once negotiations are concluded and the lease and development agreement are fully executed, HHFDC may release the contents of the proposals to the general public after any information otherwise exempt from disclosure is removed, such as proprietary and other financial information.

### **C. Confidentiality**

If an Offeror believes that any portion of a proposal, offer, specification or correspondence contains information that should be withheld as confidential, then the Procurement Officer (HHFDC Executive Director) should be so advised in writing and provided with legal justification to support the confidentiality claim.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential by law. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Proposers may not mark an entire proposal confidential. Should a proposal be submitted in this manner, the HHFDC reserves the right to hold no portion of the proposal as confidential, unless such a portion is determined by the Department of the Attorney General to be exempt from the Uniform Information Practices Act, Chapter 92F, HRS.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Department of the Attorney General in accordance with HRS Chapter 92F. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror appeals pursuant to HRS §92F-42(1). If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with HRS §92F-15.5.

### **D. Responsibility of Respondents**

The highest-scoring responsive Offeror shall, at the time of award, be compliant with all laws governing entities doing business in the State, including, but not limited to:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;

3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

To obtain and demonstrate proof of compliance, Offerors are strongly encouraged to register online at the Hawaii Compliance Express (HCE) website (<https://vendors.eHawaii.gov>) and furnish a current and valid HCE Certificate of Vendor Compliance to HHFDC. Otherwise, Offerors will be responsible for gathering all appropriate compliance documentation from the applicable agencies and submitting to HHFDC to show compliance. HHFDC shall verify compliance on HCE or with the applicable agencies.

- a. **Hawai'i Compliance Express.** HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Respondents should register with HCE at <https://vendors.eHawaii.gov> before submitting a response. The "Certificate of Vendor Compliance" is accepted as proof of compliance for award and execution of the contract.

- b. **Timely Registration on HCE.** Respondents are advised to register on HCE as soon as possible.

## **E. Non-Collusion**

By submission of a proposal, Offeror warrants that its proposal is made without collusion or fraud, that it has not offered or received any kickbacks or inducements from any other developer, supplier, manufacturer, or subcontractor in connection with the proposal, and that it has not conferred on any HHFDC officer or employee, past or present, any payment, loan, subscription, advance deposit, travel services or items even of nominal value.

## **F. Award Protest**

This RFP solicitation for land disposition is not subject to the procurement statute and administrative rules under Chapter 103D, HRS. Therefore, the procedures relating to the protest of an award under Chapter 103D, HRS, are not applicable to this solicitation. Reconsideration of HHFDC Board decisions on land dispositions may be made pursuant to the HHFDC's rules of practice and procedure.

## **G. Additional Terms and Conditions**

1. **Approvals.** Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals required by statute, regulation, rule, order, or other directive.

2. **Land Patent Grant.** This RFP is subject to Land Patent Grant No. S-15,792, which conveyed the Property to HHFDC.
3. **Confidentiality of Material.** All material given to or made available to the Offeror by virtue of this contract, which is identified as proprietary or confidential information, will be safeguarded by the Offeror and shall not be disclosed to any individual or organization without the prior written approval of the State.
4. **Nondiscrimination.** No person performing work under this RFP, including any subcontractor, employee, or agency of the Contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. **Competency of Offeror.** The evaluation committee shall determine whether the Offeror has the financial ability, resources, skills, capability, and business integrity necessary to complete a project. For this purpose, either before or after the deadline for the RFP, the HHFDC may require Offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the Offeror to satisfactorily fulfill the RFP requirements. Whenever it appears from answers to the questionnaire or otherwise, that the Offeror is not fully qualified and able to fulfill the RFP requirements, a written determination of non-responsibility of an Offeror shall be made. The unreasonable failure of an Offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror. The decision of non-responsibility shall be final.
6. **Preparation of Offer.** An Offeror may submit only one offer in response to this RFP solicitation. If an Offeror submits more than one offer, then all such offers shall be rejected.
7. **Amendment of Terms and Conditions.** The State and HHFDC reserves the right to amend or add terms and conditions to the RFP at any time before the date and time by which proposals must be submitted. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

HHFDC also reserves the right to permit submittal of amendments and supplements to a Successful Offeror's proposal, including without limitation dedicating more funds, or reducing or expanding the scope of work, and any such changes or supplements shall not nullify the selection process that was used to select the Successful Offeror for the Project.

8. **Funding Conditions.** DURF and RHRF funding shall be subject to the applicable program requirements, availability of funds and approval by the HHFDC Board of Directors and release of funds by the Governor.
9. **Affordable Housing Credits.** The Project, or any residential unit thereof, shall not be sold, transferred, or otherwise used to satisfy the affordable housing requirements for any other project at any location.

## **H. Role of HHFDC After Award**

Once a Contract is awarded the HHFDC will be responsible for the following:

- 1. Contract Administration.** Provide overall administration of the Contract. HHFDC will designate a representative who will be the point of contact for the Project.
- 2. Construction and Quality Assurance Management.** Provide, with the assistance of an independent construction management or engineering consultant (as needed at HHFDC's discretion), construction oversight and quality control, including without limitation the following functions: review and evaluate contractor submittals; ensure that materials used and work performed meet contract requirements; determine when the Project (or portions thereof) is complete and is ready for occupancy and final acceptance; and authorize the processing of appropriate payments for the Project work satisfactorily performed and completed.
- 3. Oversight.** Provide oversight of the Project and media relations.

## **I. Campaign Contributions by State and County Contractors**

If awarded a contract in response to this solicitation, the Successful Offeror agrees to comply with HRS Section 11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body between the execution of the contract through completion of the contract.

## **J. Cancellation**

HHFDC reserves the right to cancel, withdraw, suspend, postpone or extend this RFP at any time without any liability if it is determined by HHFDC, at its sole discretion, to be in the best interests of the State. The Offeror assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

## **K. Rejection of Proposals**

HHFDC reserves the right to reject any or all proposals, in whole or in part, without liability, if it is determined by HHFDC, at its sole discretion, to be in the best interest of the State. The Offeror assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

## **L. Financial Obligations**

Any brokerage or consulting fees expended by or on behalf of the Offeror shall not be paid by HHFDC. Each Offeror is responsible for all costs incurred in responding to this RFP. Neither HHFDC, its agents or its advisors shall have financial responsibility for any costs or fees incurred by an Offeror in responding to this RFP or any transaction that may be consummated as contemplated by this RFP.

### **M. Disclaimer in Event of Reliance on Material in this RFP**

The information and data included in this RFP and related documents are for informational purposes only and are deemed reliable but are not guaranteed. HHFDC provides no representations, assurances, or warranties pertaining to the accuracy of the information. Detrimental reliance on this information is at Offeror's sole risk.

## ATTACHMENTS AND EXHIBITS

Attachment 1 – Notice of Intent to Offer

Attachment 2 – Offer Form OF-1

Attachment 3 – Project Cost Breakdown Worksheet

Attachment 4 – Development Cashflow Worksheet

Attachment 5 – Pro Forma

Exhibit A – HHFDC Development Agreement Form

Exhibit B – HHFDC Ground Lease Form



[Formal Letterhead of Company]

[Date]

Mr. Stan S. Fujimoto, Project Manager  
Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

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**Notice of Intent to Offer  
Request for Proposal for Keawe Street Apartments at the Villages of Leiali'i  
Affordable Family Rental Housing Project  
DEV-RFP-18-001**

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Dear Mr. Fujimoto:

I would like to indicate our intent to submit an offer in response to the above Request for Proposal (RFP) and to be notified of any updates and amendments to the RFP.

Name of Company: \_\_\_\_\_

Sincerely,

[Signature]  
[Contact name]  
[Complete address of the firm]  
[Phone and fax]  
[Email address]

*This letter shall be submitted with a corporate resolution or "authorization to sign" no later than the date specified in the RFP*

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**Attachment 1**

Request for Proposals: Keawe Street Apartments at the Villages of Leiali'i

**OFFER FORM  
OF-1**

**DEVELOPMENT OF KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALI'I  
AFFORDABLE FAMILY RENTAL HOUSING PROJECT**

STATE OF HAWAII  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
**HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**  
RFP No. DEV-RFP 18-001

Craig K. Hirai  
Executive Director  
Hawaii Housing Finance and  
Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in this Request for Proposals, including all attachments, exhibits, and addenda, and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, the undersigned:

- 1) is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts;
- 2) is certifying that Offeror shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, gender identity and expression, marital status, handicap, human immunodeficiency virus (HIV) infection, or arrest and court records in employment and any condition of employment with the Contractor or in participation in the benefits of any program or activity funded in whole or in part by the State;
- 3) acknowledges and agrees that Offeror shall comply with HRS Section 11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body; and
- 4) acknowledges and agrees that Offeror shall comply with all the requirements, provisions, terms, and conditions specified in this RFP.

Offeror is:

Sole Proprietor     Partnership     \*Corporation     Joint Venture  
 Other: \_\_\_\_\_

\*State of incorporation: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No. \_\_\_\_\_ Federal Tax I.D. No. \_\_\_\_\_

Business address (street address): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

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**Attachment 2**

Request for Proposals: Keawe Street Apartments at the Villages of Leialii'i

Respectfully submitted:

Date: \_\_\_\_\_ (x) \_\_\_\_\_  
Authorized (Original) Signature

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_  
Name and Title (Please Type or Print)

E-mail Address: \_\_\_\_\_  
\*\* Exact Legal Name of Company (Offeror)

\*\*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed: \_\_\_\_\_

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**Attachment 2**

Request for Proposals: Keawe Street Apartments at the Villages of Leialii

**ATTACHMENT 3**

**PROJECT COST BREAKDOWN WORKSHEET**

Provide a total cost breakdown worksheet for the proposed Project substantially in the form provided herein, including labor, materials, supplies, all applicable taxes, permits, overhead, profit, and any other costs incurred to design and build the Project as specified in this RFP.

**ATTACHMENT 3  
PROJECT COST BREAKDOWN WORKSHEET  
KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALI'I**

2018

Itemized Cost	Estimated Cost	Per Unit Cost
<b>To Purchase Land and Buildings</b>		
Land	_____	_____
Existing Structures	_____	_____
Demolition	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
<b>For Site Work</b>		
Off-Site Work	_____	_____
Detail: _____	_____	_____
_____	_____	_____
_____	_____	_____
On-Site Improvements	_____	_____
Detail: _____	_____	_____
_____	_____	_____
_____	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
<b>For Rehabilitation and New Construction</b>		
New Building	_____	_____
Rehabilitation* (SEE NOTE)	_____	_____
Accessory Building	_____	_____
Appliances	_____	_____
Contractor Overhead	_____	_____
Contractor Profit	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
* NOTE: Complete Rehabilitation Cost Itemization form attached		
<b>For Contingency</b>		
Construction Contingency	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
<b>For Architectural and Engineering Fees</b>		
Architect Fee-Design	_____	_____
Architect Fee-Supervision	_____	_____
Engineering Fees	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
<b>For Interim Costs</b>		
Construction Insurance	_____	_____
Construction Interest	_____	_____
Construction Loan Origination Fee	_____	_____
Construction Loan Credit Enhancement	_____	_____
Real Property Tax & Other Taxes	_____	_____
Subtotal	_____	_____

**ATTACHMENT 3  
PROJECT COST BREAKDOWN WORKSHEET  
KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALII**

2018

<u>Itemized Cost</u>	<u>Estimated Cost</u>	<u>Per Unit Cost</u>
<b>For Financing Fees and Expenses</b>		
Bond Premium	_____	_____
Credit Report	_____	_____
Permanent Loan Origination Fee	_____	_____
Permanent Loan Credit Enhancement	_____	_____
Cost of Issuance/Underwriters Discount	_____	_____
Title and Recording	_____	_____
Counsel's Fee	_____	_____
Other: _____	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
<b>For Soft Costs</b>		
Feasibility Study	_____	_____
Market Study	_____	_____
Environmental Report	_____	_____
Tax Credit Fees	_____	_____
Rent-Up	_____	_____
Consultants	_____	_____
Other: _____	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
<b>For Syndication Costs</b>		
Organizational (Partnership)	_____	_____
Bridge Loan Fees & Expenses	_____	_____
Tax Opinion	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
<b>For Developer's Fees</b>		
Developer's Overhead	_____	_____
Developer's Fee	_____	_____
Consultant Fee	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
<b>For Project Reserves</b>		
Rent-up Reserve	_____	_____
Operating Reserve	_____	_____
Other: _____	_____	_____
Other: _____	_____	_____
Subtotal	_____	_____
<b>Total Development Budget</b>	_____	_____

**ATTACHMENT 4**  
**DEVELOPMENT CASHFLOW WORKSHEET**

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**Attachment 4**

Request for Proposals: Keawe Street Apartments at the Villages of Leialii

Itemized Cost	1	2	3	4	5	6	7	8	9	10	11	12	13	14
<b>COSTS</b>														
<b>To Purchase Land and Buildings</b>														
Land														
Acquisition of Existing Building														
Demolition														
Other:														
Other:														
<b>For Site Work</b>														
<b>Off-Site Work:</b>														
Det. Off-Site Water Improvements														
Off-Site Sewer Improvements														
<b>On-Site Improvements:</b>														
Detail:														
Other:														
Other:														
Other:														
<b>For Rehabilitation and New Construction</b>														
New Building														
Rehabilitation* (SEE NOTE)														
Commercial Space														
Community Service Facility														
Appliances														
Contractor Overhead														
Contractor Profit														
Other:														
* NOTE: Complete Rehabilitation Cost Itemization form attached														
<b>For Contingency</b>														
Construction Contingency														
Soft Cost Contingency														
Other:														
<b>Permits and Fees</b>														
Building Permits														
Other:														
Other:														
Other:														
Other:														
<b>For Architectural and Engineering Fees</b>														
Architect Fee-Design														
Architect Fee-Supervision														
Engineering Fees														
Other:														
Other:														
Other:														
Other:														
<b>For Interim Costs</b>														
Construction Insurance														
Construction Interest														
Construction Loan Origination Fee														
Construction Loan Credit Enhancement Payment and Performance Bond														
Real Property Tax & Other Taxes														
<b>BOND FINANCING COSTS</b>														
From Exhibit A-1 Bond Issuance Cost														
<b>For Financing Fees and Expenses</b>														



ATTACHMENT 4  
DEVELOPMENT CASHFLOW WORKSHEET

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
At Closing	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr
<b>Itemized Cost</b>														
<b>To Purchase Land and Buildings</b>														
Credit Report														
Permanent Loan Origination Fee														
Permanent Loan Credit Enhancement														
Cost of Issuance/Underwriters Discount														
Title and Recording														
Counsel's Fee														
Other:														
Other:														
<b>For Soft Costs</b>														
Property Appraisal														
Market Study														
Environmental Report														
HHFDC LIHTC Fee (Good Faith Deposit)														
Advertising / Marketing														
Consultants														
Accounting / Cost Certification														
Other:														
Other:														
Other:														
<b>For Syndication Costs</b>														
Organizational (Partnership)														
Bridge Loan Fees & Expenses														
Tax Opinion														
Other:														
<b>For Developer's Fees</b>														
Developer's Overhead														
Developer's Fee														
Consultant Fee														
Project Management														
Other:														
Subtotal														
<b>For Project Reserves</b>														
Rent-Up Reserve														
Operating Reserve														
Other:														
Other:														
<b>Total Development Budget</b>	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Source</b>														
1 Owner Equity														
2 DURE														
3 RHRF														
4 Fluid Mile Bonds														
5 LIHTC														
6														
Monthly Construction Loan Draws														
Cumulative Construction Loan Draws														

ATTACHMENT 4  
DEVELOPMENT CASHFLOW WORKSHEET

Affordable Family Rental Housing Project at Villages of Leilani  
Attachment 3 - Development Cashflow

Itemized Cost	15	16	17	18	19	20	21	22	23	24	Etc.	Totals
<b>COSTS</b>												
<b>To Purchase Land and Buildings</b>												
Land												
Acquisition of Existing Building												
Demolition												
Other:												
Other:												
<b>For Site Work</b>												
Off-Site Work:												
Det. Off-Site Water Improvements												
Off-Site Sewer Improvements												
<b>On-Site Improvements:</b>												
Detail:												
Other:												
Other:												
Other:												
<b>For Rehabilitation and New Construction</b>												
New Building												
Rehabilitation* (SEE NOTE)												
Commercial Space												
Community Service Facility												
Appliances												
Contractor Overhead												
Contractor Profit												
Other:												
*NOTE: Complete Rehabilitation Cost Itemization form attached												
<b>For Contingency</b>												
Construction Contingency												
Soft Cost Contingency												
Other:												
<b>Permits and Fees</b>												
Building Permits												
Other:												
Other:												
Other:												
Other:												
<b>For Architectural and Engineering Fees</b>												
Architect Fee-Design												
Architect Fee-Supervision												
Engineering Fees												
Other:												
Other:												
Other:												
Other:												
<b>For Interim Costs</b>												
Construction Insurance												
Construction Interest												
Construction Loan Origination Fee												
Construction Loan Credit Enhancement												
Payment and Performance Bond												
Real Property Tax & Other Taxes												
<b>BOND FINANCING COSTS</b>												
From Exhibit A-1 Bond Issuance Cost												
<b>For Financing Fees and Expenses</b>												

ATTACHMENT 4  
DEVELOPMENT CASHFLOW WORKSHEET

	15	16	17	18	19	20	21	22	23	22	Etc.	Totals
	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Etc.	
<b>Itemized Cost</b>												
<b>To Purchase Land and Buildings</b>												
Credit Report												
Permanent Loan Origination Fee												
Permanent Loan Credit Enhancement												
Cost of Issuance/Underwriters Discount												
Title and Recording												
Counesets Fee												
Other:												
Other:												
<b>For Soft Costs</b>												
Property Appraisal												
Market Study												
Environmental Report												
HHFDC LIHTC Fee (Good Faith Deposit)												
Advertising / Marketing												
Consultants												
Accounting / Cost Certification												
Other:												
Other:												
Other:												
<b>For Syndication Costs</b>												
Organizational (Partnership)												
Bridge Loan Fees & Expenses												
Tax Opinion												
Other:												
<b>For Developer's Fees</b>												
Developer's Overhead												
Developer's Fee												
Consultant Fee												
Project Management												
Other:												
Subtotal												
<b>For Project Reserves</b>												
Rent-up Reserve												
Operating Reserve												
Other:												
Other:												
<b>Total Development Budget</b>	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Source</b>												
(Identify Source)												
1 Owner Equity												
2 DURE												
3 RHRE												
4 Hula Maa Bonds												
5 LIHTC												
6												
<b>Monthly Construction Loan Draws</b>												
<b>Cumulative Construction Loan Draws</b>												

**ATTACHMENT 5**

**PRO FORMA WORKSHEETS**

**PART I – RENTAL INCOME**

**PART II – OPERATING EXPENSE DETAIL**

**PART III – PRO FORMA BUDGETS**

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**Attachment 5**

Request for Proposals: Keawe Street Apartments at the Villages of Leialii

Pro-Forma  
Keawe Street Apartments at the Villages of Leialii

Continue  
through  
full term of  
financing

Part III - Pro Forma Budget

	Year 1	Year 2	Year 3	Year 4 --- >	Continue through full term of financing
<b>INCOME</b>					
Low-Income Rental Income					
Market Rental Income					
Rental Subsidy Income (if any)					
Vacancy Allowance					
Net Rental Income					
Other Income					
Total Income					
<b>EXPENSES</b>					
Operating Expenses					
Ground Lease					
Replacement Reserves					
Other _____					
Total Expenses					
<b>Net Operating Income</b>					
Debt Service - Loan #1 (___% ___ Yrs Amort)					
Debt Service - Loan #2 (___% ___ Yrs Amort)					
Debt Service - Loan #3 (___% ___ Yrs Amort)					
Pre-Tax Cash Flow					
Debt Coverage Ratio					

Part II - Operating Expense Detail

Line Item	Monthly Budget	% of Monthly Budget	Per Unit Per Month	Annual Budget	Per Unit Per Year
Audit and Acctg. Fees	_____	_____	_____	_____	_____
Advertising	_____	_____	_____	_____	_____
Commissions	_____	_____	_____	_____	_____
Insurance	_____	_____	_____	_____	_____
(Fire, Gen., Med., Wrk. Comp, Flood, etc.)	_____	_____	_____	_____	_____
Janitorial Service	_____	_____	_____	_____	_____
Professional Fees	_____	_____	_____	_____	_____
Detail:	\$ _____				
_____	\$ _____				
_____	\$ _____				
_____	\$ _____				
Management Fees	_____	_____	_____	_____	_____
Office Supplies/Expenses	_____	_____	_____	_____	_____
Refuse	_____	_____	_____	_____	_____
Repair and Maintenance Total	_____	_____	_____	_____	_____
Building	\$ _____				
Elevator	\$ _____				
Grounds	\$ _____				
Painting	\$ _____				
Pest Control	\$ _____				
Pool	\$ _____				
Roads	\$ _____				
Roof	\$ _____				
Sewer	\$ _____				
Other	\$ _____				
Other	\$ _____				

Line Item	(# of People)	Monthly Budget	% of Monthly Budget	Per Unit Per Month	Annual Budget	Per Unit Per Year
Payroll Total						
Building Maintenance						
Grounds	#					
On-Site Manager	#					
Resident Manager	#					
Security	#					
Fringe Benefits	#					
Other	#					
Other	#					
Supplies Total						
Building	\$					
Electrical and Lighting	\$					
Elevator	\$					
Equipment	\$					
Grounds	\$					
Janitorial	\$					
Painting	\$					
Pest Control	\$					
Pool	\$					
Roads	\$					
Roof	\$					
Windows	\$					
Other	\$					
Other	\$					
Tax Credit Compliance Monitoring Fees						
Television/Cable						
Utilities Total						
Electricity	\$					
Gas	\$					
Telephone	\$					
Water & Sewer	\$					

Line Item	Monthly Budget	% of Monthly Budget	Per Unit Per Month	Annual Budget	Per Unit Per Year
Taxes Total	_____	_____	_____	_____	_____
Corporate Income	_____	_____	_____	_____	_____
General Excise	_____	_____	_____	_____	_____
Gross Income	_____	_____	_____	_____	_____
Payroll	_____	_____	_____	_____	_____
Real Property	_____	_____	_____	_____	_____
<b>TOTAL OPERATING EXPENSES</b>	_____	_____	_____	_____	_____
<u>Additional Expenses</u>	_____	_____	_____	_____	_____
Ground Lease	_____	_____	_____	_____	_____
Capital Expenditures	_____	_____	_____	_____	_____
Replacement Reserves	_____	_____	_____	_____	_____
<b>TOTAL ADDITIONAL EXPENSES</b>	_____	_____	_____	_____	_____
<b>TOTAL COMBINED EXPENSES</b>	_____	_____	_____	_____	_____

\$  
\$  
\$  
\$  
\$



**Pro Forma Operating Budget Format  
Keawe Street Apartments at the Villages of Leialii**

*This form or a re-creation may be used. If recreating the format, use the exact headings and categories listed here.*

Part I - Rental Income	(1)	(2)	(3)	(4)	(5) [(1) x (3)]
	No. of Units	Market Rental Rate (From Mkt. Study- For Comparison)	Tenant Rental Portion	Utility Allowance If Utilities Not Included In Tenant Rent	Total Mo. Income
<u>Low-Income Units*</u>					
Studio					
1-Bedroom					
2-Bedroom					
3-Bedroom					
<b>Total</b>					
<b>Total Annual Income</b>					
<u>Market Units</u>					
Studio					
1-Bedroom					
2-Bedroom					
3-Bedroom					
<b>Total</b>					
<b>Total Annual Income</b>					

\* (Financing programs may have different income set aside requirements. If applying for more than one program please be sure that the most stringent requirement is met.)

Note: Program Allowable Rents and Utility Allowances available from HHFDC

Breakdown of Monthly Utility Allowance:

Utility or Service	Studio	1-Bedroom	2-Bedroom	3-bedroom
Total				

**DEVELOPMENT AGREEMENT**  
**KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALI'I**  
**AFFORDABLE FAMILY RENTAL HOUSING PROJECT**

This Development Agreement (the "Agreement"), executed on the respective dates indicated below, is effective as of \_\_\_\_\_, 20\_\_\_\_, ("Effective Date") by and between the **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii, whose principal place of business and mailing address is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 ("HHFDC"); and \_\_\_\_\_, a Hawaii limited liability company, whose business address is \_\_\_\_\_, Honolulu, Hawaii, \_\_\_\_\_ ("Developer").

WHEREAS, HHFDC is the owner in fee simple of approximately 935.918 acres of land in the Villages of Leiali'i located in Lahaina, Maui, Hawaii, Tax Map Key No. (2) 4-5-021: 003, as shown on the attached **Exhibit A**, which is incorporated herein by reference ("Property");

WHEREAS, on June 14, 2018, the HHFDC Board of Directors approved the issuance of a Request For Proposals ("**RFP**"), and on \_\_\_\_\_, HHFDC issued an RFP, including Addenda Nos. 1 through \_\_\_\_\_, for the leasehold development, ownership and operation of an approximately 200-unit affordable family rental housing project at the southwest portion of the Property east (mauka) of the Upper Kapunakea Houselots subdivision and north of the Keawe Street Extension, proposed to be named the "Keawe Street Apartments at the Villages of Leiali'i";

WHEREAS, on June 14, 2018, the HHFDC Board of Directors approved a \$5 million pre-development and interim loan from the Dwelling Unit Revolving Fund ("**DURF**") for the development of the Project (defined below) in accordance with terms and conditions described therein ("**DURF For Action**");

WHEREAS, the 2018 Legislature appropriated \$30 million from the Rental Housing Revolving Fund ("**RHRF**") or so much thereof as may be necessary to expedite and complete construction of the Project (defined below) by 2021;<sup>1</sup>

WHEREAS, on \_\_\_\_\_, Developer submitted a proposal in response to the RFP ("**Proposal**") for the leasehold development, ownership and operation of a \_\_\_\_\_-unit family rental housing project at the portion of the Property below the 130' elevation as described Site Assessment Report, Villages of Leiali'i, 200-Unit Multi-Family Infill Project, Belt Collins Hawaii LLC (January 18, 2017), as described in the RFP, which will be subdivided by the Developer from the balance of the Property ("Project Site"), affordable to families at 60% or below the U.S. Department of Housing and Urban Development area median income ("**AMI**"), including one unit for the resident manager ("**Project**");

<sup>1</sup> Act 150 Session Laws of Hawaii 2018.

WHEREAS, on \_\_\_\_\_, the HHFDC Board of Directors approved the Developer and its Proposal for the Project ("Developer Selection For Action");

HHFDC and Developer would like to enter into this Agreement for the leasehold development, ownership and operation of the Project.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HHFDC and Developer hereby agree as follows:

**WITNESSETH:**

1. Purpose

This Agreement governs the leasehold development, financing, ownership, rental, management and operations by the Developer of the Project to be situated at the Project Site.

2. Project Scope

Developer shall design, construct, own, rent, manage and operate the Project in leasehold, in accordance with the following:

- a. This Agreement;
- b. HHFDC For Action;
- c. RFP;
- d. Developer's Proposal;
- e. Final plans and specification for the Project to be submitted by Developer and approved in writing by HHFDC; and
- f. Required off-site and on-site improvements and infrastructure as follows, unless otherwise approved by HHFDC:

(1) Affordable family rental housing project

- \_\_\_ Studio Units (\_\_\_ sq.ft.)
- \_\_\_ 1-Bedroom Units (\_\_\_ sq.ft.)
- \_\_\_ 2-Bedroom Units (\_\_\_ sq.ft.)

\_\_\_ 2-Bedroom Resident Manager's Unit (\_\_\_ sq.ft.)  
 \_\_\_ Units Total  
 \_\_\_ Parking Stalls  
 \_\_\_ Multi-Purpose Building – \_\_\_\_\_ sq.ft.  
 \_\_\_ Parking Stalls for Multi-Purpose Building

(2) Totals: \_\_\_ units, plus one resident manager's unit  
 \_\_\_ parking stalls

(3) Target market:

\_\_\_ Units at 30% and below the AMI  
 \_\_\_ Units at 60% and below the AMI  
  1   Resident Manager's Unit  
 \_\_\_ Total Units

(4) Project Name: The Project shall be named, "Keawe Street Apartments at the Villages of Leiali'i," unless otherwise approved by HHFDC.

In the event of a conflict between this Agreement, the RFP, the Developer's Proposal, and the HHFDC For Action, the following shall control, in order of priority:

First Priority—this Agreement, including all Exhibits hereto

Second Priority—the HHFDC For Actions

Third Priority—the RFP, then

Fourth Priority—the Developer's Proposal.

3. Property Description

The Project is located north of the Keawe Street Extension at HHFDC's Villages of Leiali'i in Lahaina, Maui, Hawaii, 96761, TMK (2) 4-5-021: 003 (portion of), as shown on the attached Exhibit A.

4. Term of this Agreement

The Project shall be completed by **December 31, 2021**, unless otherwise extended at the sole discretion of HHFDC ("Completion Date"). The term of this Agreement (the "Development Period") shall commence on the Effective Date of this Agreement and terminate one calendar year after the Completion Date defined herein.

5. Representations and Warranties of Developer

Developer represents and warrants that:

- a. Developer has all requisite power and authority to act as developer for the Project.
- b. Developer has all requisite power and authority to enter into this Agreement. No consents or approvals are required to be obtained from any governmental body or agency for the execution and delivery of this Agreement, or, if required, the same has been obtained.
- c. All tax returns and reports of Developer required by law have been duly filed and all taxes, assessments, contributions, fees and other governmental charges (other than those presently payable without penalty or interest and those currently being contested in good faith) upon Developer's properties or assets or income have been paid and Developer has submitted applicable state and federal tax clearance certificates prior to execution of this Agreement.
- d. There is no action, suit, proceeding or investigation pending, or to the best of Developer's knowledge, threatened against Developer, or the Project in any court, or before or by any governmental entity from which any adverse decision might materially affect Developer's ability to observe and perform its obligations under this Agreement or under any and all other agreements and instruments to which Developer is a party.
- e. Developer is not in violation of or in default with respect to any material term or provision of any mortgage, indenture, contract, agreement or instrument. The execution, delivery, performance of and compliance with this Agreement will not result in any such violation or be in conflict with or constitute a default under any such term or provision or result in the creation of any mortgage, lien or charge on any of the properties or assets of Developer. There is no term or provision of a mortgage, indenture, contract, agreement or instrument applicable to Developer or by which Developer is bound which materially and adversely affects or will materially and adversely affect the business or prospects or condition (financial or other) of Developer or Developer's properties or assets.
- f. Any financial statements of Developer delivered to HHFDC are true and correct in all respects, have been prepared in accordance with generally accepted accounting practices, and fairly represent the financial condition of Developer as of the date of financial statements. No materially adverse change has occurred in Developer's financial condition since the date of the financial statement and the financial condition will not be materially altered during the life of this Agreement.
- g. Developer has made no contract or arrangement of any kind which would give rise to a lien on the Project.

6. Development of Project

- a. The Developer accepts the Property in "AS IS, WHERE IS" condition without any express or implied warranties or representations. HHFDC shall incur no expenditures and liability in connection with this Agreement and the Property's development and operation. The Developer shall be responsible for all items necessary to develop and operate the Project, including but not limited to title reports, conveyance documents, annexation documents, closing costs, planning costs, onsite and offsite improvements, rezoning, water allocation, the installation and connection of utilities to the Project and cutting, filling, and finish grading of the Property.
- b. Developer shall cause the Project to be constructed substantially in accordance with the final building plans approved by HHFDC. All construction shall be in accordance with all applicable federal, state and municipal statutes, codes, and ordinances.
- c. Developer will devote such effort and energy as is necessary to develop the Project.
- d. All construction shall be performed in a good, workmanlike manner using new or reconditioned materials. All work shall be performed to the same standard of care as is customary in the Hawaii construction industry.
- e. Developer shall engage an experienced and qualified project manager to be directly responsible for managing and facilitating the development of the Project. HHFDC acknowledges that \_\_\_\_\_ shall be the project manager for development of the Project. Any changes or substitutions of said project manager shall be subject to the approval of HHFDC.

7. Minimum Prevailing Wages

Developer, its contractors and subcontractors shall pay all mechanics and laborers employed on the Project, minimum prevailing wages for the corresponding work classifications as determined by the Director of Labor and Industrial Relations pursuant to Chapter 104, HRS. A certified copy of each weekly payroll shall be submitted to HHFDC within seven (7) calendar days after the end of each weekly payroll period. The Developer shall be responsible for the timely submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates, and that the classifications set forth for each laborer and mechanic conform with the work they performed. If certified payrolls are not submitted on a timely basis, or if HHFDC finds that any laborer or mechanic employed on the Project has been or is being paid less than the applicable prevailing wages, HHFDC may terminate this Agreement.

8. Rental Program

The Project shall be an affordable family rental housing project for the duration of the Ground Lease, or as otherwise approved by HHFDC.

9. Project Presentations

The Developer shall be responsible for obtaining community input to the Project from the applicable neighborhood board and/or other interested community groups, and other organizations as required by HHFDC. The Developer shall conduct a public informational briefing on the Developer's Proposal in the community within three calendar months of the HHFDC Board approval of the Developer and its Proposal.

10. Environmental Impact Statement

The Villages of Leiali'i Affordable Housing Final Environmental Impact Statement (October 2012) was published in The Environmental Notice by the State Office of Environmental Quality Control on October 23, 2012 ("Leiali'i Final EIS"). The Governor of the State of Hawaii approved the Leiali'i Final EIS on December 7, 2012 and notice of the Governor's approval was published in The Environmental Notice on December 23, 2012. The Developer shall be responsible for compliance with the Leiali'i Final EIS and the requirements of HRS Chapter 343.

11. Disability and Communication Access Board

The Project shall be accessible to and usable by persons with disabilities in compliance with Section 103-50, HRS. Prior to the start of construction, Developer shall submit to HHFDC written evidence that the Project plans have been approved by the Disability and Communication Access Board, or that Section 103-50, HRS does not apply to the Project. This requirement is in addition to any other applicable requirement for accessibility such as the Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) and the Fair Housing Accessibility Guidelines (24 CFR Chapter 1).

12. Energy Conservation

To the extent possible, the Project shall comply with Section 196-9, HRS, as follows:

- a. Design and construct buildings to meeting the Leadership in Energy and Environmental Design silver or two green globes rating system or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, except when the guideline, standard, or system interferes or conflicts with the use of the building or facility as an emergency shelter.
- b. Incorporate energy efficiency measures to prevent heat gain in residential facilities up to



three stories in height to provide R-19 or equivalent insulation on roofs, R-11 or equivalent in walls, and high-performance windows to minimize heat gain and, if air conditioned, to minimize cool air loss. R-value is the constant time rate resistance to heat flow through a unit area of a body induced by a unit temperature difference between the surfaces. R-values measure the thermal resistance of building envelope components such as roof and walls. The higher the R-value, the greater the resistance to heat flow. Where possible, buildings shall be oriented to maximize natural ventilation and day-lighting without heat gain and to optimize solar for water heating. This provision shall apply to new residential facilities built using any portion of state funds or located on state lands.

- c. Install solar water heating systems where it is cost-effective, based on a comparative analysis to determine the cost-benefit of using a conventional water heating system or a solar water heating system. The analysis shall be based on the projected life cycle costs to purchase and operate the water heating system. If the life cycle analysis is positive, the facility shall incorporate solar water heating. If water heating entirely by solar is not cost-effective, the analysis shall evaluate the life cycle, cost-benefit of solar water heating for preheating water. If a multi-story building is centrally air conditioned, heat recovery shall be employed as the primary water heating system. Single family residential clients of the Department of Hawaiian Home Lands and any agency or program that can take advantage of utility rebates shall be exempted from the requirements of this paragraph so they may continue to qualify for utility rebates for solar water heating.
- d. Implement water and energy efficiency practices in operations to reduce waste and increase conservation.
- e. Incorporate principles of waste minimization and pollution prevention, such as reducing, revising, and recycling as a standard operating practice in programs, including programs for waste management in construction and demolition projects and office paper and packaging recycling programs.
- f. Use life cycle cost-benefit analysis to purchase energy efficient equipment such as Energy Star products and use utility rebates, where available, to reduce purchase and installation costs.
- g. Procure environmentally preferable products, including recycled and recycled-content, bio-based, and other resource-efficient products and materials.

13. Other Energy Conservation Measures

The Developer shall consider incorporation of sustainable and energy conservation measures into the Project, including the following (as applicable):

- a. Site homes to maximize use of natural light and ventilation over artificial light and air-conditioning;
- b. CFL lighting;
- c. Energy Star appliances;
- d. Skylights to promote natural interior lighting;
- e. Solar water heating;
- f. Insulated roofs, e.g.,
  - (1) Attic space between roof and ceiling;
  - (2) Insulation materials;
  - (3) Solar powered attic vents to remove hot air from attic space;
- g. High performance windows to minimize heat gain and cool air loss;
- h. Wider eaves and overhangs to create more shade earlier in the day;
- i. Insulated exterior walls, e.g.,
  - (1) Double wall;
  - (2) Heat insulation materials, e.g., concrete;
- j. To minimize waste, installation of individual electric meters and payment of utilities by tenants.

14. Water Conservation Measures

The Developer shall incorporate water efficiency best practices in the Project. At a minimum, as described in the *Water Conservation Manual for State of Hawaii Facilities*, Commission on Water Resource Management (May 2007), a copy of which is available online at <http://hawaii.gov/dlnr/cwrm/planning/wcmshf2007.pdf>, the Developer shall consider incorporation of the following water conservation measures into the Project:

- a. Installation of water sub-meters to each residential unit to:

- (1) Monitor and control abuses; or
- (2) Prorate water charges to each tenant;
- b. Plumbing fixtures that comply with the Energy Policy Act of 1992, e.g., ultra low flush toilets (A listing of fixtures certified by the EPA as having high water efficiency can be found at <http://www.epa.gov/watersense/pp/index.htm>);
- c. Horizontal axis washing machines rather than top loading washing machines;
- d. Energy Star water consuming appliances;
- e. Trees, shrubs, perennials, and ground cover rather than turf grass;
- f. Local indigenous Hawaiian plants that thrive on natural rainfall;
- g. Installation of rain shut offs and smart controllers on all automated irrigation systems to avoid landscape irrigation when raining. Any controllers which do not provide for soil moisture or evapotranspiration based response should be checked and reset at least once a month to reflect the monthly changes in evapo-transpiration rates at the site. As an alternative, provide the more automated, soil-moisture sensors on controllers;
- h. Limit irrigation to early morning or late evening; and
- i. Maintain fixtures to repair and prevent leaks.

15. NPDES Permit

Developer shall comply with the provisions of the Clean Water Act and Chapter 342D, HRS, and Chapter 11-55, HAR, relative to the National Pollutant Discharge Elimination System (“NPDES”) permit requirements. For discharges into Class A or Class 2 State waters, the Developer may apply for an NPDES general permit coverage by submitting a Notice of Intent (“NOI”) form to the Department of Health Clean Water Branch for the type of discharge authorized by an NPDES general permit applicable to this Project, including but not limited to storm water associated with construction activity and construction dewatering effluent. For types of wastewater not covered by general permit coverage or wastewater discharging into Class 1 or Class AA State waters, an NPDES individual permit may be required. Developer shall not proceed with construction until the applicable NPDES permits are obtained. Developer shall ensure that its contractors understand and comply with the permit requirements and Developer is responsible to secure its contractor’s indemnification of and holding the State of Hawaii and HHFDC harmless with respect to the actions of its contractors.

16. Hawaiian and Indigenous Plants

- a. The Developer shall comply with Section 103D-408, HRS, for the incorporation of Hawaiian plants in new or renovated landscaping of any project developed with public moneys within the following timetable:
1. By January 1, 2019, Hawaiian plants shall constitute a combined minimum of ten per cent of the total plant footprint for landscaping plans, designs, and specifications;
  2. By January 1, 2025, Hawaiian plants shall constitute a combined minimum of twenty-five per cent of the total plant footprint for landscaping plans, designs, and specifications; and
  3. By January 1, 2030, Hawaiian plants shall constitute a combined minimum of thirty-five per cent of the total plant footprint for landscaping plans, designs, and specifications;

Provided that:

1. Suitable cultivated plants can be made available for this purpose without jeopardizing wild plants in their natural habitat; and
  2. Wherever and whenever possible, Hawaiian plants shall be used for landscaping on, and sourced from, the island and ahupua'a in which the species was found or known to occur prior to European contact.
- b. The Project shall utilize indigenous species of plants for its landscaping whenever and wherever feasible pursuant to Section 15-307-27(9), HAR.

17. Market Study

HHFDC may require the Developer to submit a current comprehensive market analysis substantiating the feasibility of any portion of the Project. The specifications and scope of the market study shall be determined by HHFDC.

18. On-site and Off-site Infrastructure

Developer shall be responsible to build and maintain all onsite and offsite infrastructure, including but not limited to, planning, design, payment of permit fees and infrastructure such as roadways, waterlines, sewers, drainage, and electrical, telephone, gas and cable television lines, conduits, and hookups necessary for development of the Project.

The Developer shall be responsible for all County Department of Public Works requirements for infrastructure.

The Developer shall be responsible for the operation and maintenance of all offsite systems or improvements required for the development, operation or for the benefit of the Project not dedicated to the County, including but not limited to, offsite drainage systems, temporary or permanent retention basins, potable and non-potable water reservoirs and transmission lines, and sewer lines.

19. Interim and Permanent Financing

The HHFDC Board of Directors approved \$5.0 million from the Dwelling Unit Revolving Fund (“DURF”) appropriated by the 2018 Legislature<sup>2</sup> for pre-development and interim financing for development of the Project, subject to approval of release of funds by the Governor, as described in the DURF For Action. As described in the DURF For Action, the DURF loan shall be repaid by the Project’s permanent financing sources, except to the extent allowed to be allocated to offsite infrastructure by HHFDC.

The 2018 Legislature also appropriated the sum of \$30.0 million from the Rental Housing Revolving Fund (“RHRF”) or so much thereof as may be necessary for gap equity financing to expedite and complete the construction of the Project by 2021.<sup>3</sup> HHFDC will make available up to \$30 million from the RHRF funds for the Project pursuant to Act 150 Session Laws of Hawaii 2018, subject to the following:

- a. Encumbrance of the RHRF funds with the execution of this Agreement by May 31, 2019;
- b. Program requirements;
- c. HHFDC Board of Directors approval;
- d. Release of funds by the Governor; and
- e. Execution of applicable documents.

Except as described herein, Developer shall be responsible for securing all funding necessary for the development, construction, rental, management or operation of the Project. HHFDC makes no commitment to provide additional financing for this Project.

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<sup>2</sup> H.B. No. 2748, H.D. 2, S.D. 2, C.D. 1, Twenty-Ninth Legislature, 2018; Act 039 Session Laws of Hawaii 2018.

<sup>3</sup> S.B. No. 2293, S.D. 2, H.D. 3, C.D. 1, Twenty-Ninth Legislature, 2018; Act 150 Session Laws of Hawaii 2018.

The Ground Lease shall not be subordinated to Developer's financing.

20. GET Exemptions

HHFDC shall certify claims for general excise taxation exemption submitted by Developer on behalf of its contractors, consultants or assigns for all work qualified for exemption, as permitted by law.

Pursuant to Section 15-306-2, HAR, non-residential uses shall be limited to incidental or de minimis uses that are intended to directly benefit the residents of the Project to be eligible for exemptions from general excise taxes.

21. Assumption of Risk and Liability

Developer shall assume sole and complete risk and liability for the development of the Project during the Development Period. Developer shall indemnify, defend and hold harmless HHFDC, the State of Hawaii, and their officers, employees, directors, agents, representatives, officials, successors or assigns ("Indemnitees") from and against any and all liability, loss, damage (including foreseeable or unforeseeable consequential damages), cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, relating to, arising out of or resulting from directly or indirectly: (a) the acts or omissions of the Developer or its employees, officers, agents, or subcontractors; (b) the design, construction, repair, renovation, or defects of the Project or Property and/or lease, use, occupation or operation of the Project or Property; and/or (c) the enforcement of this Agreement (whether or not suit is brought therefore). This provision shall survive the expiration or earlier termination of this Agreement, notwithstanding any other provision to the contrary.

22. Liability Insurance

Developer shall maintain insurance acceptable to HHFDC in full force and effect throughout the term of this Agreement. The policy or policies of insurance maintained by the Developer shall provide the following minimum policy limits and coverage:

Coverage

Commercial General  
Liability and Automobile  
Insurance

Minimum Policy Limits

Developer's commercial general liability and automobile liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit

of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations performed under this Agreement. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the Developer does not own automobiles, it shall maintain Hired and Non-owned Automobile Liability coverage.

#### Pollution Liability

Developer shall obtain at Developer's expense, and shall keep in effect during the term of this Agreement, Pollution Liability Insurance covering Developer's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Developer all arising out of this Agreement. Combined single limit per occurrence may not be less than \$3,000,000. Annual aggregate limit may not be less than \$5,000,000. The policy shall name the State of Hawaii and HHFDC as additional insureds.

#### Property

Including Windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by Developer, located on the Property. Developer shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. The State of Hawaii and HHFDC shall be a loss payee under the Property Insurance. Coverage shall be evidenced on form Accord 27 – Evidence of Property Insurance.

Fire and Extended Coverage	100% replacement value
Builder's Risk	100% replacement value
Malicious Mischief	100% replacement value
Workers' Compensation	As required by Hawaii laws

The Commercial General Liability Insurance and the Automobile Insurance shall contain the following five provisions:

- a. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
- b. The State of Hawaii and HHFDC are added as additional insured parties with respect to operations performed on the Property under this Agreement.
- c. If a general aggregate limit is used, the general aggregate limit shall apply separately to this Agreement.
- d. Insurance shall include a cross liability or severability of interest clause.
- e. The Developer will immediately provide written notice to HHFDC should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Agreement and on the Property, all operations performed incidentally, directly or indirectly connected with the operations to be performed under this Agreement and on the Property, including operations performed outside the work area and all change order work.

Developer agrees to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit the Developer to enter into a pre-loss agreement to waive subrogation without an endorsement, Developer shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Developer enter into such an agreement on a pre-loss basis.

On or before the effective date of this Agreement, Developer agrees to deposit with HHFDC certificates of insurance necessary to satisfy HHFDC that the insurance provisions of this Agreement have been complied with. Developer further agrees to keep such insurance in effect



and certificates of insurance on deposit with HHFDC during the entire term of this Agreement. Certificates of insurance shall refer to this Agreement.

HHFDC shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this Agreement. If, in the opinion of HHFDC, the insurance provisions in this Agreement do not provide adequate protection for HHFDC, HHFDC may require the Developer to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. HHFDC's requirements shall be designed to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.

HHFDC shall notify the Developer in writing of any changes in the insurance requirements desired by HHFDC. If the Developer does not deposit copies of insurance policies with HHFDC incorporating such changes requested by HHFDC within thirty (30) days of receipt of such notice, this Agreement shall be in default without further notice to the Developer and HHFDC shall be entitled to all legal remedies, including termination of this Agreement, and the Developer shall be liable for all damages, costs, and fees.

The procuring of the required policy or policies of insurance shall not be construed to limit the Developer's liability under this Agreement or to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding the policy or policies of insurance, the Developer shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Agreement.

All rights or claims or subrogation against the State of Hawaii and HHFDC, their officers, employees, and agents are waived.

The Developer shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Agreement, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

22.a. Contractor's Pollution Liability Insurance.

Any general contractor contracted to build a building on the Property shall be required to obtain and maintain Pollution Liability Insurance covering its liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs arising out of or caused by the operations and construction activities of said general contractor. Combined single limit per occurrence shall not be less than \$3,000,000 and aggregate limit of not less than \$5,000,000. The policy shall have tail coverage extending 5 years beyond the completion of the work contemplated by the applicable construction contract. The policy shall name the State of Hawaii and HHFDC as additional insureds.

23. Observance of Laws, Ordinances and Regulations

Developer, at its sole cost, shall ensure that the planning, design, construction, and operation of the Project complies with the rules, regulations, ordinances, codes and standards of the County, and any Federal and State requirements. If there is a conflict between requirements, the more restrictive requirement shall control.

24. Safe, Sanitary and Orderly Condition

During the Development Period, Developer, its officers, agents, assigns, employees, consultants and/or contractors, or persons acting for or on its behalf, shall keep the premises and improvements, if any, in a safe, clean, sanitary and orderly condition and shall not make, permit or suffer any waste, strip, spoil, nuisance, or unlawful, improper, or offensive use of the Property.

25. Information to be Provided by Developer

- a. Developer shall submit bi-weekly status reports on the progress of development of the Project.
- b. Upon HHFDC request, Developer shall promptly furnish current data and information, financial or otherwise, concerning Developer and the Project, including the following:
  1. Project budget showing Developer's estimated costs for developing and constructing the Project, including Developer's estimates of costs incurred to date and to be incurred over the remainder term of development; and
  2. Project schedule showing Developer's progress to date and estimated time for completing the Project. Each significant design phase for preparing the Project plans shall be indicated.
- c. Developer shall give HHFDC notice when served of any litigation or claims of any kind which might subject Developer to any liability in an amount in excess of \$50,000.00 whether or not covered by insurance, within thirty (30) calendar days of Developer's receipt of such litigation or claim.

26. Taxes and Assessments

Developer shall be responsible for all taxes and assessments applicable to the Project. Developer will pay or cause to pay all taxes, assessments or other governmental charges levied upon any of Developer's properties or Developer's income before the same become delinquent.

27. HHFDC Review and Approval

All Project plans shall be subject to HHFDC's review and approval prior to submittal to the County for processing, including all of the following:

- a. All requests for changes in land use designations, including land use classifications, zoning, or zoning exemptions or waivers for the Project.
- b. All plans, specifications and drawings for all on-site and off-site improvements.
- c. All development budgets, construction schedules and amendments including Composite plans.

HHFDC will complete its review within twenty (20) working days of receipt of all such material from Developer, or in such additional time as reasonably necessary for HHFDC to complete its review.

28. [Reserved]

29. Conditions Prior to Commencement of Construction

Developer shall not commence with any part of construction of the Project until a Notice to Proceed has been issued by HHFDC. The Notice to Proceed shall not be issued prior to the fulfillment to HHFDC's satisfaction of all of the following conditions precedent, subject to applicable subordination to Developer's interim lender as required by such lender:

- a. Developer shall have performed and complied with all agreements and conditions required to be performed and complied with by Developer pursuant to this Agreement prior to or at commencement of construction.
- b. Developer shall furnish to HHFDC one (1) complete half-sized and (1) "pdf" electronic file on CD of the set of plans and (upon request of HHFDC) specifications for the applicable phase or project approved by HHFDC, the Disability and Communication Access Board, and the County.
- c. Developer shall furnish to HHFDC evidence satisfactory to HHFDC that the Project is in compliance with the requirements of Section 103-50, HRS, and the Disability and Communication Access Board, or that Section 103-50, HRS is not applicable to this Project.
- d. Developer shall furnish to HHFDC evidence satisfactory to HHFDC that the Developer

has obtained a building permit for the construction proposed.

- e. Developer shall furnish to HHFDC evidence of Notice of General Permit Coverage approved by the Department of Health for the type of discharge(s) from the project authorized by an NPDES General Permit.
- f. Developer shall furnish to HHFDC a copy of the construction contract(s) for the proposed work to be commenced (“Construction Contract”).
- g. Developer shall furnish to HHFDC a copy of a performance and payment bond equal to 100% of the Construction Contract project for the work to be commenced. The contractor shall be the principal, and the surety shall be a corporate surety satisfactory to HHFDC. The bond shall be conditioned upon the full and proper performance of the work in accordance with the plans and specifications approved by HHFDC and upon the payment of all materials and labor in connection with the development and construction of the Project. The State of Hawaii and the HHFDC shall be additional co-obligees on the bonds.
- h. Developer shall furnish to HHFDC a construction schedule for the Project.
- i. Developer shall furnish to HHFDC a breakdown of the total development cost of the Project, including estimated contingencies.
- j. Developer shall provide evidence satisfactory to HHFDC that Developer has sufficient funds secured and available to pay for the proposed construction.
- k. The Ground Lease has been issued to the Developer in accordance with Paragraph 38 of this Agreement, or for work off the Project Site, Developer shall furnish to HHFDC evidence that Developer has obtained a right-of-entry from the respective landowner.
- l. The representations and warranties of Developer contained in this Agreement and otherwise made by or on behalf of Developer in writing, in connection with the Project shall be true and correct.

30. Publicity and Project Signage

Developer shall have sole responsibility for funding the advertising and promotional program for the Project. The advertising and promotional program shall disclose the fact that the Project is being developed by Developer with assistance from HHFDC. Developer shall include the HHFDC logo in all its advertisements relating to the Project. All of Developer’s advertising and promotional program shall be subject to the review and prior approval of HHFDC. HHFDC shall be given ten (10) working days to provide comments to the Developer.

If Developer erects a construction or Project sign, such sign shall acknowledge the State of Hawaii and HHFDC's participation and assistance in the Project.

31. HHFDC Inspection

Upon 24 hours prior written notice to Developer, HHFDC and its agents, shall have the right of entry upon the Project Site. HHFDC and its agents shall have the right to inspect all work done, labor performed and materials furnished in and about the construction site and to inspect all books, contracts, records and papers of Developer relating to the development, financing and construction of the Project under this Agreement. HHFDC and its agents shall not interfere with the work in progress. At least two (2) weeks prior to start of construction, Developer shall furnish HHFDC a current construction schedule, and updated schedules as they may be revised. HHFDC shall be invited to Developer's pre-construction meeting with its general contractor and to Developer's regularly scheduled owner-architect-contractor meetings for the Project.

32. Coordination of Construction with Ongoing Activities

Developer shall make reasonable efforts to coordinate its construction on the Project Site and shall also cooperate with other activities taking place in the vicinity. Developer shall be responsible for repairing or paying for the costs of repairing any damage that its activities may cause to any improvements.

33. Submittals to HHFDC upon completion of construction

Upon the earlier of completion of the Project, or as soon as each item is obtained, the Developer shall submit the following to HHFDC:

- a. A certification by an architect or engineer duly licensed under the laws of the State of Hawaii that the improvements have been substantially completed in accordance with the Project plans and specifications, with a summary description of the Project, as-built, to include the following information:
  - (1) Area of Project Site;
  - (2) Gross building area of Project;
  - (3) Gross building area of any non-residential uses;
  - (4) Total number of residential units and number of each residential unit type and average size of each unit type;
  - (5) Number of buildings, stories, and elevators in each building;
  - (6) Number of parking stalls, as allocated between residential and non-residential uses;
  - (7) Number of handicapped parking stalls, as allocated between residential and non-residential uses; and

(8) Number of loading stalls.

- b. One half-sized print set and an electronic "pdf" file on CD of "as-built" drawings reflecting all construction changes, alterations or deletions and bearing the stamp or seal and the signature of the registered professional engineer or architect, after each increment of construction work has been completed;
- a. All copies of applicable Certificates of Occupancy issued by the County; and
- b. Copy of the Affidavit of Publication filed at the applicable Circuit Court of the State of Hawaii indicating that notice of completion of the applicable increment of construction work has been published.

34. Warranty

All construction shall be performed in a good, workmanlike manner contemporary with industry standards using new or reconditioned materials in normal working order.

35. Termination for Illegal Purposes.

Notwithstanding any provision to the contrary, at any time during the term of this Agreement, HHFDC shall have the right to terminate this Agreement, if the Property or any part of the Property, appurtenances or improvements are used, or intended to be used, in any manner or in part, to commit or to facilitate the commission of a crime.

36. Nondiscrimination

The development, sale or use of the Property shall not be in support of any policy which discriminates against anyone based upon race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection.

The Project shall not have a requirement or preference for any religious faith or culture.

37. Hazardous Materials

- a. Developer shall complete a Phase I Environmental Site Assessment Report and any follow-up reports recommended by a qualified environmental consultant acceptable to the State of Hawaii Department of Health and shall be responsible for any environmental cleanup of the Property of hazardous materials required by the State of Hawaii Department of Health prior to commencement of construction of any new units or substantial rehabilitation of the Project.

- b. Developer shall not cause or permit the escape, disposal or release of any hazardous materials. Developer shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials. Developer shall not allow any such materials on the Property, except to use in the ordinary course of Developer's business, and then only after written notice is given to HHFDC of the identity of such materials and upon HHFDC's consent. HHFDC may withhold consent at its sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Developer, then the Developer shall be responsible for all costs. In addition, Developer shall execute affidavits, representations and the like from time to time at HHFDC's request, concerning Developer's best knowledge and belief regarding the presence of hazardous materials on the Property.

Developer shall indemnify, defend, and hold harmless HHFDC, the State of Hawaii and their respective officers, employees, directors, agents, representatives, officials, successors, or assigns ("Indemnitees") from and against any and all liability, loss, damage (including foreseeable or unforeseeable consequential damages), cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, relating to, arising out of or resulting from directly or indirectly to: (a) the Developer's breach of any warrants or obligations under this Agreement; (b) the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, discharge, disposal or presence of any hazardous material on, within, under or about the Property with the exception of those products customarily produced or distributed and readily available for sale to a consumer for use in or around a residence or for the personal use or consumption of a consumer in or around a residence; (c) the Indemnitees' investigation and handling (including the defense) of any Hazardous Materials Claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; and/or (d) the Indemnitees' enforcement of this Agreement, whether or not suit is brought therefore. This covenant shall survive the expiration or earlier termination of this Agreement, notwithstanding any other provision to the contrary.

For the purpose of this Agreement, "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, or rule, whether existing or subsequently enacted ("Hazardous Materials Laws").

As used in this Agreement, the term "Hazardous Materials Claims" means and includes

(i) any and all enforcement, clean-up, removal, mitigation or other governmental or regulatory actions instituted, or to the best of the Developer's knowledge contemplated or threatened, in respect of the Property pursuant to any Hazardous Materials Laws, and (ii) any and all claims made or to the best of Developer's knowledge contemplated or threatened, by any third party against the Developer seeking damages, contribution, cost recovery, compensation, injunctive relief or similar relief resulting from any Hazardous Discharge or from the existence of any hazardous material on, within or under the Property.

As used in this Agreement, the term "Hazardous Discharge" means any event involving the use, deposit, disposal, spill, release or discharge of any hazardous material on, within or under the Property.

38. Conveyance of Property to Developer

Conveyance of the Project Site to Developer shall be by ground lease ("Ground Lease") from HHFDC at a rent of \$1.00 per year lease rent, fixed for a 75-year term, substantially in the form included in the RFP, or otherwise approved by HHFDC, and subject to the following:

- a. The Developer shall obtain final subdivision approval of the Project Site from the County as approved by HHFDC;
- b. HHFDC reserves the right to require additional subdivision(s) of the Project Site and to convey title to Developer in phases;
- c. HHFDC reserves the right to withhold conveyance of title until after the approval of the last discretionary approval for the applicable phase of the Project, e.g., zoning exemptions;
- d. HHFDC reserves the right to withhold conveyance of title until after all the offsite improvements necessary for the development of the phase for which title is requested have been completed or bonded in accordance with the County's subdivision regulations;
- e. HHFDC reserves the right to withhold conveyance of title until the closing of all the interim financing required for development of the Project for the phase for which title is requested;
- f. Developer shall be responsible for preparation of the legal descriptions of the parcel(s) to be conveyed to Developer, as well as the remaining portions of the Property created by Developer's subdivision but not conveyed to Developer;



- g. Developer shall be responsible for all closing costs, fees, expenses and taxes, including those that are reasonably and necessarily allocated to or incurred by HHFDC;
- h. Developer shall accept the Project Site in "AS IS, WHERE IS" condition without any express or implied warranties or representations. HHFDC shall incur no expenditures and liability in connection with this Agreement and the Project Site's development and operation;
- i. The parties acknowledge that the lease rent under the Ground Lease is substantially less than the fair market rent for the demised premises and is in furtherance of the public purpose of providing affordable housing opportunities to the State of Hawaii;
- j. The Project shall remain affordable for the term of the Ground Lease;
- k. The public access road accessing the Project Site and the balance of the Property shall be conveyed to the Developer by non-exclusive easement which shall automatically terminate upon dedication to the County, or other form approved by HHFDC;
- l. HHFDC reserves the right to convey the Ground Lease concurrent with the non-exclusive easement for the public access road;
- m. HHFDC reserves the right to issue a 15' easement to the DWS for a new 8" waterline along Easements A and B of E.O. No. 2189 between Wahikuli and Fleming Roads described in the HHFDC Board of Directors For Action dated January 8, 2009; the new waterline was installed, however, DWS has not followed-up with the creation of the easement they requested;
- n. Title to the Property shall be subject to the Villages of Leiali'i Declaration of Covenants, Conditions & Restrictions, substantially in the form dated December 6, 2004 and recorded at the State of Hawaii Bureau of Conveyances as Document No. 2004-246863 (VOL DCCR's") as it may be amended and recorded by HHFDC, and/or any other similar or associated governance documents approved by HHFDC. If not already recorded on the Property at the time of the transfer of the Ground Lease to the Developer, the Developer agrees to execute a consent to annex the Property to the VOL DCCR's for recordation at the State of Hawaii Bureau of Conveyances. The master association under the VOL DCCR's has not been activated. HHFDC reserves the unilateral right to activate the master association, or amend, supplement, or repeal the VOL DCCR's in whole or in part, at any time, at its sole discretion.
- o. The Project shall commence construction by \_\_\_\_\_, unless otherwise extended at the sole discretion of HHFDC; and

- p. The Project shall be completed by **December 31, 2021**, unless otherwise extended at the sole discretion of HHFDC.

39. Right of Entry to Developer

HHFDC grants the Developer a right-of-entry for itself, its volunteer workers, agents, employees, consultants, contractors, and anyone else who works on the Project on behalf of the Developer to enter the Property for the purposes of conducting engineering studies and maintenance of the Property under this Agreement. Developer shall not permit any other person to occupy or use the Property or any portion of the Property, nor shall Developer occupy the Property for any other purpose, without HHFDC's prior approval. Developer shall not undertake any construction on the Property without HHFDC's written approval or HHFDC's issuance of a Notice to Proceed with Construction pursuant to Paragraph 29 of this Agreement. Developer agrees to defend, indemnify and hold harmless the State of Hawaii and HHFDC as set forth in Paragraph 21 of this Agreement.

40. Default

Developer shall be in default if:

- a. Developer shall fail to complete the Project by the Completion Date, or timely pay, perform and/or complete Developer's other obligations under this Agreement;
- b. Developer shall become insolvent, or shall voluntarily or involuntarily be dissolved or shall make any assignment for the benefit of creditors or shall generally fail to pay Developer's debts as they become due;
- c. Developer shall become the subject of an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted and such order shall remain in effect and unstayed for a period of sixty (60) consecutive days;
- d. Developer shall commence a voluntary case under the bankruptcy laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law, or regulation;
- e. Developer shall file any answer admitting the material allegations of any petition filed against Developer in any such proceedings;
- f. Developer shall seek or consent to or acquiesce in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of Developer or of all or a substantial part of Developer's properties or assets;

- g. Developer shall file any proceeding requesting Developer's dissolution or liquidation; or within sixty (60) days after commencement of any proceedings against Developer seeking any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which Developer may be entitled under any present or future statute, law or regulation and such proceedings shall not have been dismissed;
- h. Within sixty (60) days after the appointment of, or taking possession by, any custodian, trustee, receiver or liquidator of any or of all or a substantial part of the properties or assets of Developer, without HHFDC's consent or acquiescence, any such appointment or possession shall not have been vacated or terminated;
- i. There shall be any attachment, execution or other judicial seizure of, or otherwise materially affecting all or any part of this Agreement, the Property or any improvements thereon unless such attachment, execution or seizure is set aside, dissolved, bonded off or otherwise eliminated within thirty (30) days of its occurrence;
- j. Any third person shall obtain an order or decree in any court of competent jurisdiction enjoining or prohibiting Developer from performing this Agreement as a result of the negligent or willful acts or omissions of Developer, and (1) such proceedings shall not be discontinued and such order or decree shall not be vacated within thirty (30) days after the granting thereof and (2) Developer shall fail to provide reasonable assurances to HHFDC of its ability to complete the Project;
- k. There shall be a sale, transfer, hypothecation, assignment or conveyance of all or any part of this Agreement, the Project, including the housing units and other improvements comprising the Project, or the Property by Developer without the prior written consent of HHFDC, except as expressly allowed and contemplated by this Agreement;
- l. Any representation or warranty made by or on behalf of Developer, in any other writings in connection with the Project shall prove to have been false or incorrect in any material respect on the date as of which such representation or warranty was made;
- m. A final judgment is entered which alone or with other outstanding final judgments against Developer or any of its partners would have a material adverse effect on their financial ability to perform their obligations in connection with this Agreement and (1) such judgment shall not be discharged, or (2) within thirty (30) days after entry of such judgment the execution thereof shall not be stayed pending appeal, or (3) such judgment shall not be discharged within thirty (30) days after the expiration of any such stay;
- n. Any of the above events b. through m., inclusive, occur as to any of the members or managers or partners of the Developer, and additional security is not provided as

provided in Paragraph 42.f of this Agreement;

- o. Abandonment or suspension of development or construction of improvements required by this Agreement for a period of four (4) consecutive calendar months;
- p. An event of default under any loans and loan agreements issued by HHFDC to the Developer, or HHFDC programs approved by HHFDC to the Developer for the Project; or
- q. If all or a portion of the Ground Lease has been issued to the Developer, an event of default under the Ground Lease, or any phase of the Ground Lease.

41. Cure Period

Developer shall immediately proceed with taking all action necessary to cure all defaults.

Developer shall have 30 calendar days to cure a default which can be remedied and cured by the payment of money.

If a default cannot be remedied by the payment of money (“non-monetary default”), Developer shall have thirty (30) calendar days in which to cure such non-monetary default, or if such default cannot be reasonably cured in thirty (30) calendar days, Developer shall commence to cure the default within thirty (30) calendar days and thereafter shall continue to diligently cure such default subject to approval by HHFDC.

During such period of any monetary or non-monetary default, Developer shall protect the Project from loss, damage, vandalism, waste or other destruction and shall maintain the Project schedule to the extent that it is practicable to do so.

42. HHFDC Remedies

After Developer has been declared to be in default and Developer fails to cure such default within the time period prescribed in Paragraph 41 above, Developer agrees that HHFDC shall have all legal and equitable rights to which HHFDC may be entitled under the laws of the State of Hawaii including without limitation the rights and remedies set forth below. HHFDC may:

- a. Terminate all of Developer’s right, title and interest under this Agreement to develop the Project and the Property and take over the completion of the Project. Notwithstanding such termination, Developer shall not be released from the obligation to pay and perform all outstanding obligations under this Agreement, including the payment of any unpaid balance of Developer’s equity, which Developer is obligated to pay and invest and damages arising out of delays and cost overruns incurred to complete the Project lien-

free;

- b. To retain all fees, deposits, funds or security that have been paid or delivered to HHFDC or escrow;
- c. To keep and use all plans, drawings, specification and work product whether prepared by Developer or Developer's consultants and, in HHFDC's sole discretion, to negotiate with Developer's consultants and contractors to complete the Project;
- d. To enter into negotiations with other developers and enter into a development agreement with another developer to complete the development of the Project pursuant to development rights afforded to such person under a development agreement;
- e. To complete the development of the Project and use any of Developer's equity and any other funds or security which Developer has paid or deposited with HHFDC to complete the Project lien-free;
- f. To require Developer to put up additional security in an amount necessary to pay for the completion of the Project lien-free and Developer's other obligations under this Agreement. HHFDC may require such additional security to be in the form of cash or an irrevocable letter of credit (or equivalent) or bond;
- g. To sue for damages, including but not limited to architectural and engineering fees and costs and attorney fees and costs;
- h. To seek specific performance;
- i. To cancel, terminate and seek such cancellation and termination from the County Council of any zoning exemptions approved by HHFDC for the Project pursuant to HRS Section 201H-38;
- j. To terminate any loans and loan agreements issued by HHFDC to the Developer for the Project and seek repayments of such loan in accordance with such loan agreements;
- k. To terminate any HHFDC programs approved by HHFDC for the Project and seek to recapture any benefits received by Developer for the Project; or
- l. If all or a portion of the Ground Leases have been issued to the Developer, to cancel and terminate any Ground Lease.

All rights, powers and remedies herein given to HHFDC 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.

## GENERAL PROVISIONS

43. Assignments

Without the prior written approval of HHFDC, Developer shall not transfer or assign this Agreement or any interest in this Agreement, either voluntarily or by operation of law. Any such transfer or assignment shall be null and void.

44. Force Majeure

If any party is prevented from performing its obligations stated in this instrument by any cause not within the reasonable control of that party, including, but not limited to fire, an act of God, public enemy, terrorism or war, an act or failure to act of a government entity (except on the part of HHFDC), unavailability of materials, or actions by or against labor unions, it shall not be in default of its obligations stated in this Agreement. Any party delayed by such an event shall notify the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If no notice is given by the delayed party, no time extension shall be granted.

45. Amendments, Waiver

This Agreement can only be changed by an instrument in writing signed by HHFDC and Developer. The terms of this Agreement may not be waived, modified, or in any way changed by implication, through conduct, correspondence, or otherwise, unless such waiver, modification, or change shall be specifically agreed to in writing by HHFDC and Developer. Any waiver in whole or in part to any of the terms and conditions of this Agreement shall be specific and not general. Each waiver shall only apply to the specific conditions and circumstances surrounding it.

46. Binding Effect of Agreement

This Agreement shall be binding upon and inure to the benefit of HHFDC and Developer, their respective successors and assigns.

47. Gender Number

The use of any pronoun in reference to HHFDC or Developer shall be construed to mean the singular or plural, the masculine, feminine or neuter, as the instrument and context may require.

48. No Party Deemed Drafter

The parties agree that neither HHFDC nor Developer shall be deemed to be the drafter of this Agreement. In the event this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision against any party as the drafter of this Agreement.

49. Counterparts

This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute but one Agreement.

50. Invalidity of Provision

If any provision of this Agreement as applied to any party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way effect any other provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole. If any provision of this Agreement is inconsistent with any provision of any other document (excluding any loan documents) relating to the Project, the provisions of this Agreement shall control.

51. No Third-Party Beneficiaries

No third-party beneficiaries are intended by this Agreement, and the terms and provisions of this Agreement shall not give rise to any right in third parties to enforce the provisions of this Agreement.

52. Campaign Contributions by State and County Contractors

The Developer acknowledges that Section 11-355, HRS, prohibits campaign contributions from specified State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

53. Governing Law

The laws of the State of Hawaii shall govern the validity, construction and effect of this Agreement.

54. Accessibility Features

The Developer shall consider incorporation of the following accessibility-related features recommended by the University of Hawaii Center on Disability Studies into the Project to ease

everyday access for anyone with mobility challenges:

- a. One no-step entrance;
- b. Interior doorways at least 32 inches wide;
- c. Adequate space to use a wheelchair in food preparation areas;
- d. Bathroom walls that can support grab bars;
- e. Half bath or preferably full bath on the main floor; and
- f. Light switches and electrical outlets within comfortable reach.

55. Construction by Hawaii Workforce

Developer, its contractors and subcontractors shall comply with HRS Chapter 103B (Act 68 SLH 2010), as amended by Act 192 SLH 2011 and implemented by State of Hawaii Comptroller's Memorandum No. 2011-18 dated July 25, 2011 to ensure that Hawaii residents compose not less than eighty per cent of the workforce employed to perform the contract for the construction of this Project. Every contractor shall comply with this requirement for the entire duration of its contract on the Project. Certifications of Compliance For Employment of State Residents shall be made under oath by an officer of the general contractor and subcontractor whose subcontract is \$50,000 or more and submitted to HHFDC. Shortage trades, as determined by the State of Hawaii Department of Labor and Industrial Relations, shall not be included in the calculation. All improvements under this Agreement shall be a public building for purposes of this requirement.

56. Notices

Any notice to the parties provided for or permitted by this Agreement may be given sufficiently for all purposes in writing and (a) mailed as registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to such party at its post office address below or the last such address designated by such party in writing to the other; or (b) delivered personally; or (c) sent by email (so long as a copy of such email notice is provided immediately thereafter in accordance with the requirements of this paragraph by hand delivery or certified mail). Any such written notice shall be deemed conclusively to have been received at the time of such personal delivery, upon email delivery, or at 5:00 pm on the third business day after being deposited with the United States mail as aforesaid.

If to HHFDC:                      Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813



Attn: Executive Director  
Email: [craig.k.hirai@hawaii.gov](mailto:craig.k.hirai@hawaii.gov)

If to Developer: \_\_\_\_\_  
\_\_\_\_\_

### PROJECT SPECIFIC REQUIREMENTS

57. Subdivision

The Developer shall seek HHFDC approval of the Project boundaries before seeking final subdivision approval of the Project Site and the public access road from the balance of the Property by the County. The Developer shall not create remnant lots for ownership by HHFDC as a result of the subdivision of the Project Site; any remnant lots shall be incorporated into the Project Site.

58. Public Access Road

The Project shall include one or more public collector road accesses from the Keawe Street Extension which will provide access to the Project as well as the balance of the Property to the north of the Project as shown in the Leiali'i Final EIS. The roadway providing public access to the Project shall be subdivided by the Developer, built to County standards and dedicated to the County. Any rights-of-way over the Project Site for any future roadways providing access to the Project as well as the balance of the Property as shown in the Leiali'I Final EIS shall be set aside by easement. Dedication of land to the County, including roadways, shall be subject to Legislative approval pursuant to Section 171-64.7, HRS.

59. Entitlement Approvals

The Developer shall be responsible for all entitlement approvals necessary for development of the Project, including working with the County or HHFDC to obtain approvals of any land use planning, zoning, subdivision or building code exemptions required for the Project. The Developer shall also be responsible for any further consolidation or subdivision and the preparation of any legal descriptions of the Project Site as may be required.

60. Land Use Commission Decision and Order

The Developer shall comply with the conditions imposed by the Land Use Commission ("LUC") Decision and Order ("D&O") for Docket No. A89-652 for the Villages of Leiali'i. The Developer shall be responsible for obtaining LUC approval of any revisions to the D&O required to develop the Project in the event that the Project does not comply with the LUC D&O.

In accordance with Item 2 of the Order of the LUC D&O, the Developer shall cause all prospective occupants of the Project to be informed of (a) possible odor, noise, and dust pollution resulting from any surrounding farming operation, and (b) the Hawaii Right-to-Farm Act, Chapter 165, HRS, which limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

61. Wastewater Facilities

In accordance with the County of Maui Department of Environmental Management letter to HHFDC dated January 27, 2017, the Project shall not be permitted a permanent connection to the County's sewer system. The Developer shall be responsible for the design, approval, construction and operation of an onsite package wastewater treatment plant for the Project, and for the use or disposal of its effluent.

62. Maintenance Around Project Site

The Developer shall be responsible for the monthly trimming of weeds and vegetation on the HHFDC undeveloped properties immediately outside the boundaries of the Project Site for a distance of 50 feet from the boundary of the Project Site for fire and rodent control for the protection of the Project, until such undeveloped properties are developed by HHFDC.

63. Perimeter Fences and Signage

The Developer shall be responsible for securing and maintaining the Project Site with appropriate perimeter fences, notices and signage against trespassing onto adjacent undeveloped lands, including the land mauka (east) of the Project site and the proposed Bypass Highway, ditches and reservoirs, by Project tenants, guests, invitees and children who may be attracted to any hazards and nuisances beyond the Project Site.

(The remainder of this page is intentionally left blank; the signature page follows.)

IN WITNESS THEREOF, the undersigned have executed these presents as of the day and year first written above.

Approved by the HHFDC Board  
of Directors at its meeting  
held on \_\_\_\_\_

HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION

By \_\_\_\_\_  
Craig K. Hirai  
Executive Director

Approved as to Form:

“HHFDC”

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_

A Hawaii limited liability company

By \_\_\_\_\_  
Name:  
Title:

“Developer”

“DEVELOPER”

x:\c:\lei rfp 200units\Exh A - Dev.Agmt.Form

Reviewed by \_\_\_\_\_, \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared

CRAIG K. HIRAI, personally known to me, who, being by me duly sworn, did say that he is the EXECUTIVE DIRECTOR of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that this \_\_\_\_\_-page DEVELOPMENT AGREEMENT, KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALI'I, AFFORDABLE FAMILY RENTAL HOUSING PROJECT dated \_\_\_\_\_, was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

\_\_\_\_\_  
Name:  
Notary Public, State of Hawaii  
\_\_\_\_ Judicial Circuit

My commission expires: \_\_\_\_\_

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

On \_\_\_\_\_, before me personally appeared \_\_\_\_\_  
and \_\_\_\_\_, 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 capacities shown, having been duly authorized to execute such  
instrument in such capacities.

\_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_

First Judicial Circuit

Document Description: Development Agreement, Keawe Street Apartments at the Villages of Leiali'i,  
Affordable Family Rental Housing Project

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

Reviewed by \_\_\_\_\_

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

On \_\_\_\_\_, before me personally appeared \_\_\_\_\_  
and \_\_\_\_\_, 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 capacities shown, having been duly authorized to execute such  
instrument in such capacities.

\_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

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Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Notary Name: \_\_\_\_\_ First Judicial Circuit  
Document Description: Development Agreement, Keawe Street Apartments at the Villages of Leiali'i,  
Affordable Family Rental Housing Project

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

Reviewed by \_\_\_\_\_

EXHIBIT "A"

Property Location Map or  
Property description

Reviewed by \_\_\_\_\_, \_\_\_\_\_



Return by Mail ( ) Pickup ( ) To: Land Court ( ) Regular ( ) Double ( )

Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
Attention: Stan S. Fujimoto, Project Manager

Total pages \_\_\_\_\_

**TYPE OF DOCUMENT:** Ground Lease  
Keawe Street Apartments at the Villages of Leiali'i

**PARTIES TO DOCUMENT:**

**Lessor:** Hawaii Housing Finance and Development Corporation, a public body and a body corporate and politic of the State of Hawaii, State of Hawaii

**Lessee:** \_\_\_\_\_, a Hawaii limited liability company

**PROPERTY DESCRIPTION**

**DOCUMENT NO.**

**DOCUMENT NO.  
TRANSFER CERTIFICATE OF  
TITLE NO:**

**TAX MAP KEY NO. (2) 4-5-021: 003 (POR.)**

**GROUND LEASE**  
**KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALI'I**

THIS INDENTURE ("Lease"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ("Effective Date") by and between the **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii, the principal place of business and mailing address of which is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813, **STATE OF HAWAII** ("Lessor"), and \_\_\_\_\_, a Hawaii limited liability company, whose principal place of business and mailing address is \_\_\_\_\_, Honolulu, Hawaii, 96818 ("Lessee");

WITNESSETH:

WHEREAS, Lessor is the owner in fee simple of the premises described in this Lease.

WHEREAS, the premises was conveyed to Lessor by Land Patent Grant No. S-15,792, dated November 4, 1994.

NOW, THEREFORE, the Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises at Wahikuli, Lahaina, Island and County of Maui, State of Hawaii more particularly described in Exhibit "A" which is attached and incorporated by reference (the "premises" or the "Leased Land").

It being expressly understood and agreed by Lessor that, except as provided herein, Lessee is the leasehold owner of all buildings and real property improvements and fixtures which are now or hereafter situated on such land described in Exhibit "A"; provided that Lessee, for itself and its successors and assigns, covenants that, except as provided by Sections 9 and 27 of this Lease, the buildings and real property improvements and fixtures shall not be separated from the premises demised hereby and can only be conveyed or encumbered with any conveyance or encumbrance of this Lease subject to Lessor's approval or consent if required as provided below in Section 13 pertaining to "Assignment of Lease" even though not expressly mentioned or described in the conveyance or other instrument.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of: Seventy-Five (75) years, commencing on the Effective Date, up to and including the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the office of the Lessor, an annual and additional quarterly rent as provided hereinbelow:

- A. Base Lease Rent. A base lease rent of \$1.00 per year for the full term of the Lease shall be payable in advance in a lump sum payment of SEVENTY-FIVE AND NO/100 DOLLARS (\$75.00) upon the execution of this Lease.

Lessee understands and agrees that the base lease rent of \$1.00 per year for the term of this Lease is substantially less than the fair market rent for the leased premises and is in furtherance of the public purpose of providing affordable housing opportunities in the State of Hawaii. For the allocable portion of the Project attributable to the Affordable Units as described in Section 12 below, except for a reasonable management fee for operation of the Project, Lessee shall not benefit financially from any conveyance or refinancing of this Lease, unless approved in writing by the Lessor, except for the following:

1. The sales price of Lessee's leasehold interest in the Project shall be subject to the following:
  - a. The Lessee shall be permitted to recapture documented advances made for the Project; and
  - b. Any excess proceeds of any sale shall be placed in escrow or other mutually agreeable vehicle or mechanism and used to create additional affordable housing in the State of Hawaii;
2. Lessee's reserves for the Project will be identified and transferred to any transferee of the Project; and
3. Lessor reserves the right to impose less, different or additional conditions to any extensions of this Lease.

This restriction set forth in this Section A. shall not apply if Lessee acquired its leasehold interest through foreclosure of a mortgage secured by this Lease (whether by judicial proceedings or by virtue of any power of sale contained in the mortgage), nor any conveyance of the Lease to the mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument as described in Section 20 below.

- B. Twenty percent (20%) of Funds. Twenty percent (20%) of all funds Lessee derives from the premises, other than rent from affordable housing as approved by Lessor, shall be paid quarterly to Lessor, by the end of the calendar month following the quarter for which such amount is based. The amount shall be submitted in arrears with an itemized list of all funds Lessee derives from the premises, other than rent from leases of affordable housing, for the quarter upon which such amount is based.
- C. Increase of Base Lease Rent. In the event of a foreclosure of a mortgage secured by this Lease (whether by judicial proceedings or by virtue of any power of sale contained in the mortgage), or any conveyance of the Lease to the mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument as described in Section 20 below, if any of the dwelling units in the

Project on the leased premises are not used as Affordable Units as described in Section 12 below, the base lease rent of the leased premises shall be increased in the following manner:

1. From and upon the first day (the "Rent Increase Commencement Date") of the first full calendar month after the use of any or all of such dwelling units as other than Affordable Units, the annual rent for the leased premises shall be calculated as follows:

Fair market value of the land x 8% x percentage of such dwelling units not used as Affordable Units + rent otherwise due under Paragraph A hereof x percentage of such dwelling units used as Affordable Units. For purposes hereof, the fair market value of the land shall be determined exclusive of buildings and improvements, and based upon the actual then existing use for which the Lessee shall use the improvements on the land, and exclusive of the encumbrance of this Lease.

2. The fair market value of the land shall be determined as of the Rent Increase Commencement Date and each fifth anniversary of the Rent Increase Commencement Date. If the Lessor and the Lessee are unable to agree upon the fair market value of the land within 45 days after the Rent Increase Commencement Date or each such adjustment date, the fair market value of the land shall be determined in the manner set forth in Paragraph C.7 hereof.
3. The percentage of dwelling units used as Affordable Units shall be adjusted on each anniversary of the Rent Increase Commencement Date. Such percentage shall be certified to the Lessor by the Lessee in a written report as of the Rent Increase Commencement Date and each anniversary thereof, which report shall show the calculation of any adjustments and shall be delivered to the Lessor with the rental payment then due.
4. Adjustments to the fair market value of the land or to such percentages may be upwards but not downwards, and the rent due under the above formula shall in no event be less than the rent paid for the previous rental period.
5. The adjusted rent shall be paid in advance in equal monthly installments on the first day of each month.
6. Notwithstanding anything elsewhere stated in this Lease, if the dwelling unit in the Project on the leased premises designated as the manager's unit is not being used as an Affordable Unit, then, and notwithstanding such use, so long as 75% or more of the dwelling units in the Project are being used as Affordable Units, the dwelling unit designated as the manager's

unit shall be deemed to be used as an Affordable Unit.

7. In the event of failure to agree on a fair market value of the land for any of the periods within the time specified in Paragraph C hereof, either party may give to the other written notice of a desire to have an arbitration by three appraisers to determine the said fair market value in the manner proved for in Chapter 658A of the Hawaii Revised Statutes, as the same may be amended, and name one of the appraisers in said written notice, whereupon the other party shall, within ten days after receipt of such notice, name a second appraiser, and in case of failure so to do the party who has already named an appraiser may have the second appraiser selected or appointed by one of the judges of the Circuit Court of the Third Circuit, State of Hawaii, and the two appraisers so appointed in either manner shall select and appoint a third appraiser, and in the event the two appraisers shall fail to appoint the third appraiser within ten days after the naming of the second appraiser, either party may have the third appraiser selected or appointed by one of the said judges, and the three appraisers so appointed shall thereupon proceed to determine the fair market value of the land on the basis hereinafter set forth, and the decision and award of any two of them shall be final, conclusive and binding upon all parties, unless the same shall be vacated, modified or corrected, all as provided in said Chapter 658A, as the same may be amended. The appraisers shall be recognized real estate appraisers, and shall have all the powers and duties prescribed in said Chapter. It is understood and agreed that the appraisers' duty will be to only determine the fair market value of the land, exclusive of buildings and improvements but based on the actual then existing use or uses for which Lessee shall use the improvements, and exclusive of the encumbrance of this Lease. In all cases of arbitration, the Lessor and the Lessee shall each pay the expenses of their own attorney's, appraiser's and witnesses' fees, and all other expense of such arbitration shall be divided equally between the Lessor and the Lessee. If and whenever the fixing of such rental is under arbitration, the Lessee, pending the determination thereof, shall continue to pay the same rental which the Lessee had been paying during the last preceding rental period. However, if the rental which the Lessee had been paying during the last preceding rental period was only \$1.00 each year, Lessee, pending the determination by the appraisers of the fair market value of the land, shall pay the amount which Lessor considers to be the rent due in accordance with Paragraph C hereof. Lessor shall promptly repay Lessee for rental overcharge or Lessee shall promptly pay Lessor the deficiency, if any, upon the conclusion of the arbitration proceeding, in either case, together with interest thereon at the rate of 12% per annum.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and Waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxite clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the premises.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS  
FOLLOWS:

1. Payment of Rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, Assessments, Etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, fees, fines, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term.

a. Lessee's Right to Contest. Lessee shall have the right, at its own expense, to contest the amount or validity of any tax or assessment by appropriate proceedings diligently conducted in good faith. As a condition precedent to Lessee's contesting any tax or assessment, Lessee shall (i) comply with all laws, orders, rules and regulations respecting such contest, (ii) give Lessor prior written notice of Lessee's intent to so contest said amount or validity, and (iii) in order to protect Lessor from any sale or foreclosure against the premises or any part thereof, provide a good and sufficient surety bond or other security deemed appropriate by Lessor in the amount of such tax or assessment plus estimated penalties and interest that may be imposed. Lessee shall bear any and all costs, liabilities or damages, including reasonable attorneys' fees

and costs arising out of such contest. Nothing in this section relieves, modifies, or extends Lessee's covenant to pay any such tax or assessment at the time and in the manner provided in this Section 2.

b. Lessor's Cooperation in Lessee's Contest. Provided Lessor incurs no cost or liability in doing so, Lessor shall cooperate (and Lessor shall execute applications, certificates and like documents) with Lessee in any proceedings brought by Lessee to contest the validity or the amount of any taxes or assessments or to recover any taxes or assessments paid by Lessee. If the provisions of any law at the time in effect shall require that such proceedings be brought by or in the name of Lessor, then, provided Lessor incurs no cost or liability in doing so, Lessor shall join in any such proceedings or permit the same to be brought in its name. If any such proceedings shall be brought by Lessee, Lessee shall, without limiting any other indemnity in this Lease, defend, indemnify and hold the Lessor and the State of Hawaii harmless from all claims arising from such proceedings.

3. Utility Services. The Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee, excluding any utility charges contracted directly by the residential and retail commercial tenants.

4. Covenant against Discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition as comparable residential developments in Hawaii, similar in age, desirability of location, level of housing affordability, kind and nature to the Improvements.

6. Waste and Unlawful, Improper or Offensive Use of Premises. The Lessee shall be responsible for the maintenance of the premises during the term of this Lease and shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful or improper use of the premises or any part thereof. Lessee shall be responsible for responding to any complaints against the leased premises and for resolving any issues arising from the complaints, including but not limited to, taking action to halt any waste, nuisance, or unlawful use of the premises.

7. Compliance with Laws. The Lessee shall comply with the applicable laws of all governmental authorities having jurisdiction over the Leased Land, construction of the Improvements, and use and operation of the premises now in force or which may become effective subsequent to the commencement of this Lease.

8. Inspection of Premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the Lease term, to enter the premises and examine the state of its repair and condition with three (3) days prior written notice to Lessee.

9. Improvements. Except as provided in Section 12 of this Lease and in Section 2 of Exhibit B of this Lease, the Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Lessor and upon those conditions the Lessor may reasonably impose with exception that Lessee is not required to obtain Lessor's prior approval to effect (i) emergency repairs, (ii) interior alterations or minor repairs that are non-structural and do not significantly alter the external appearance or view of any improvements, (iii) other routine maintenance work that does not otherwise involve major repairs, or (iv) tenant improvement repair(s) in the retail commercial space. The Lessee shall own the improvements until the expiration or earlier termination of the Lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at its sole cost and expense. Accordingly, at all times during the term of this Lease, Lessee shall be deemed to exclusively own the improvements for federal and state and local tax purposes, and Lessee alone shall be entitled to all of the tax attributes of ownership thereof, including, without limitation, the right to claim depreciation or cost recover deductions, the right to claim the tax credits available to the Lessee under Section 42 of the Internal Revenue Code, with respect to the improvements, and the right to amortize capital costs and to claim any other federal or state or local tax benefits attributable to the improvements. Lessee and Lessor shall each report this transaction consistent with the provisions of this Section 9 on any federal, state or local tax return filed by each. At the expiration or earlier termination of this Lease, provided Lessee is not then in default, Lessee may remove any or all of Lessee's personal property from the premises so long as (i) such personal property can be removed without structural damage to the improvements, and (ii) such personal property is removed within thirty (30) days following such expiration or earlier termination of this Lease, and (iii) all resultant damage to the premises and any improvements are promptly and completely remedied and Lessee takes reasonable steps necessary to preserve the appearance of the premises and any improvements. Any personal property of Lessee remaining on the premises after said thirty (30) day period shall automatically vest and become the sole property of Lessor without any payment by Lessor and without any further action or agreement required, including the necessity of bill of any sale, deed, conveyance or other act or agreement of Lessee, and without payment of any kind or nature by Lessor to Lessee or to any other person.

Notwithstanding any provision herein or elsewhere to the contrary, Lessee shall own in fee simple all buildings, structures and real property improvements which are now or hereafter situated on the premises; provided that Lessee, for itself and its successors and assigns, covenants that the buildings, structures and real property improvements shall not be separated from the premises and can only be conveyed or encumbered with any conveyance or encumbrance of this Lease subject to Lessor's approval or consent as provided below in Section 13, Assignment of Lease etc.

9a. Bond. Lessee shall not commence construction of any improvement to the Premises or improvements at a cost of more than \$25,000.00 without first obtaining and depositing with Lessor performance and labor and material payment bonds naming Lessor and the State of Hawaii as additional obligees with a responsible surety authorized to do business in the State of Hawaii, which bonds shall guarantee completion of such construction in accordance



with the contract therefore free and clear of all mechanics' and materialmen's liens and shall be in a penal sum not less than 100% of the cost of such construction.

10. Repairs to Improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted as to comparable residential developments in Hawaii, similar in age, desirability of location, level of housing affordability, kind and nature to the improvements. Lessee shall also, at its own expense, make any and all repairs and perform all work required to keep the premises, buildings, and improvements on the premises in compliance with all County, State, and Federal laws and regulations, including but not limited to environmental, Americans with Disabilities Act, and other requirements.

11. Liens. Except for the liens permitted by Section 13, Section 19 and Section 20 of this Lease and except for leases and/or rental agreements with residential and commercial tenants for the residential and commercial spaces in the project described in Section 12, the Lessee shall at all times keep the premises free and clear of all mechanics' and materialmen's liens and all other liens and encumbrances. Lessee shall promptly pay all contractors and materialmen in accordance with its contract(s) for construction of any improvements with respect to work performed by or for Lessee or materials purchased by or for Lessee so as to prevent any liens attaching to the premises. Notwithstanding the preceding sentence, Lessee may contest any and all invoices and payment requests from such contractors and materialmen, provided that Lessee, if the amount contested exceeds Twenty-Five Thousand Dollars (\$25,000), shall first post with Lessor a bond (in an amount equal to 100% of the contested invoices) or other security, in form and amount reasonably acceptable to Lessor, to secure the payment of any contested amounts (plus any fees, interests and penalties) and the removal of any liens which may attach as a result of such nonpayment and contest if such lien remains outstanding for a period of more than twenty (20) calendar days. Lessee shall defend, indemnify, and hold harmless the Lessor from and against any claims for such liens and encumbrances and all resulting expenses.

12. Character of Use. The Lessee shall use or cause the premises to be used for the purposes of developing, operating and maintaining a \_\_\_-unit (includes 1 resident manager's unit) multifamily rental housing project, all of which (except the resident manager's unit) shall be affordable to families at or below 60% of the U.S. Department of Housing and Urban Development area median income ("AMI")("Affordable Units"), and ancillary facilities as described in the Use Restrictions set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless otherwise agreed to by Lessor ("Project"). Lessee shall ensure that the use and occupancy of the premises complies with all applicable County, State, and Federal laws and regulations.

13. Assignments of Lease, etc. Lessee shall not assign this Lease without the written approval or consent of Lessor. A permitted assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, that no such assignment shall be effective to transfer any interest in this Lease unless Lessor shall have approved or consented to the assignment and shall have received either a true executed copy of such assignment or written notice thereof, and also, in any case other than assignment by way of a mortgagor's assignment

to or by the Department of Housing and Urban Development or Veterans Administration or upon foreclosure of a mortgage or assignment in lieu of foreclosure, the written undertaking of the assignee to perform all obligations of Lessee hereunder, which undertaking may be incorporated in such assignment. No such assignment shall release the Lessee or assignor from further liability hereunder unless Lessor shall consent in writing to such assignment, and Lessor will not require payment of any money for such consent nor withhold such consent unreasonably or because of the assignee's national origin, race, color or creed; provided, however, that any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of this Lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Lessee by this Lease only during the period such person has possession of ownership of the leasehold estate.

14. Subletting; Space Lease; Parking Spaces. Except for renting the dwelling units in the Project, together with the parking spaces, to eligible persons and families consistent with the provisions of Section 12 above, Lessee shall not be allowed to sublet the whole or any portion of the premises.

15. Indemnity. The Lessee shall indemnify, defend and hold harmless the Lessor, the State of Hawaii, and their officers, employees, directors, agents, representatives, officials, successors and assigns from and against any and all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, relating to, arising out of or resulting from: (a) the acts or omissions of the Lessee or its employees, officers, agents, or subcontractors; (b) this Lease; (c) the design, construction, repair, renovation, or defects of the Project, premises, or improvements thereon and/or lease, use, occupation or operation of the Project, premises, or improvements thereon; and/or (d) the enforcement of this Lease (whether or not suit is brought therefore). This provision shall survive the expiration or earlier termination of this Lease, notwithstanding any other provision to the contrary.

16. Costs of Litigation. In case the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this Lease, in recovering possession of the premises, or in the collection of delinquent rents, taxes, and any and all other charges.

17. Liability Insurance. Lessee, at its cost and expense, shall maintain at all times the following insurance policies in full force and effect throughout the term of this Lease, with the following minimum policy limits and coverage, with insurance company(s) licensed to do business in the State of Hawaii with a minimum insurer financial strength rating of B+ from A.M. Best or BBB- from Fitch Ratings, Inc., or otherwise acceptable to Lessor:

<u>Coverage</u>	<u>Minimum Policy Limits</u>
Commercial General Liability and Auto-	Lessee's commercial general liability and automobile liability, including products and

mobile Insurance

completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations performed under this Lease. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the Lessee does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.

Pollution Liability

Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, Pollution Liability Insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee all arising out of Lessee's lease and use of the Leased Land. Combined single limit per occurrence may not be less than \$3,000,000. Annual aggregate limit may not be less than \$5,000,000. The policy shall name the State of Hawaii and the Lessor as additional insureds.

Workers' Compensation

As required by Hawaii laws

Property

Including Windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by Lessee, located on the premises. Lessee shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. State of Hawaii and Lessor shall be loss payees under the Property Insurance. Coverage should be evidenced on form Acord 27 – Evidence of Property Insurance.

The Commercial General Liability Insurance and the Automobile Insurance shall contain the following five provisions:

- a. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
- b. The Lessor and the State of Hawaii are added as additional insured parties with respect to operations performed on the property under this Lease.
- c. If a general aggregate limit is used, the general aggregate limit shall apply separately to this Lease.
- d. Insurance shall include a cross liability or severability of interest clause.
- e. The Lessee shall immediately provide written notice to the Lessor should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Lease and on the leased premises, all operations performed incidentally, directly or indirectly connected with all operations to be performed under this Lease and on the premises, including operations performed outside the work area and all change order work.

Lessee agrees to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit the Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, the Lessee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Lessee enter into such an agreement on a pre-loss basis.

Lessee agrees to deposit with Lessor, on or before the Effective Date of this Lease, certificates of insurance necessary to satisfy Lessor that the insurance provisions of this Lease have been complied with. Lessee further agrees to keep such insurance in effect and current certificates of insurance on deposit with Lessor during the entire term of this Lease. The certificates of insurance shall refer to this Lease.

Lessor shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this Lease. If, in the reasonable opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor, Lessor may require the Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance

is required.

Lessor shall notify the Lessee in writing of any changes in the insurance requirements desired by Lessor. If the Lessee does not deposit copies of insurance policies with Lessor incorporating such changes requested by Lessor within thirty (30) days of receipt of such notice, this Lease shall be in default without further notice to the Lessee and Lessor shall be entitled to all legal remedies, including termination of this Lease, and the Lessee shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, Lessee shall have the right to contest Lessor's request.

The procuring of the required policy or policies of insurance shall not be construed to limit the Lessee's liability under this Lease nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding the policy or policies of insurance, the Lessee shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Lease to the extent the Lessee is liable therefor under Sections 11, 15 or 29 of this Lease.

All rights or claims of subrogation against the State of Hawaii and Lessor, their officers, employees, and agents are waived.

Lessee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

17A. Contractor's Pollution Liability Insurance. Any general contractor contracted to construct the Project or undertake substantial rehabilitation of the Project on the premises shall be required to obtain and maintain Pollution Liability Insurance covering its liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs arising out of or caused by the operations and construction activities of said general contractor. Combined single limit per occurrence shall not be less than \$3,000,000 and aggregate limit of not less than \$5,000,000. The policy shall have tail coverage extending 5 years beyond the completion of the work contemplated by the applicable construction contract. The policy shall name the Lessor and the State of Hawaii as additional insured parties.

18. Property Insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this Lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased premises in the joint names of Lessor and Lessee, with the standard mortgage clause for mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

Subject to the prior written approval of mortgagee, in the event of total or partial loss, any

proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Lessor; provided, however, that with the approval of the Lessor, the Lessee may surrender this Lease and pay the balance owing on any mortgage and the Lessee shall then receive after payment of such balance, that portion of the remaining proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the Effective Date of this Lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s).

Lessee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

Notwithstanding the foregoing, this Lease may not be terminated in the event of a casualty without the prior written consent of the Leasehold Mortgagee, and all insurance proceeds to which Lessee is entitled shall be paid to the Leasehold Mortgagee and disbursed only in accordance with the applicable loan documents.

19. Lessor's Lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used by the Lessee on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this Lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid. Notwithstanding the foregoing, this lien shall be subordinate in all respects to any mortgage which Lessee shall be allowed to place on this Lease or to which Lessor shall consent as provided in this Lease. Lessor shall execute such instruments as a permitted mortgagee may reasonably require to evidence the subordination of Lessor's lien. Upon Lessor's request, Lessee shall execute a UCC-1 statement for recording in the Bureau of Conveyances, State of Hawaii, memorializing Lessor's security interest.

20. Mortgage. Except for those certain leasehold mortgages to encumber this Lease in connection with certain financing from Freddie Mac under its Direct Purchase of Tax Exempt Loan Program (the "Permitted Leasehold Mortgages") and Tax Credit Investor and as otherwise provided in this Lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this Lease without the prior written approval of the Lessor and the Tax Credit Investor and any mortgage, hypothecation, or pledge without Lessor's and Tax Credit Investor's approval shall be null and void.

Upon due application and with the written consent of the Lessor and Tax Credit Investor, the Lessee may mortgage, pledge or otherwise transfer this Lease if Lessee obtains a

loan, the repayment of which is to be secured by one or more mortgages on the leasehold estate in favor of (i) any department or agency of the federal government, including U. S. Department of Housing and Urban Development, Federal Housing Administration, Veterans Administration, Rural Development, (ii) any department, agency or public body and body corporate and politic of the State of Hawaii, (iii) any agency or department of the County, (iv) any bond issuer, underwriter or trustee, or (v) any lending institution (including, without limitation, any bank, insurance company, pension or retirement fund or mutual fund), in each case, to finance or refinance the development, construction, repair or alteration of improvements on the premises (together with the Permitted Leasehold Mortgages, each a "Leasehold Mortgage" and the holder of any such Leasehold Mortgage (which includes any and all Permitted Leasehold Mortgages) referred to as a "Leasehold Mortgagee"). It is understood and agreed that such Leasehold Mortgagee, or its designee, or any purchaser in foreclosure proceedings, or any grantee pursuant to an assignment in lieu of foreclosure, may become the legal Lessee under this Lease through foreclosure proceedings, by assignment of this Lease in lieu of foreclosure or otherwise. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Lessee to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Lessor under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Lessor shall recognize the purchaser or other transferee in connection therewith as the Lessee under this Lease. Lessee is authorized otherwise to comply with the requirements of the mortgagee for obtaining such mortgage loan. No liability for the performance of Lessee's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Lessee under this Lease, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee, its nominees and assigns; and provided further, such liability shall be limited to value of the Leasehold Mortgagee's, nominee's or assign's interest in this Lease. If a Leasehold Mortgagee shall acquire title to Lessee's interest, by foreclosure of a Leasehold Mortgage thereon, by assignment in lieu of foreclosure or by an assignment from a nominee or wholly-owned subsidiary of such Leasehold Mortgagee; or under a new lease created pursuant to Section 20.e. below, or otherwise, such Leasehold Mortgagee may subsequently assign such Lease or sublet or underlet the premises in accordance with the terms of this Lease, without the prior consent of Lessor, and such assignee shall enjoy all rights, powers and privileges granted herein. No Leasehold Mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Lease or any new lease entered into in accordance with the provisions of Section 20.e. below, unless and until it becomes, and then only for as long as it remains, the owner of the leasehold estate pursuant to this Lease.

During the term of any Permitted Leasehold Mortgages and if any future Leasehold Mortgagee shall give written notice to Lessor of its Leasehold Mortgage, together with the name and address of such future Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Permitted Leasehold Mortgages and any such future Leasehold Mortgage shall be satisfied and release of record:

a. No act or agreement between or on the part of Lessor or Lessee to cancel, terminate, surrender, amend, or modify this Lease or Lessee's right to possession shall be binding

upon or effective against the Leasehold Mortgagee without its prior written consent.

b. If Lessor shall give any notice, demand, election or other communication required hereunder (hereafter collectively, "Notices") to Lessee hereunder, Lessor shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by personal delivery, by an overnight delivery service, or by registered or certified mail, return receipt requested, and shall be deemed given upon receipt if sent by personal delivery, on the next business day if sent by an overnight delivery service, and seventy-two hours after the time such copy is deposited in the United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Lessor to Lessee shall be binding upon or affect Lessee or the Leasehold Mortgagee unless a copy of the Notice shall be given in writing to the Leasehold Mortgagee pursuant to this subsection. Lessor will not exercise any right, power or remedy with respect to any default hereunder, and no notice to Lessee of any such default shall be effective, until Lessor shall have so given to the Leasehold Mortgagee written notice or a copy of its notice to Lessee of such default. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Lessor, may change the address to which such copies of Notices are to be sent.

c. There shall be added to the grace periods provided in Section 21 hereof to Lessee for curing any default, an additional ten (10) days in the case of a default in payment of any rents, and an additional sixty (60) days in the case of all other defaults, for such Leasehold Mortgagee to cure the same beyond the time allowed to Lessee. Lessor will not terminate this Lease because of any default by Lessee hereunder or other cause whatsoever if, within such additional applicable time period after Lessor has mailed written notice of intention to terminate this Lease for such cause to the Leasehold Mortgagee at its last known address and also, if such Leasehold Mortgagee is insured by the Department of Housing and Urban Development or guaranteed by the Veterans' Administration, to such Department or Administration, the Leasehold Mortgagee or such Department or Administration shall either cure such default or other cause or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the covenants of this Lease capable of performance by it until such time as this Lease shall be sold upon foreclosure pursuant to such Leasehold Mortgage, and in case of such undertaking, Lessor will not terminate this Lease within such further time as may be required by the Leasehold Mortgagee or such Department or Administration to complete foreclosure of such Leasehold Mortgage or other remedy thereunder, provided (a) that such remedy is pursued promptly and completed with due diligence, and (b) that Lessor is paid all rent and other charges accruing hereunder as the same become due, and upon foreclosure sale of this Lease, the time for performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance with due diligence. Notwithstanding the foregoing, if a Leasehold Mortgagee completes a foreclosure of this Lease or otherwise diligently exercises its rights and remedies hereunder, Lessor shall waive any events of default that cannot reasonably be cured by such Leasehold Mortgagee.

d. If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or



injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified above for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

e. Lessor agrees that, in the event of termination of this Lease for any reason (including, but not limited to, a rejection or termination of this Lease in bankruptcy or any other default by Lessee), Lessor, if requested by any Leasehold Mortgagee, will enter into a new lease of the premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease (and any renewal term, if any), at the base rent and additional lease rent and upon the terms, covenants and conditions herein contained, provided:

i. Such Leasehold Mortgagee shall make written request upon Lessor for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Lessor that this Lease has been terminated;

ii. Such Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Lessor shall have incurred by reason of such termination;

iii. Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under this Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and

iv. The lessee under the new lease shall have the same right of occupancy to the buildings and improvements on the premises as Lessee had under this Lease immediately prior to its termination.

Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 20 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge or encumbrance on the fee of the premises, and any sublease under this Lease shall be a sublease under the new lease and shall not be deemed to have terminated by their termination of this Lease.

f. To the extent permitted by law, Lessor shall not convey, transfer, assign, mortgage or encumber its interest in the Leased Land, without the prior written consent of Leasehold Mortgagee, and shall prohibit Lessee from subordinating Lessee's interest in this Lease to any subsequent mortgage of the fee estate granted by Lessor without the approval of the Leasehold Mortgagee.

Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this Section 20 or to cure any default of Lessee referred to above.

21. Breach. Time is of the essence in this agreement, and if the Lessee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this Lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this Lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Lessor may at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this Lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor, or shall be removed by Lessee, in either case, at no cost or expense of Lessor; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Condemnation. If at any time, during the term of this Lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the Lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the Lessor's interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

To the extent that the Lessee is entitled to any condemnation award, it shall be paid to the most senior Leasehold Mortgagee to be used in accordance with the applicable mortgage documents, with any remaining balance being paid directly to Lessee. In the event of partial condemnation, this Lease shall continue unless Lessee and Lessor agree to terminate this Lease with the prior written consent of the Leasehold Mortgagee. Finally, Lessor will provide reasonable prior written notice to Leasehold Mortgagee and Lessee of any proceeding for adjustment or adjudication of any condemnation claim involving the Leased Land, and shall permit the Leasehold Mortgagee and Lessee to participate therein as interested parties.

23. Right to Enter. The Lessor, State of Hawaii, or the County and their agents,

representatives, successors or assigns shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, (i) in the exercise of these rights, the Lessor, State or County shall not interfere unreasonably with Lessee's use and enjoyment of the premises and (ii) Lessor, or its assigns, shall provide at least three (3) business days prior written notice to Lessee.

24. Acceptance of Rent Not a Waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this Lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

25. Extension of Time. Notwithstanding any provision contained in this Lease, when applicable, the Lessor may for good cause shown, allow additional time beyond the time or times specified in this Lease for the Lessee to comply, observe, and perform any of the Lease terms, conditions, and covenants.

26. Quiet Enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the Lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

27. Surrender. The Lessee shall, at the end of the term or other sooner termination of this Lease, peaceably deliver unto Lessor possession of the premises, together with all improvements existing or constructed thereon, or Lessee shall remove such improvements, at the option of the Lessor, in either case, at no cost or expense of Lessor. Furthermore, upon the expiration, termination, and/or revocation of this Lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the Lease.

28. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased "AS IS."

29. Hazardous Materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon

Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee shall indemnify, defend, and hold harmless the Lessor, the State of Hawaii and their respective officers, employees, directors, agents, representatives, officials, successors, or assigns ("Indemnitees") from and against any and all liability, loss, damage (including foreseeable or unforeseeable consequential damages), cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, relating to, arising out of or resulting from directly or indirectly to: (a) the Lessee's breach of any warrants or obligations under this Lease; (b) the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, discharge, disposal or presence of any hazardous material on, within, under or about the premises with the exception of those products customarily produced or distributed and readily available for sale to a consumer for use in or around a residence or for the personal use or consumption of a consumer in or around a residence; (c) the Indemnitees' investigation and handling (including the defense) of any Hazardous Materials Claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; and/or (d) the Indemnitees' enforcement of this Lease, whether or not suit is brought therefore. This covenant shall survive the expiration or earlier termination of the Lease, notwithstanding any other provision to the contrary.

If Lessee discovers any hazardous materials on the premises (other than groundwater contamination not directly caused, created or contributed to by Lessee), the presence of which violates any applicable laws, Lessee shall immediately undertake, at Lessee's expense, to remediate the presence of the hazardous materials in compliance with applicable laws to the extent necessary to permit the construction, operation, maintenance and use of the premises.

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

As used in this Lease, the term "Hazardous Materials Claims" means and includes (i) any and all enforcement, clean-up, removal, mitigation or other governmental or regulatory actions instituted, or to the best of Lessee's knowledge contemplated or threatened, in respect of the premises pursuant to any Hazardous Materials Laws, and (ii) any and all claims made or to the best of Lessee's knowledge contemplated or threatened, by any third party against the Lessee seeking damages, contribution, cost recovery, compensation, injunctive relief or similar relief resulting from any Hazardous Discharge or from the existence of any hazardous material on, within or under the premises.

within or under the premises.

As used in this Lease, the term "Hazardous Discharge" means any event involving the use, deposit, disposal, spill, release or discharge of any hazardous material on, within or under the premises.

30. Termination for Illegal Purposes. At any time during the term of this Lease, Lessor shall have the right, notwithstanding any other provision to the contrary, to immediately terminate this Lease if the Premises or any part of the Premises, appurtenances or improvements are used, or intended to be used, in any manner or in part, to commit or to facilitate the commission of a crime or to endanger public safety.

31. No Merger of Fee. The fee estate of Lessor and the leasehold estate of Lessee shall at all times remain distinct separate estates and shall not merge, notwithstanding any acquisition by any means of both such estates by Lessor, Lessee, any post-foreclosure lessee, any Leasehold Mortgagee or a third party.

32. Estoppel Certificates. Upon written request by Lessee or any existing or prospective Leasehold Mortgagee, Lessor shall within (10) business days following a request for same, deliver an estoppel certificate, confirming any matter relevant to this Lease, to the extent of Lessor's knowledge, including all defaults presently claimed and the scope, status and remaining duration of any cure rights for such default, as well as any Leasehold Mortgagees that Lessor has notice of. All such estoppels shall be in such form as Lessee or other requesting party shall reasonably require. Notwithstanding the foregoing, in no event shall Lessor be required to give any consent or execute any document which increases its liabilities or obligations under this Lease or decreases its rights or benefits under this Lease.

33. Hawaii Law. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

34. Exhibits - Incorporation in Lease. All exhibits referred to are attached to this Lease and hereby are deemed incorporated by reference.

35. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Lease.

36. Partial invalidity. If any term, provision, covenant, or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

37. Time Is of the Essence. Time is of the essence in all provisions of this Lease.

38. Archeological Sites. In the event any sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately

stop all land utilization and/or work and contact the Historic Preservation Office at 692-8015 in compliance with Chapter 6E, Hawaii Revised Statutes ("HRS").

39. Counterparts. This Lease may be executed in counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

40. Brokers' Commissions. Each party represents to the other that it is not obligated to any broker, finder or other real estate or financing agent in connection with the subject matter of this Lease or any of the transactions contemplated hereby.

41. Notices. Wherever in this Lease one party to this Lease is required or permitted to give or serve a notice, request or demand to or on the other, such notice, request or demand shall be given or served upon the party to whom it is directed in writing and shall be delivered personally with a delivery receipt, delivered by facsimile or forwarded by registered or certified mail, postage prepaid, return receipt requested or by commercial delivery service with a delivery receipt. All notices delivered by personal delivery, certified mail or commercial delivery service shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the item was returned as undeliverable. Either party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other party in the manner provided in this section.

42. Authority. The parties represent that the undersigned individuals possess the legal authority to enter into this Lease and that the signatures shall be sufficient to bind the parties to the terms of this Lease.

43. Additional Terms. The provisions of Exhibit B, Use Restrictions, are hereby incorporated and made an integral part of this Lease.

44. Future Utility Easements. Lessee shall consent to easements for utility purposes approved by Lessor, including but not limited to, water, sewer, electrical, storm drainage, and other similar uses, through, over and across the premises, provided that the location and dimensions of the easements shall be agreed to by Lessor and Lessee, and shall be aligned so as to minimize any disruption or negative impact to the premises, provided further that Lessor shall bear all reasonable administrative costs related to the conveyance of title of said easements, including surveying, recordation, and attorneys' fees. Thereafter, the locations and dimensions of the easements may be changed from time to time by mutual agreement of Lessor and Lessee, provided, however, that relocation costs shall be borne by the party proposing relocation.

45. DWS Easement. Lessor reserves the right to issue a 15' easement to the County of Maui Department of Water Supply ("DWS") for a new 8" waterline along Easements A and B of E.O. No. 2189 between Wahikuli and Fleming Roads described in the HHFDC Board of Directors For Action dated January 8, 2009. The new waterline was installed, however, DWS has not followed-up with the creation of the easement they requested.

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

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: \_\_\_\_\_, LLC

TMK: (2) 4-5-021: 003 (por.)

IN WITNESS WHEREOF, the parties have executed this Lease on the date and year first above written.

Approved by the Board of Directors  
of Hawaii Housing Finance and  
Development Corporation at its  
meeting held on:

\_\_\_\_\_

HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION, a public  
body and a body corporate and politic of the  
State of Hawaii, STATE OF HAWAII

By \_\_\_\_\_  
Craig K. Hirai  
Executive Director

"Lessor"

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: \_\_\_\_\_, LLC

TMK: (2) 4-5-021: 003 (por.)

\_\_\_\_\_, LLC  
a Hawaii limited liability company

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

"Lessee"



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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared CRAIG K. HIRAI, personally known to me, who, being by me duly sworn, did say that he is the EXECUTIVE DIRECTOR of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that this \_\_\_\_\_-page GROUND LEASE, KEAWE STREET APARTMENTS AT THE VILLAGES OF LEIALI'I, dated \_\_\_\_\_, was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

\_\_\_\_\_  
Name:  
Notary Public, State of Hawaii  
\_\_\_\_ Judicial Circuit

My commission expires: \_\_\_\_\_

ACKNOWLEDGMENT/NOTARY CERTIFICATION

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

On this \_\_\_\_\_, 201\_, in the First Circuit of the State of Hawaii, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this \_\_\_\_-page Ground Lease, Keawe Street Apartments at the Villages of Leiali'i, as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: \_\_\_\_\_  
Name:  
Notary Public, State of Hawaii  
First Judicial Circuit  
My commission expires:

ACKNOWLEDGMENT/NOTARY CERTIFICATION

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

On this \_\_\_\_\_, 201\_, in the First Circuit of the State of Hawaii, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this \_\_\_\_\_-page Ground Lease, Keawe Street Apartments at the Villages of Leiali'i, as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: \_\_\_\_\_  
Name:  
Notary Public, State of Hawaii  
First Judicial Circuit  
My commission expires:

**EXHIBIT "A"**

(Legal Description of Property)

[End of Exhibit "A"]

EXHIBIT "B"

USE RESTRICTIONS

SECTION 1. Definitions.

All words and phrases not otherwise defined in this Lease shall have the meanings as defined under applicable regulations promulgated by the U.S. Department of Housing and Urban Development ("HUD").

SECTION 2. Affordability and Age requirements

The rental units in the Project shall provide affordable rental housing opportunities for families as defined by State law in accordance with the following affordability requirements at the time of occupancy, unless otherwise approved by Lessor ("Affordable Units"):

No. of Units	Size, sq. ft.	Unit Types and Target Market
		Studio Units at 60% or below the HUD area median income ("AMI")
		1-Bedroom Units at 60% or below the AMI
		2-Bedroom Units at 60% or below the AMI
		Resident Manager's Unit
		Total Affordable Units
		Market Units
		Units Total

\_\_\_\_\_ square feet of commercial space

\_\_\_\_\_ Parking Stalls

a. Household income is defined as the total annual income of each member of a tenant's household, excluding minors (i.e., persons under eighteen years) and shall be calculated in a manner that HUD determines annual income under Section 8 of the United States Housing Act of 1936, as amended, together with the Regulations promulgated thereunder.

b. Area median incomes are derived from estimates provided by HUD.

c. The maximum rent per Affordable Unit including all utilities and one parking stall shall not exceed the maximum net rent per Affordable Unit as described in this Lease.

d. To be eligible for exemptions from general excise taxes pursuant to

Chapter 15-306, Hawaii Administrative Rules (“HAR”), non-residential uses, including any commercial space shall be limited to incidental or de minimis uses that are intended to directly benefit the residents of the Project.

e. The Lessee shall be responsible for ensuring that there are no inconsistencies between this Lease and any other programs applicable to the Project. If there are any inconsistencies between the requirements of this Lease and other applicable program requirements, the more restrictive requirement shall control.

f. The Project shall be completed no later than **December 31, 2021**, unless otherwise approved by Lessor.

g. The Lessee shall be responsible for the monthly trimming of weeds and vegetation on the Lessor’s undeveloped properties immediately outside the boundaries of the premises for a distance of 50 feet from the boundary of the premises for fire and rodent control for the protection of the Project, until such time that Lessor’s undeveloped properties are developed. Lessee is granted a right-of-entry over Lessor’s adjacent land for the purpose provided in this subsection until revoked in writing by Lessor or such land is developed by Lessor.

h. The Lessee shall be responsible for securing and maintaining the premises with appropriate perimeter fences, notices and signage against trespassing onto adjacent undeveloped lands, including the land mauka (east) of the premises and the proposed Lahaina Bypass Highway, ditches and reservoirs, by tenants, guests, invitees and children who may be attracted to any hazards and nuisances on undeveloped lands beyond the premises.

### SECTION 3. Rent

a. Affordable Units must be rent-restricted to the median income adjusted for family size for the area in which the premises is located.

b. The rent for each unit must remain restricted throughout the term of this Lease, as approved by Lessor.

### SECTION 4. [RESERVED]

### SECTION 5. Annual Certification

The requirements under this Lease shall be certified annually by the Lessee through the submission of an Annual Report, as required by Lessor. The Annual Report will be due on the first day of the anniversary month of the date of this Lease. This date shall be known as the Effective Date. The Lessee must retain the Annual Report and the supporting documentation verifying the information on the Annual Report for a minimum period of three (3) years after the due date.

### SECTION 6. Tenant Income

Applicants for Affordable Units should be advised early in their initial visit to the Project that there are maximum income limits which apply to the Affordable Units. Management should explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification (TIC) prior to occupancy and recertified on an annual basis.

#### SECTION 7. Verification

The applicant's household income figure must be verified to determine the applicant's eligibility and rent. Verification of household income may only be accepted from the source of income. Applicants may not be permitted to obtain their own verifications. The process used to verify an applicant's income and eligibility must be thoroughly documented in the applicant's file. Verifications shall be valid for a period of ninety (90) days prior to move-in, after which the information must be re-verified.

#### SECTION 8. Certification

Upon acceptance of an applicant for the Affordable Unit, a TIC must be completed for the applicant and certified to by the applicant and the Lessee. The form is a legal document which, when fully executed, qualifies the applicant to live in the Affordable Unit.

The TIC must be executed along with the lease prior to move-in. No one may live in a unit in the Project unless they are certified and under a lease.

The original TIC form is to be retained by the Lessee in the applicant's file. Upon request of Lessor, a copy of the form shall be sent to Lessor or its designated representative within thirty days of the tenant move-in. The Lessee must retain the TIC and the supporting documentation verifying the TIC for a minimum of three years.

#### SECTION 9. Recertification

(a) To insure that each unit is complying with the income restrictions, (1) the Lessee shall annually recertify each tenant's income and household composition, and (2) the Lessee shall cause each tenant to report certain changes in income and household composition which occur between regularly scheduled recertification.

(b) If the income of the tenants in an Affordable Unit who have previously verified increases above the applicable income limitation, such Affordable Unit may continue to be counted as a low income unit as long as the next available unit of comparable or smaller size is occupied by a qualified low income tenant, and the rent continues to be restricted for the initial unit.

(c) The Lessee shall complete each tenant's annual recertification by the anniversary date of the tenant's move-in date. The request for recertification shall be made between sixty (60) and ninety (90) days before that date, and it must clearly state that the tenant has ten (10)

calendar days in which to contact the Lessee to begin the recertification process. The notice must also state the days and the hours available for the interview, the information the tenant should bring to the interview, and how and whom to contact to schedule the interview.

(d) Upon recertification of the tenant's income, the Lessee shall complete a new TIC, which shall be certified by applicant and the Lessee. Upon request of Lessor, this new TIC shall be sent to Lessor or designated representative prior to the tenant's anniversary date.

#### SECTION 10. Past Due Recertification

A recertification is considered past due if, upon request of Lessor, Lessor or its designated representative has not received executed copies of the TIC form from the tenant by the anniversary date of the tenant's move-in date. As of that date, Lessor or its designated representative will notify the Lessee of past due certifications and, within sixty (60) days, will process formal notice to the Lessee that the premises may be in non-compliance.

#### SECTION 11. Interim Adjustments

Each tenant of an Affordable Unit is obligated to report changes in household income and family composition which occur between the regularly scheduled recertification periods. These changes could include, but are not limited to, any household member moving out of the unit, any adult member of the household, who was previously reported as unemployed, obtaining employment, or the tenant's household income increasing. A new TIC must be completed, retained by the Lessee in the tenant's files, and, upon request of Lessor, submitted to Lessor or its designated representative within thirty (30) days of any change to a previously verified tenant's household income.

#### SECTION 12. Rent Restrictions

The maximum rents that tenants may pay shall be approved by Lessor.

Rents may be increased accordingly as the HUD median income increases, provided that the rental rates remain affordable to families earning not more than the median incomes as provided in Section 2 herein.

#### SECTION 13. Eviction of Tenants

Once an eligible tenant has been certified and admitted to the premises, the tenant may not be displaced solely due to an increase in the tenant's household income beyond the restricted limit.

#### SECTION 14. Audits

(a) The premises shall be subject to a management audit by Lessor or its designated representative at least annually. Notification of an audit shall be given to the Lessee at least 30 days prior to such audit. The results of the management audit and the recommendations for



corrective action at the premises shall be transmitted to the Lessee within thirty (30) days following the completion of the audit.

(b) The purpose of the audit will be to conduct a physical inspection of the buildings and/or premises, to review a sampling of the TICs submitted either in that or any prior year (along with the backup and supporting documentation to the TIC), to review the documentation supporting the Annual Report, and to review any other documentation necessary for Lessor or its designated representative to make a determination as to whether the premises is in compliance with this Lease and all applicable statutes.

(c) The Lessee shall have a period of sixty (60) days in which to respond to the findings of the management audit. Lessor or its designated representative shall review the Lessee's response to determine the extent to which the issues raised in the management audit letter are addressed.

(d) In the event there are unresolved issues following the audit and Lessor or its designated representative's review of the Lessee's response, Lessor or its designated representative shall stipulate the remedial actions to be carried out or observed by the Lessee.

(e) The Lessee shall reimburse Lessor for any audit expenses incurred by Lessor, including the costs of an independent consulting firm selected and procured by Lessor.

#### SECTION 15. Reporting Requirements

(a) The Tenant Income Certification must be submitted, upon request of Lessor, at the following times during the year:

- \* Thirty (30) days after the initial rent-up to the tenant;
- \* Thirty (30) days after any interim adjustments to tenant incomes and household size have been reported/discovered; and
- \* Thirty (30) days after the tenant's move-in anniversary date.

(b) The Annual Report must be submitted annually upon the Effective Date throughout the compliance period. These forms must be sent to Lessor or its designated representative.

(c) The Tenant Income Certification and the Annual Report forms are available from Lessor or its designated representative. Additionally, Lessor or its designated representative has data regarding HUD area median incomes, maximum rental rates, income verification information, and third-party verification forms.

#### SECTION 16. Fees

A reasonable annual compliance monitoring fee may be charged for administrative expenses. If fees are charged, payments shall be submitted with the Annual Report on the

Effective Date for each year of the compliance period. It will be the responsibility of Lessor or its designated representative to inform the Lessee of any changes in the annual compliance fee prior to the Lessee's Effective Date and submittal of fees. The fee may be adjusted annually each July 1.

SECTION 17. Observation of Laws, Ordinances and Regulations.

The Project shall comply with all applicable rules, regulations, ordinances and codes of the County of Hawaii, and any applicable federal and State of Hawaii laws.

SECTION 18. Nondiscrimination.

The operation and use of the Project shall not be in support of any policy which discriminates against anyone based upon race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection.

SECTION 19. Reserved Housing Credits.

This Project shall not be sold, transferred, or otherwise used to satisfy the reserved housing or affordable housing requirement for any other project at any other location, unless approved in writing at the sole discretion of Lessor.

SECTION 20. Reservation for Recapture of General Excise Tax Exemptions.

If the Project is completed with exemptions from Hawaii's General Excise Tax law approved by Lessor, if the Affordable Units do not remain restricted for income-qualified tenants in accordance with this Lease for the full remaining term of this Lease and this Lease is terminated for any reason, Lessor reserves the right to recapture from Lessee, the Project, and the leased premises, a proportionate share of the approximate \$\_\_\_\_\_ Project development cost savings resulting from Lessor's approval of an affordable housing exemption from Hawaii's General Excise Tax law, based on the unexpired portion of the term of this Lease that would have been remaining but for the early termination. If the Affordable Units do not remain restricted for income-qualified tenants in accordance with this Lease for the full remaining term of this Lease, but this Lease is not terminated, Lessor reserves the right to recapture from Lessee, the Project, and the leased premises, a proportionate share of the approximate \$\_\_\_\_\_ Project development cost savings resulting from Lessor's approval of the exemption from Hawaii's General Excise Tax law, based on the number of non-compliant Affordable Units relative to the total number of Affordable Units and the unexpired portion of the term of this Lease as of the date such Affordable Units are no longer restricted for income-qualified tenants.

SECTION 21. Incorporation of Development Agreement

a. This Lease incorporates the terms and conditions of the Development Agreement between the Lessor and Lessee for the leasehold development, ownership, management and operation of the Project, dated \_\_\_\_\_ ("Development Agreement"). An event of

default under the Development Agreement shall constitute an event of default under this Lease.

b. In the event the Development Agreement is terminated or deemed to be terminated for reasons other than completion of the Project, this Lease shall also be terminated. In such case of termination, the Lessee shall promptly execute a Cancellation of Lease provided by Lessor reflecting such termination.

End of Exhibit "B"