

**Developer
Request for
Proposals
RFP No. 21-005-DEV**

**690 POHUKAINA STREET
MULTI-FAMILY AFFORDABLE
HOUSING PROJECT
Honolulu, Hawaii**

**RFP Issued: 11/17/21
Intent to Offer: 12/30/21
Questions Due: 01/31/22
Proposal Due: 03/15/22**



STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

677 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813
FAX: (808) 587-0600

NOTICE TO INTERESTED PARTIES
Request for Proposals (RFP) No. 21-005-DEV
690 POHUKAINA STREET
MULTI-FAMILY AFFORDABLE 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 master planning of the project site and development of an affordable residential housing project with an educational use component at 690 Pohukaina Street, Honolulu, Hawaii, identified as Tax Map Key (1) 2-1-051: 041. The project site has been designated for development of affordable housing and educational uses. The selected Offeror shall be responsible for preparing a comprehensive master plan for the affordable housing and educational uses, and development of the affordable housing component.

Copies of the RFP shall be made available as follows, beginning **November 17, 2021**.

- 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://dbedt.hawaii.gov/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 to the RFP Contact.** To register, please email the RFP Contact below and provide the following information:
Company Name, Mailing Address, Contact Person Name, Email, Phone Number.
To complete registration, an Offeror must also submit a "Notice of Intent to Offer" letter (**Attachment 1**) together with a corporate resolution or "authorization to sign".
If an Offeror does not register with the RFP Contact, Offeror will not be sent notification of the Pre-Proposal Conference details, or any changes or addenda to the RFP. Such changes or addenda, however, will be posted on the HHFDC website.
- 2. 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 remote **Pre-Proposal Conference** will be held on **December 7, 2021 at 10:00 a.m., HST**. Details on how to access the conference will be provided only to Offerors that have registered with HHFDC's RFP Contact. Statements made by HHFDC representatives at the Pre-Proposal Conference, 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, Cheryl Kajitani, Housing Development Specialist, HHFDC, Email: cheryl.kajitani@hawaii.gov. The **deadline for questions is January 31, 2022 at 4:00 p.m., HST**. **Proposals must be received and time-stamped no later than 4:00 PM HST on March 15, 2022 by HHFDC at its office located at 677 Queen Street, Suite 300, Honolulu, Hawaii 96813.**

A handwritten signature in cursive script that reads "Francis Paul Keeno".

Francis Paul Keeno, Executive Assistant
Hawaii Housing Finance and Development Corporation

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1. EXECUTIVE SUMMARY

Opportunity	<p>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 development of an affordable housing project with an educational use component. The project site has been designated for development of affordable housing and educational uses. The selected Offeror shall be responsible for preparing a comprehensive master plan for the affordable housing and educational uses, and development of the affordable housing component.</p> <p>HHFDC may provide a loan from the Dwelling Unit Revolving Fund (DURF) of up to two million dollars (\$2,000,000) to fund Project related costs.</p>
Proposed Project	<p>2. The Project involves the preparation of a master plan for the project site for housing and educational uses, and development of affordable housing, parking, and ancillary amenities. The educational uses will be developed by the Department of Education.</p>
Site	<p>3. The State-owned property is 94,423 square feet (2.167 acres) of land at 690 Pohukaina Street, in Kakaako, Honolulu, Hawaii, identified as Tax Map Key (1) 2-1-051: 041. The property is bound by Mother Waldron Park to the east, Pohukaina Street to the makai direction, Keawe Street to the west, and Halekauwila Place affordable rental project to the mauka direction.</p>
Existing Use and Zoning	<p>4. The parcel is in the Kakaako Community Development District Mauka Area, Pauahi Neighborhood Zone, and is under the regulatory jurisdiction of the Hawaii Community Development Authority. On the eastern boundary of the property is a single-story concrete building which houses an office supply retail store. The remainder of the property is vacant and is being used as surface parking and construction staging.</p>
Land Offering	<p>5. HHFDC will provide a 75-year lease for the property. Ground Lease rent will be subject to Offeror's proposal and is subject to negotiation and HHFDC's approval.</p>
Selection Process	<p>6. Following this Request for Proposals, a pre-proposal conference and submission of proposals, qualified development teams will be evaluated by a selection committee, after which the committee will recommend a development team for exclusive negotiations and approval by the HHFDC Board of Directors.</p>
Pre-Proposal Conference	<p>7. A remote Pre-Proposal Conference will be held on <u>December 7, 2021 at 10:00 a.m., HST</u>. Details on how to access the conference will be provided to Offerors that have registered with HHFDC's RFP Contact. Any Offeror is advised to pre-register by email to the RFP</p>

	<p>Contact and provide the following information: Company Name, Mailing Address, Contact Person Name, Email address and Phone number. (To complete registration, Offerors must also submit a "Notice of Intent to Offer" letter (Attachment 1) together with a corporate resolution or "authorization to sign".)</p> <p>Interested parties are invited to attend; however, attendance at the Pre-Proposal Conference is not mandatory.</p>
Notice of Intent to Submit an Offer	8. No later than <u>4:00 p.m., HST on December 30, 2021</u> . Completed Notice of Intent to Offer form (Attachment 1) must be submitted with Corporate Resolution.
Deadline for Written RFP Questions	9. Accepted beginning on <u>November 22, 2021 through January 31, 2022, at 4:00 p.m., HST</u> . Questions should be emailed to the RFP Contact, Cheryl Kajitani, at cheryl.kajitani@hawaii.gov. Answers will be emailed via addendum to all registered Offerors .
Proposals Due	10. No later than <u>4:00 p.m., HST on March 15, 2022</u> .
RFP Response Format	<p>11. Submit one (1) original marked "ORIGINAL", two (2) copies marked "COPY" (three total), and one (1) complete electronic copy on compact disc or USB drive, including the pro forma sheet in Microsoft Excel format to:</p> <p>Denise Iseri-Matsubara Executive Director Request for Proposals No. 21-005-DEV Hawaii Housing Finance and Development Corporation 677 Queen Street, Suite 300 Honolulu, Hawaii 96813</p>
Priority Offer List Determination	12. Date to be determined.
Discussion with Priority Listed Offerors	13. Date to be determined.
Best and Final Offer Due	14. Date to be determined.
Estimated Selection of Successful Offeror	15. Date to be determined.

A **remote 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.

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 via email.

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 two (2) 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) 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, 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 HHFDC. The Executive Director’s contact information is as follows:

Denise Iseri-Matsubara, Executive Director
Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
Ph: (808) 587-0641; Email: denise.iseri-matsubara@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:

Cheryl Kajitani, Housing Development Specialist
Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
Ph: (808) 587-0548; Email: cheryl.kajitani@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.
CPR	Condominium Property Regime
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.
DLNR	The Department of Land and Natural Resources of the State of Hawaii.
DOE	The Department of Education of the State of Hawaii.
DURF	HHFDC's Dwelling Unit Revolving Fund
HAR	Hawaii Administrative Rules
HHFDC	The Hawaii Housing Finance & Development Corporation
HRS	Hawaii Revised Statutes
KCDD	The Kakaako Community Development District
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.
PLO	Priority List Offerors. Those Offerors who are on the Priority List.
Priority List	Those Responsible Offerors who: 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 (3) 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 HHFDC as a result of this solicitation.

A. INTRODUCTION AND PURPOSE

This Request for Proposals (“RFP”) is being issued by the Hawaii Housing Finance and Development Corporation (“HHFDC”) for the purpose of soliciting proposals from interested Developers or development teams who meet the qualifications described herein. HHFDC will enter into a development agreement with the Successful Offeror for the preparation of a master plan accommodating affordable housing and educational uses and the leasehold development of a multi-family housing project affordable to households primarily at or below 140% of the U.S. Department of Housing and Urban Development area median income, all on the land parcel owned by the State, Honolulu, Hawaii identified as TMK: (1) 2-1-051:041 (hereinafter referred to as “Project”). See **Figures 1 and 2, Project Location and Area Maps**. 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.

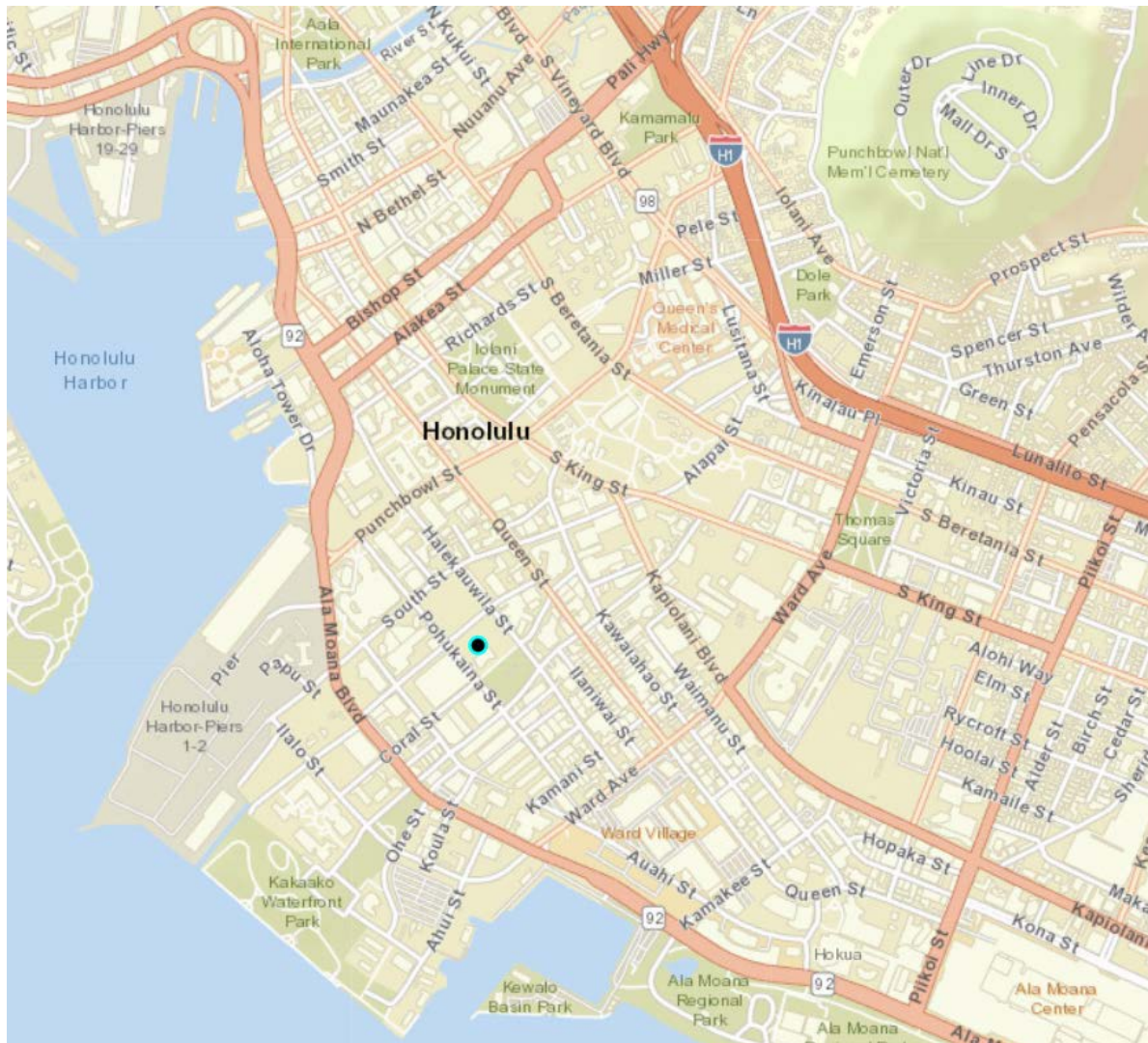
In this RFP, each Offeror will be required to use State of Hawaii licensed architects and engineers to prepare the design and will be expected to adhere to all State of Hawaii requirements and requirements of other authorities having jurisdiction.

After reviewing proposals and potentially interviewing parties who submit responsive proposals, HHFDC anticipates selecting a preferred development entity to prepare a master plan, and design, finance, build, own or lease, operate, and manage the Project. The preferred development entity shall enter 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 in the RFP. In reaching agreement on the terms of the DA, the preferred development entity 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. Upon full execution of the DA, the preferred development entity shall henceforth be identified as the Successful Offeror.

Figure 1: Project Location Map

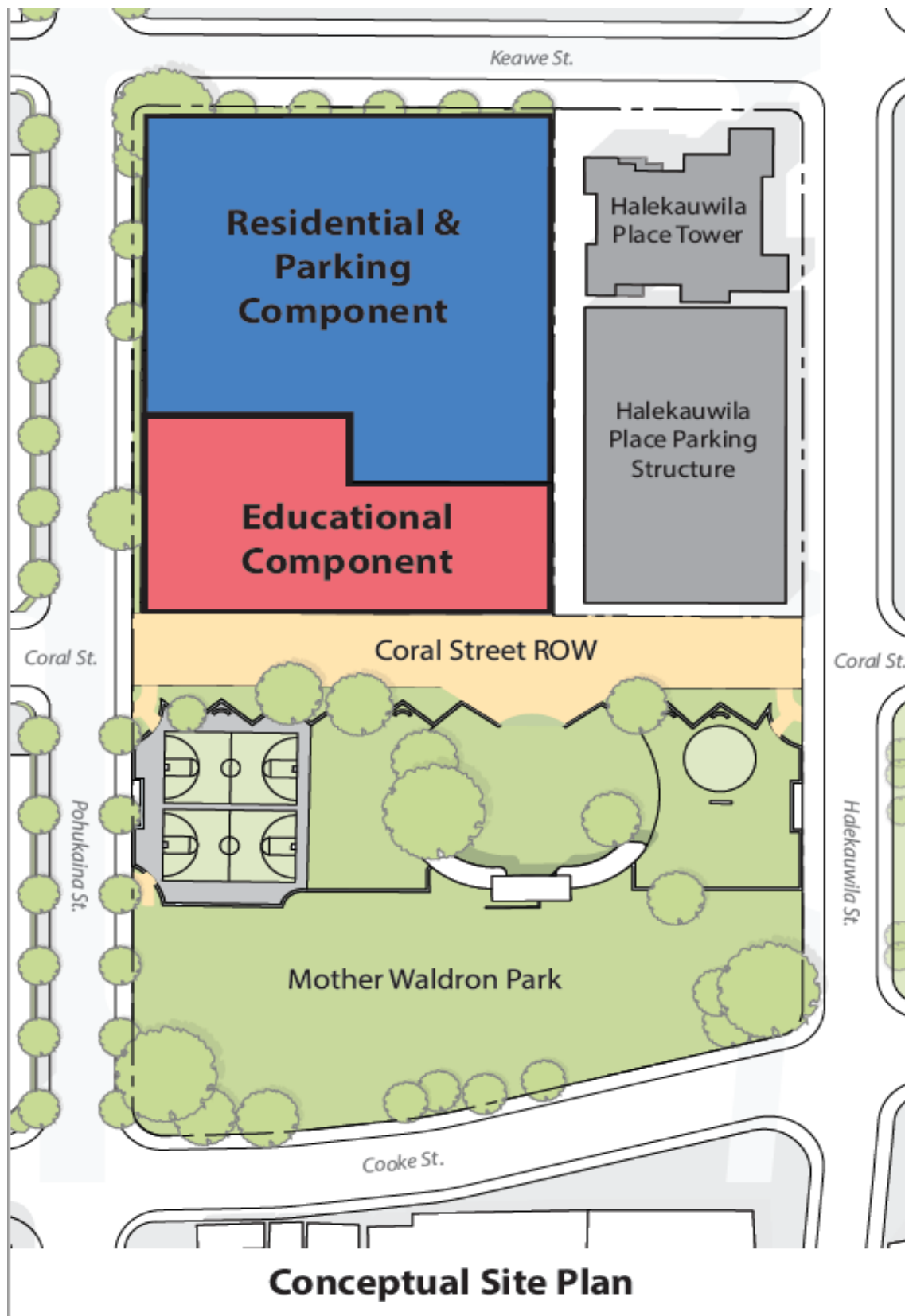


Figure 2: Project Area Map



[illegible]

Figure 4: Conceptual Site Plan



3. PROJECT OVERVIEW

The Project site has been designated by Executive Order for affordable housing and educational purposes. The Successful Offeror will be responsible for preparing a comprehensive master plan for the affordable housing and educational components. Upon completion of the master plan, the Successful Offeror will be responsible for the leasehold development of a multi-family affordable housing project, parking, and ancillary amenities, and all offsite and onsite improvements necessary to develop the Project. HHFDC may provide a loan from the Dwelling Unit Revolving Fund (DURF) of up to two million dollars (\$2,000,000) to fund Project costs.

DOE's preference is a stand-alone independent educational component facility with its own dedicated ground footprint. The development of the final master plan shall include consultation of HHFDC and DOE and be subject to HHFDC and DOE approval. Total floor square footage, general layout, access, traffic flow, utilities, parking, and ancillary requirements for the educational use component shall be as agreed upon by HHFDC and DOE. To efficiently develop the site, DOE is interested in collaborating with the Successful Offeror to construct a shared parking structure for the housing and educational components. The Successful Offeror will be required to negotiate in good faith with DOE to provide parking for the educational component, whether by a shared parking structure or other on-site arrangements. The educational component will be developed by DOE and costs associated with parking for the educational component will be borne by DOE, or other State entities.

The Successful Offeror shall be responsible for obtaining all necessary entitlements, permits, and subdivision/CPR approvals for the affordable housing development. HHFDC intends to grant a 75-year lease to the Successful Offeror in an "as is" condition with no implied warranties or representations.

Project Information Summary

Name:	690 Pohukaina Multi-Family Affordable Housing
Project Location:	690 Pohukaina Street (See <i>Figures 1 and 2</i>)
Tax Map Key:	(1) 2-1-051:041 (See <i>Figure 5</i>)
Land Area:	2.167 acres
Landowner:	State of Hawaii Department of Land and Natural Resources Land Division ("DLNR") is the Fee Owner Hawaii Housing Finance and Development Corporation ("HHFDC") controls the property by Executive Order

4. RFP DOCUMENTS

The documents included in this RFP (collectively, the “RFP Documents”) consist of this RFP document, and attachments contained or identified in this RFP, any and all addendums to the RFP Documents, and the following appendices, although not attached, which can be downloaded from the following hyperlinks or from the HHFDC website <http://dbedt.hawaii.gov/hhfdc/>

Appendices	Document
1	<p>Final Environmental Impact Statement Kakaako Community Development District TOD Overlay Plan 2015</p> <p>Link to OEQC website for the document: http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2015-07-08-OA-FEIS-Kakaako-Community-Transit-Oriented-Development-Overlay-Plan.pdf</p>
2	<p>Sewer Master Plan Update HCDA Kakaako Mauka District October 2014</p> <p>Link to HHFDC website for the document: http://dbedt.hawaii.gov/hhfdc/files/2021/11/Append-2-Sewer-Master-Plan-Update-HCDA-Kakaako-Mauka-Dist-10-2014.pdf</p>
3	<p>Topographic Map</p> <p>Link to HHFDC website for the document: http://dbedt.hawaii.gov/hhfdc/files/2021/11/Append-3-Pohukaina-Topo-Map.pdf</p>
4	<p>Soils Report (Adjacent Lot)</p> <p>Link to HHFDC website for the document: http://dbedt.hawaii.gov/hhfdc/files/2021/11/Append-4-Pohukaina-Soils-Report.pdf</p>
5	<p>HHFDC For Action (October 14, 2021)</p> <p>Link to HHFDC website for the document: http://dbedt.hawaii.gov/hhfdc/files/2021/11/Append-5-For-Action--2021-1014-690-Pohukaina-Street_RFP_DURF_Approved.pdf</p>
6	<p>HCDA Kakaako Mauka Area Plan</p> <p>Link to HCDA website for the document: https://dbedt.hawaii.gov/hcda/files/2018/02/Mauka-Area-Plan.-small.pdf</p>

5. HHFDC OBJECTIVES

A. HHFDC Vision for the Site

The 690 Pohukaina Street site is located in the City and County of Honolulu, Kakaako Community Development District (KCDD) Mauka Area (See **Figure 3**). The KCDD is under the jurisdiction of the Hawaii Community Development Authority (HCDA) which regulates planning and redevelopment in this area. The Project site is also within the HCDA's Pauahi Neighborhood Zone, which is envisioned to be a mixed-use "urban village." The site is positioned to be transit-oriented and is less than a block away from the future Kakaako rail station. Adjacent to the Project site is Mother Waldron Park, which is on the National Register of Historic Places.

Pursuant to Executive Order 4533, the project site has been set aside for educational and affordable housing purposes. The Successful Offeror will be required to prepare a master plan for the project site accommodating the educational and affordable housing uses and to develop a multi-family affordable housing development, parking, and amenities. The educational component will be developed by the DOE, with the possible exception of the shared parking for the educational component as described in Section 3.

A conceptual site plan that was previously considered is provided as **Figure 4**. Offerors have complete flexibility to propose design concepts, provided the following project objectives are addressed:

- 1. Affordable Housing Project.** The affordable housing units shall be targeted primarily to households earning no more than 140% of Honolulu's Area Median Income (AMI) for the duration of the Lease term. A range of income thresholds is desired. The project shall include parking and incidental uses, such as management office, lobby area, and amenities. The master plan for the project shall provide that more than fifty percent (50%) of the total floor area of the project, including the residential component, the educational component, and any commercial component, but excluding parking, shall be affordable housing. For purposes of responding to this RFP, Offerors may assume that the Educational component will constitute not less than 108,000 square feet of floor area.
- 2. Active Street Frontage.** Offerors are encouraged to incorporate ground floor uses which will promote an active street frontage. Commercial, community, and residential uses may be appropriate for ground floor frontage.
- 3. Parking.** The Offeror shall construct a parking structure with sufficient parking stalls for residents, employees, and visitors for the Project. The Offeror should also provide space within the Project for secure, on-site bicycle parking and electric vehicle charging stations, and loading zone(s).

To efficiently develop the site, DOE is interested in collaborating with the Successful Offeror to construct a shared parking structure for the housing and educational use components. The Successful Offeror will be required to negotiate in good faith with DOE to provide parking for the educational use component, whether by a shared parking

structure or other arrangement. Costs associated with parking for the educational use component will be borne by DOE, or other State entity.

4. **Project Amenities.** The Project shall be landscaped and include such features as shade trees, seating areas, and well-lit walkways.
5. **Future Educational Component.** For the purposes of this RFP, Offerors may assume that approximately 28,000 ground square feet on the parcel must be set aside for a future educational use component. The Successful Offeror shall determine the land area and spatial requirements of the educational use component in consultation with DOE during preparation of the master plan. Development of this component is the responsibility of DOE. The development of the final master plan shall include consultation of HHFDC and DOE and be subject to HHFDC and DOE approval.

DOE's preference is for a stand-alone independent educational component facility with its own dedicated ground footprint. See also **Attachment 7** for conceptual renderings provided by DOE, however those renderings illustrate conceptual placeholders only and do not indicate a preferred configuration.

6. **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](https://www.oaha.org/hawaiianplants) at <https://www.oaha.org/hawaiianplants>) 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, efficient building systems and products, vehicle charging stations, car sharing, 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 Offerors 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 plan, and design, finance, develop, own or lease, operate, 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 plan and design the Project, obtain financing for the Project, and construct, own or lease, operate, and manage the Project under a ground lease from HHFDC.

The Successful Offeror will obtain all appropriate approvals of subdivision or CPR documents for the Project site and HHFDC will enter into a ground lease of the Project site with the Successful Offeror 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 **Attachment 6**. Lease rent shall be proposed by Offerors and is subject to negotiation.

The Offeror has the flexibility to propose alternatives 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 **Attachment 5**.
- b. **Condominium Property Regime or Subdivision.** Successful Offeror to obtain approval of CPR documents, or subdivision approval, to create appropriate units/lots for leasehold ownership of the housing component, educational use component, and common area components.
- c. **Financing of Affordable Housing.** Offerors must provide a financial plan to undertake the project. The financial plan should identify interim and permanent sources, and assumptions relative to the availability of financing. HHFDC will make available up to \$2,000,000 to fund project related costs. The financial plan should explain assumptions relative to payback of the loan. HHFDC's or the State's interest in the land shall not be used as security for any private financing.

- d. **Completion of Project.** Delivery of a completed design-build Project in accordance with the terms and conditions of the Contract.

2. 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 BWS.

The Successful Offeror will be responsible for applying for any necessary exemptions specific to the approved Project and obtaining approval by the Honolulu City 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 HHFDC to support any exemptions proposed by the Successful Offeror.

- 3. **Development Agreement.** The Successful Offeror and HHFDC shall negotiate a Development Agreement (a sample form, subject to change and negotiation, is attached as **Attachment 5**) over a period of no more than six (6) months from the date of HHFDC Board approval of the selection, 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 within 6 months of the HHFC's Board approval of the Successful Offeror.
- 4. **Deadlines.** The DA will include a number of benchmarks and milestones for the planning, entitlement, and development of the Project.

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 & Project 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 is a portion of Tax Map Key (1) 2-1-051:041. The Successful Offeror shall obtain subdivision approval or approval of CPR documents to create appropriate lots/units for separate leasehold ownership of the housing component, educational component, and common area components as deemed necessary. In subdividing the Project site, or submitting it to a CPR, the Successful Offeror shall not create remnant parcels for ownership by HHFDC.
 - 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. **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 **Attachment 5**, subject to change and negotiation at HHFDC's discretion.
 - d. **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 a lease rent proposed by Offerors and subject to negotiation.
 - e. **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. Approval of CPR documents for the property shall have been completed, or the property shall have been subdivided.

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., zoning exemptions or entitlements.
3. 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 any balance of the property not conveyed to the Successful Offeror.
4. HHFDC reserves the right to convey title simultaneously with the closing of the Successful Offeror's construction financing for the development of the Project.
5. The Successful Offeror shall be responsible for all closing costs.

- f. Ownership and Operation of Offsite Improvements; Dedication to the County.** The Successful Offeror shall be responsible for the creation, improvement to standards of the County, and dedication to the City and County of Honolulu, of any offsite infrastructure improvements for the project.

The Successful Offeror shall be responsible for all offsite development costs. However, in the event that there are unforeseen offsite deficiencies or circumstances that jeopardize the viability of the Project, HHFDC reserves the right to provide financial assistance to address the issue(s).

- g. Entitlement Approvals.** The Successful Offeror shall be responsible for all entitlement approvals necessary for development of the Project, including but not limited to working with the City and County of Honolulu, the Hawaii Community Development Authority (HCDA), or HHFDC to obtain approvals of any land use planning, zoning, development permit, subdivision or building code exemptions required for this Project.

1. **HRS Chapter 6E, Historic Preservation.** The Successful Offeror shall be responsible for consulting with the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources to determine any adverse effect on significant archaeological and cultural resources caused by the proposed Project, and shall be responsible for all compliance action, mitigation, coordination, and reports that may be required by SHPD, prior to, during, and after construction of the Project.
2. **HRS Chapter 343 Environmental Impact Statements.** The Project, being an affordable housing development within the State Land Use Urban district, with underlying zoning allowing residential development, may qualify for an exemption from the preparation of an environmental assessment/environmental impact statement. HHFDC intends to seek an exemption from HRS Chapter 343 for this Project. However, if after consultation with the State Department of Health Office of Environmental Quality Control and other agencies, it is determined that an environmental

assessment/environmental impact statement is required, the Successful Offeror shall be responsible for compliance with HRS Chapter 343.

A Final Environmental Impact Statement was prepared by the HCDA in 2015 for its Draft Transit-Oriented Development Overlay Plan for the Kakaako Community Development District. The FEIS included the Project parcel and the link to this FEIS can be found in this RFP as **Appendix 1**.

- h. Housing Project.** The Successful Offeror shall, on its own behalf or in conjunction with another entity acceptable to HHFDC, own or lease, operate, and manage the housing Project.
- i. Water System.** The Successful Offeror shall be responsible for any on- or off-site water requirements for the Project and shall be responsible for obtaining potable water for the Project from the Board of Water Supply (BWS) and the payment of BWS water facilities charges.
- j. Sewer System.** The Successful Offeror shall be responsible for any on- or off-site sewer requirements for the Project and shall be responsible for securing sewage capacity and connection approvals from the City and County of Honolulu.
- k. Electrical System.** The Successful Offeror shall be responsible for any on- or off-site electrical requirements for the Project.
- l. 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.
- m. Community and Governmental Input.** The Successful Offeror shall be responsible for project presentations to the RFP 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 six calendar months of HHFDC Board approval of the Successful Offeror and the Project.

The Successful Offeror shall be responsible for any additional governmental briefings on the proposed Project including but not limited to required public hearings pursuant to HCDA's rules for the Kakaako Community Development District.
- n. 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 the Project.
- o. 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 for the full duration of the lease.

- p. **Dust Control.** The Successful Offeror shall be responsible for compliance with all statutes and rules on air pollution control, 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 existing uses in the community surrounding the site.
- q. **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 HHFDC 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. HHFDC shall approve the final plans for the Project.
- r. **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.
- s. **RFP Information.** Information provided in this RFP is obtained from available resources and is 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.
- t. **Compliance with Federal, State, and County Requirements.** The Project shall comply with the rules, regulations, ordinances, codes and standards of the City and County of Honolulu, the Hawaii Community Development Authority, and any Federal and State requirements. If there is a conflict between requirements, the more restrictive requirement shall control.
- u. **Eligible Developer.** The Successful Offeror shall be deemed an eligible Developer or qualified Offeror as determined in this RFP and as described under Chapter 15-307-24 HRS, subject to the approval of HHFDC's board of directors. If there is any conflict between this RFP and the provisions under Chapter 15-307-24 HRS, the latter shall govern.
- v. **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.
- w. **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.

- x. **Market Analysis.** HHFDC may require the Successful Offeror to submit a current comprehensive market analysis substantiating the feasibility of the housing component. The specifications and scope of the market study shall be subject to HHFDC's review and approval.
- y. **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/or 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, and/or the ground lease; (c) the design, construction, repair, renovation, and/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 two (2) copies along with one (1) electronic CD or USB drive copy including financial pro forma sheet in Microsoft Excel format to:

Denise Iseri-Matsubara
Executive Director
Request for Proposals: No. 21-005-DEV
Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

Proposals must be received and time-stamped at HHFDC by **4:00 p.m., HST on March 15, 2022**. The proposals should present the information described below and should adhere to the format described below.

A. 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.

B. 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.

C. 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.
- d. **Organizational Chart.** Provide a detailed organizational chart for the Offer entity, financing entities, and all other entities involved with the project.

2. Financial Qualifications.

Note that HHFDC will maintain the confidentiality of all proprietary financial information provided by Offerors as part of the review process. Offerors must clearly mark proprietary financial information as “Confidential” and arrange for it to be easily removed from their proposal by HHFDC.

- 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, (Low Income Housing Tax Credits, 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 housing project to households at 140% 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; and (4) 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.

D. Development Concept, Strategy, and Schedule

HHFDC acknowledges that the development concept plan, project delivery strategy, schedule, 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, schedule, 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 E**). 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:

- 1. Development plan.** Provide a narrative description and diagram(s) that clearly indicate property lines, 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 gross 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, common areas, 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 ten (10) 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 comply with the requirements of this RFP, sufficiently far enough advanced to allow the Offeror to estimate development costs. 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. **Housing Project.** A diagram, supporting table, and narrative describing the proposed affordable housing Project, including but not limited to, the total number of units, number of units by unit types (indicating both number of bedrooms and number of bathrooms) and target income levels, unit sizes, accessible units, project amenities (e.g., picnic areas, 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 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 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 Honolulu mass transit plan and any 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. **Development Schedule.** Provide a schedule identifying tasks, task durations, and key milestone dates. Describe the 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.** Please provide a narrative describing the anticipated needed improvements, if any. Note that the Successful Offeror will be responsible for confirming infrastructure needs, and all negotiations and approvals with relevant agencies for on and off-site 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 for each phase of the entire Project; and
 - (2) Substantial completion of each phase of the entire Project.

E. 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, site work costs, maintenance costs (if applicable), and other identified costs for the Project. Indicate the proposed lease rent and payment schedule for the lease. 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, leasehold rent/sale revenue, 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 any 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, 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.
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 refer to the example provided in **Attachment 3**. 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, Federal funding sources). 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 4**.
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, State of Hawaii general excise tax exemption, State of Hawaii tax exempt bond authority, use of non-competitive 4% tax credits, a DURF loan of up to \$2,000,000, 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.

F. 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.

G. 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.

H. Submittal Format

Respondents are asked to submit one (1) original proposal and two (2) copies along with one (1) complete electronic proposal on CD or USB flash drive including Financial 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.

I. 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 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>A. Offeror Qualifications</p> <ol style="list-style-type: none"> 1. Legal Offeror entity and team members. 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. 3. Financial capacity to develop the Project, including its financial record and success in obtaining equity and debt capital for funding past projects. 4. Capacity to manage the Project. 	20
<p>B. Project Design Concept and Strategy</p> <ol style="list-style-type: none"> 1. Well thought-out development concept with strong rationale. 2. Achievement of HHFDC objectives for the Project, including maximum number of affordable housing units and range of affordability, budget, sustainability, and provision of safe and convenient pedestrian and bicycle access to public transportation services. 3. Realistic and creative approach to achieving successful vertical development, and approach to overall management, marketing and tenanting residential units, and maintenance of facilities; 4. Innovation and creativity. 5. Consistency with all other requirements of this RFP. 	20
<p>C. Ability to Meet Time and Budget Requirements</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 other affordable housing projects.</p>	15

<p>D. Number of Affordable Units Proposed and Community Benefits</p> <p>Number of affordable units by income levels served, and additional physical or programmatic elements proposed to benefit the future development phases, and existing community.</p>	<p>15</p>
<p>E. Financial Proposal</p> <ol style="list-style-type: none"> 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. 2. Complete Project budget and financial pro forma demonstrating a feasible Project. 3. Return to the State (lease rent) and DURF loan repayment. 4. Minimum use of State of Hawaii resources.* 	<p>15</p>
<p>F. Management Proposal</p> <ol style="list-style-type: none"> 1. Demonstrated understanding of the challenges and opportunities associated with the Project. 2. Demonstrated understanding of the qualifications necessary to design, construct, and complete the Project in all respects. 3. Demonstrated understanding of how the Offeror's project delivery approach will contribute to the success of the Project and meet HHFDC's goals. 4. Commitment to providing HHFDC with a high-quality Project. 	<p>15</p>
<p><i>Total</i></p>	<p>100</p>

* Refer to **Section 7.E.5** for items which will not be considered "use of State of Hawaii resources" for purposes of scoring proposals.

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. The award process will be deemed complete upon the recordation of the Development Agreement and form of Ground Leases. 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 or project stakeholders. 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 as "To Be Determined" 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 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 HHFDC and the Successful Offeror do not execute the development agreement by the end of such deadline, then 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. Refer to **Section 10.C** for additional information regarding confidentiality.
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 for selecting a Successful Offeror for exclusive negotiations.

Selection Schedule Summary (subject to modification)

Milestone	Date or Timeframe
1. RFP Advertised and Issued	November 17, 2021
2. Pre-Proposal Conference	10:00 a.m., HST on December 7, 2021. Interested parties are invited to attend; however attendance is not mandatory.
3. Deadline for Notice of Intent to Offer	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 4:00 p.m., HST on December 30, 2021.
4. Deadline for Receipt of RFP Questions	Questions must be made in writing and will be accepted beginning on <u>November 22, 2021 through January 31, 2022, at 4:00 p.m., HST.</u> Questions may be emailed to Cheryl Kajitani at cheryl.kajitani@hawaii.gov . Responses will be prepared as addenda and emailed to the registered Offerors. Addenda will also be posted to the HHFDC website at http://dbedt.hawaii.gov/hhfdc/
5. Proposals Due	March 15, 2022 at 4:00 p.m., HST. Submit one (1) original marked "ORIGINAL" and two (2) copies marked "COPY" (three total), and one (1) complete electronic proposal on CD or USB flash drive of the response including pro forma worksheets in Microsoft Excel format to: Denise Iseri-Matsubara Executive Director Request for Proposals No. 21-005-DEV Hawaii Housing Finance and Development Corporation 677 Queen Street, Suite 300 Honolulu, Hawaii 96813
6. Discussion with Priority Listed Offerors (if needed)	TBD
7. Best and Final Offers Due (if needed)	TBD
8. Selection of Successful Offeror	TBD
9. Award Contract	TBD

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

10. TERMS AND CONDITIONS

In addition to all of the other terms and conditions of this RFP, 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/or appendices, 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, 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 HHFDC and be subject to public disclosure in accordance with Hawaii'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.

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, 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. **Hawaii 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 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. **Confidentiality of Material.** All material given to or made available to the Offeror by virtue of this RFP or any 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.

3. **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.
4. **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, 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.
5. **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.
6. **Amendment of Terms and Conditions.** The State and HHFDC reserve 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.
7. **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 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. **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 interest 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.

11. ATTACHMENTS

Attachment 1 – Notice of Intent to offer
Attachment 2 – Offer Form OF-1
Attachment 3 – Developmental Cashflow Worksheet
Attachment 4 – Pro forma
Attachment 5 – HHFDC Development Agreement Form
Attachment 6 – HHFDC Ground Lease Form
Attachment 7 – DOE's Conceptual Renderings

IMPORTANT NOTE: Please also refer to Section 4, RFP Documents, for a list of Appendices which are not attached to this RFP but can be downloaded from the website(s) indicated in Section 4.

[Formal Letterhead of Company]

[Date]

Ms. Cheryl Kajitani, Housing Development Specialist
Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

**Notice of Intent to Offer
Request for Proposal for 690 Pohukaina Affordable Multi-Family Housing Project
RFP No. 21-005-DEV**

Dear Ms. Kajitani:

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.

Exact Legal Name of Company: _____

D.B.A. name, if applicable: _____

Sincerely,

[Signature]

[Contact name]

[Complete address of the firm]

[Phone number]

[Email address]

This letter shall be submitted with a corporate resolution or "authorization to sign" no later than the date specified in the RFP, and may be emailed to the RFP Contact at cheryl.kajitani@hawaii.gov

Attachment 1

Request for Proposals: 690 Pohukaina Multi-Family Affordable Housing

**OFFER FORM
OF-1**

**DEVELOPMENT OF 690 POHUKAINA AFFORDABLE MULTI-FAMILY HOUSING
PROJECT**

**STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
RFP No. 21-005-DEV**

Denise Iseri-Matsubara
Executive Director
Hawaii Housing Finance and
Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

Dear Ms. Matsubara:

The undersigned has carefully read and understands the terms and conditions specified in this Request for Proposals, including all attachments, appendices, 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: _____

Respectfully submitted:

Date: _____ (x) _____
Authorized 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: _____

Attachment 3

DEVELOPMENT CASHFLOW WORKSHEET

The pro forma represents a critical part of the overall proposal submission. 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. The pro forma cash flow should provide an estimate of costs and revenues associated with the development concept and the financial proposal articulated in the proposal submission. The pro forma should be based on available information and the Offeror's own judgment recognizing that the pro forma will be refined as the project plan evolves and business terms are negotiated.

The pro forma will allow HHFDC to understand the development team's proposed approach to maximizing the feasibility of the Project, the potential returns to all parties, and the key conditions/assumptions required to accomplish project feasibility and these returns. Ultimately, HHFDC and the selected Offeror will work together to finalize the plan to ensure HHFDC's overall objectives are met and the Project is financially feasible. The business deal will be based on the refined pro forma.

In order to compare the approaches and initial conclusions of the different development teams, it is critical that the pro forma portion of the submission conform to the structure and content identified in the attached Excel worksheet. The attachment provides a framework so the organization and line items can be modified and expanded to best illustrate your financial proposal.

Attachment 3

ATTACHMENT 3
DEVELOPMENT CASHFLOW WORKSHEET

Itemized Cost	COSTS																
		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	Mo/Yr
To Purchase Land and Buildings																	
Land																	
Acquisition of Existing Buildings																	
Demolition																	
Other:																	
Other:																	
Subtotal: To Purchase Land and...																	
For Site Work																	
Off-Site Work:																	
Det: Off-Site Water Improvements																	
Det: Off-Site Sewer Improvements																	
Other:																	
Other:																	
Other:																	
Subtotal: Off-Site Work:	\$ -																
On-Site Improvements:																	
Det: Parking (surface)																	
Det: Landscaping																	
Other:																	
Other:																	
Other:																	
Subtotal: On-Site Improvements:	\$ -																
Subtotal: For Site Work:	\$ -																
For New Construction and Rehabilitation																	
New Building - Residential																	
New Building - Commercial																	
New Building - Community Service Facility																	
New Building - Parking (structured)																	
New Building - Other																	
Subtotal: New Building	\$ -																
Rehabilitation* (SEE NOTE)																	
Contractor Overhead																	
Contractor Profit																	
Contractor General Requirements																	
Other:																	
Subtotal: For New Construction and...	\$ -																
* NOTE: Complete Rehabilitation Cost Itemization form attached																	
For Contingency																	
Construction Contingency - Gen. Contractor																	
Construction Contingency - Owner																	
Soft Cost Contingency																	
Other:																	
Subtotal: For Contingency:																	
Permits and Fees																	
Building Permits																	
Other:																	
Other:																	
Other:																	
Other:																	
Subtotal: Permits and Fees:																	

ATTACHMENT 3
DEVELOPMENT CASHFLOW WORKSHEET

Itemized Cost	COSTS		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
		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	Mo/Yr	Mo/Yr
To Purchase Land and Buildings																		
For Architectural and Engineering Fees																		
Architect Fee-Design																		
Architect Fee-Supervision																		
Engineering Fees																		
Other:																		
Other:																		
Other:																		
Other:																		
Subtotal: For Architectural and...																		
For Interim Costs																		
Construction Insurance																		
Construction Interest																		
Construction Loan Origination Fee																		
Construction Loan Credit Enhancement																		
Payment and Performance Bond																		
Real Property Tax & Other Taxes																		
Subtotal: For Interim Costs:																		
BOND FINANCING COSTS																		
Bond Financing Costs																		
For Financing Fees and Expenses																		
Credit Report																		
Permanent Loan Origination Fee																		
Permanent Loan Credit Enhancement																		
Cost of Issuance/Underwriters Discount																		
Title and Recording																		
Counsel's Fee																		
HHFDC LIHTC Fee (Good Faith Deposit)																		
Other:																		
Other:																		
Subtotal: For Financing Fees and...																		
For Soft Costs																		
Property Appraisal																		
Market Study																		
Environmental Report																		
Advertising / Marketing																		
Consultants																		
Accounting / Cost Certification																		
Legal Fees																		
Organizational Expenses																		
Other:																		
Other:																		
Other:																		
Subtotal: For Soft Costs:																		

ATTACHMENT 3
DEVELOPMENT CASHFLOW WORKSHEET

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Itemized Cost	COSTS	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	Mo/Yr
To Purchase Land and Buildings																	
For Syndication Costs																	
Organizational (Partnership)																	
Bridge Loan Fees & Expenses																	
Tax Opinion																	
Other:																	
Subtotal: For Syndication Costs:																	
For Developer's Fees																	
Developer's Overhead																	
Developer's Fee																	
Consultant Fee																	
Project Management Fee																	
Other:																	
Subtotal: For Developer's Fees:																	
For Project Reserves																	
Rent-up Reserve																	
Operating Reserve																	
Replacement/Capital Reserve																	
Other:																	
Other:																	
Subtotal: For Project Reserves:																	
TOTAL DEVELOPMENT BUDGET:																	
Source of Funds																	
(Identify Source)																	
1	Owner Equity																
2	DURF																
3	RHRF																
4	Hula Mae Bonds																
5	LIHTC																
6																	
Total: Sources of Funds:																	
Monthly Construction Loan Draws																	
Cumulative Construction Loan Draws																	

ATTACHMENT 3
DEVELOPMENT CASHFLOW WORKSHEET

Itemized Cost	COSTS	17	18	19	20	21	22	23	22	Etc.	
		Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Etc.	Totals
To Purchase Land and Buildings											
Land											
Acquisition of Existing Buildings											
Demolition											
Other:											
Other:											
Subtotal: To Purchase Land and...											
For Site Work											
Off-Site Work:											
Det: Off-Site Water Improvements											
Det: Off-Site Sewer Improvements											
Other:											
Other:											
Other:											
Subtotal: Off-Site Work:	\$ -										
On-Site Improvements:											
Det: Parking (surface)											
Det: Landscaping											
Other:											
Other:											
Other:											
Subtotal: On-Site Improvements:	\$ -										
Subtotal: For Site Work:	\$ -										
For New Construction and Rehabilitation											
New Building - Residential											
New Building - Commercial											
New Building - Community Service Facility											
New Building - Parking (structured)											
New Building - Other											
Subtotal: New Building	\$ -										
Rehabilitation* (SEE NOTE)											
Contractor Overhead											
Contractor Profit											
Contractor General Requirements											
Other:											
Subtotal: For New Construction and...	\$ -										
* NOTE: Complete Rehabilitation Cost Itemization form attached											
For Contingency											
Construction Contingency - Gen. Contractor											
Construction Contingency - Owner											
Soft Cost Contingency											
Other:											
Subtotal: For Contingency:											
Permits and Fees											
Building Permits											
Other:											
Other:											
Other:											
Other:											
Subtotal: Permits and Fees:											

ATTACHMENT 3
DEVELOPMENT CASHFLOW WORKSHEET

Itemized Cost	COSTS	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	Etc.	
To Purchase Land and Buildings											
For Architectural and Engineering Fees											
Architect Fee-Design											
Architect Fee-Supervision											
Engineering Fees											
Other:											
Other:											
Other:											
Other:											
Other:											
Subtotal: For Architectural and...											
For Interim Costs											
Construction Insurance											
Construction Interest											
Construction Loan Origination Fee											
Construction Loan Credit Enhancement											
Payment and Performance Bond											
Real Property Tax & Other Taxes											
Subtotal: For Interim Costs:											
BOND FINANCING COSTS											
Bond Financing Costs											
For Financing Fees and Expenses											
Credit Report											
Permanent Loan Origination Fee											
Permanent Loan Credit Enhancement											
Cost of Issuance/Underwriters Discount											
Title and Recording											
Counsel's Fee											
HHFDC LIHTC Fee (Good Faith Deposit)											
Other:											
Other:											
Subtotal: For Financing Fees and...											
For Soft Costs											
Property Appraisal											
Market Study											
Environmental Report											
Advertising / Marketing											
Consultants											
Accounting / Cost Certification											
Legal Fees											
Organizational Expenses											
Other:											
Other:											
Other:											
Subtotal: For Soft Costs:											

ATTACHMENT 3
DEVELOPMENT CASHFLOW WORKSHEET

		17	18	19	20	21	22	23	22	Etc.	
Itemized Cost		Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Mo/Yr	Etc.	Totals
Costs											
To Purchase Land and Buildings											
For Syndication Costs											
Organizational (Partnership)											
Bridge Loan Fees & Expenses											
Tax Opinion											
Other:											
Subtotal: For Syndication Costs:											
For Developer's Fees											
Developer's Overhead											
Developer's Fee											
Consultant Fee											
Project Management Fee											
Other:											
Subtotal: For Developer's Fees:											
For Project Reserves											
Rent-up Reserve											
Operating Reserve											
Replacement/Capital Reserve											
Other:											
Other:											
Subtotal: For Project Reserves:											
TOTAL DEVELOPMENT BUDGET:											
Source of Funds											
(Identify Source)											
1 Owner Equity											
2 DURF											
3 RHRF											
4 Hula Mae Bonds											
5 LIHTC											
6											
Total: Sources of Funds:											
Monthly Construction Loan Draws											
Cumulative Construction Loan Draws											

Attachment 4

PRO FORMA FINANCIAL WORKSHEETS PART I –INCOME PART II – OPERATING EXPENSE DETAIL PART III – PRO FORMA BUDGETS PRO FORMA REQUIREMENTS

The pro forma represents a critical part of the overall proposal submission. The pro forma worksheet should provide an estimate of costs and revenues associated with the development concept and the financial proposal articulated in the proposal submission. The pro forma should be based on available information and the Offeror's own judgment recognizing that the pro forma will be refined as the project plan evolves and business terms are negotiated.

The pro forma will allow HHFDC to understand the development team's proposed approach to maximizing the feasibility of the Project, the potential returns to all parties, and the key conditions/assumptions required to accomplish project feasibility and these returns. Ultimately, HHFDC and the selected Offeror will work together to finalize the plan to ensure HHFDC's overall objectives are met and the Project is financially feasible. The business deal will be based on the refined pro forma.

In order to compare the approaches and initial conclusions of the different development teams, it is critical that the pro forma portion of the submission conform to the structure and content identified in the attached Excel worksheet. The attachment provides a framework so the organization and line items can be modified and expanded to best illustrate your financial proposal.

Attachment 4

Attachment 4
Pro Forma Operating Budget Format
690 Pohukaina Street Multi-Family Affordable Housing Project

*This form or a re-creation may be used. If recreating the format, use the exact headings and categories listed here.
 Note Parts II and III located in separate tabs in the Excel file.*

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					
Total					
Total Annual Income					

* (Add lines as necessary for each type and AMI level of unit. 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.)

<u>Market Units*</u>					
Studio					
1-Bedroom					
2-Bedroom					
3-Bedroom					
Total					

Total Annual Income

=====

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				

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		Monthly Budget	% of Monthly Budget	Per Unit Per Month	Annual Budget	Per Unit Per Year
Payroll Total	(# of People)					
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	\$					
TOTAL OPERATING EXPENSES						
<u>Additional Expenses</u>						
Ground Lease						
Capital Expenditures						
Replacement Reserves						
TOTAL ADDITIONAL EXPENSES						
TOTAL COMBINED EXPENSES						

Pro-Forma
690 Pohuakaina Affordable Housing

Part III - Pro Forma Budget	Year 1	Year 2	Year 3	Year 4 --- >	Continue through full term of financing
<u>INCOME</u>					
Low-Income Rental Income	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____
Rental Subsidy Income (if any)	_____	_____	_____	_____	_____
Vacancy Allowance	_____	_____	_____	_____	_____
Net Rental Income	_____	_____	_____	_____	_____
Other Income	_____	_____	_____	_____	_____
Total Income	_____	_____	_____	_____	_____
<u>EXPENSES</u>					
Operating Expenses	_____	_____	_____	_____	_____
Ground Lease	_____	_____	_____	_____	_____
Replacement Reserves	_____	_____	_____	_____	_____
Other _____	_____	_____	_____	_____	_____
Total Expenses	_____	_____	_____	_____	_____
Net Operating Income					
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	_____	_____	_____	_____	_____

Attachment 5 – HHFDC Development Agreement Form

Attachment 5

Request for Proposals: 690 Pohukaina Multi-Family Affordable Housing

DEVELOPMENT AGREEMENT
690 POHUKAINA AFFORDABLE FAMILY RENTAL HOUSING PROJECT

This Development Agreement (the “Agreement”), executed on the respective dates indicated below, is effective as of _____, (“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 _____ [State & entity type], whose business address is _____ (“Developer”).

A. WHEREAS, the State of Hawaii is the owner in fee simple of approximately 2.167 acres of land located at 690 Pohukaina Street, Honolulu, Oahu, Hawaii, Tax Map Key No. (1) 2-1-051: 041, as shown on the attached **Exhibit A**, which is incorporated herein by reference (“Property”);

B. WHEREAS, by Executive Order No. 4533, dated May 19, 2017 (the “Executive Order”), the Property was set aside to HHFDC for educational and affordable housing purposes;

C. WHEREAS, on October 14, 2021, 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 ____-unit affordable family rental housing project on a portion of the Property, proposed to be named the “_____”;

D. 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, as described in the RFP, which will be divided into appropriate units by condominium property regime by the Developer from the balance of the Property (“Project Site”), and affordable to families at ____% or below the U.S. Department of Housing and Urban Development area median income (“AMI”), including one unit for the resident manager (“Project”);

E. WHEREAS, on _____, the HHFDC Board of Directors approved the Developer and its Proposal for the Project (“Developer Selection For Action”); and

F. WHEREAS, 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 operation 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, 1-Bath Units (____ sq.ft.)
____ 2-Bedroom, 1-Bath Units (____ sq.ft.)
____ 2-Bedroom, 2-Bath Units (____ sq.ft.)
____ 2-Bedroom, 2-Bath Resident Manager's Unit (____ sq.ft.)
____ 3-Bedroom, 1-Bath Units (____ sq.ft.)
____ 3-Bedroom, 2-Bath Units (____ sq.ft.)
____ Units Total (including resident manager's unit)
____ Parking Stalls
____ Multi-Purpose Building – _____ sq.ft.
____ Parking Stalls for Multi-Purpose Building

The exact square footages are subject to adjustment by Developer; provided, however, that such adjustments which exceed five percent (5%) shall be subject to approval by HHFDC.

(2) Total: ____ Available units (excluding resident manager's unit)

(3) Target market:

____ Units at 30% and below the AMI
____ Units at 60% and below the AMI
____ Resident Manager's Unit
____ Total Units

(4) Parking Structure with ____ parking stalls.
Surface parking with ____ parking stalls.
Total ____ parking stalls.

(5) Project Name: The Project shall be named, "_____" 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.

The estimated total development cost of the Project is \$_____.

3. Property Description

The Project is located at TMK (1) 2-1-051: 041 (portion of), as shown on the attached Exhibit A.

4. Term of this Agreement; Completion Deadline

The Project shall be completed by _____, 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.

The following provisions shall survive the expiration or earlier termination of this Agreement:
Section 19, "Assumption of Risk and Liability"
Section 35, "Hazardous Materials"

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.
- f. The Project shall commence construction by _____ (the "Construction Commencement Deadline"), unless otherwise extended at the sole discretion of HHFDC.
- g. The Project shall be completed by the Completion Date, unless otherwise extended at the sole discretion of HHFDC.
- h. The development of the Project shall be in strict compliance with the Executive Order setting aside the Property to 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, unless otherwise extended at the sole discretion of HHFDC.

10. Environmental Impact Statement

The HHFDC intends to seek an exemption from HRS Chapter 343 for the Project. However, if after consultation with the State Department of Health Office of Environmental Quality Control and other agencies, it is determined that an environmental assessment/environmental impact statement is required, the Developer shall be responsible for compliance with requirements under 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, regarding energy efficiency and environmental standards for state facilities.

13. 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.

14. Hawaiian and Indigenous Plants

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.

15. 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.

16. 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, driveways, 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.

17. Interim and Permanent Financing

The 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.

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

18. GET Exemptions

HHFDC shall be responsible for certifying valid 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.

19. 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.

20. 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:

<u>Coverage</u>	<u>Minimum Policy Limits</u>
Commercial General Liability and Automobile Insurance	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 of no less than \$1,000,000 per accident.
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.

20.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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. Intentionally Omitted.

27. 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, DVD, or USB "flash drive" 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 Section 36 of this Agreement, or for any 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.

28. 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.

29. 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.

30. 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.

31. 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, DVD, or USB “flash drive” of “as-built” drawings reflecting all construction changes, alterations or deletions, 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.

32. Warranty

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

33. 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.

34. Nondiscrimination

The development, sale, and 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, national origin, 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.

35. Hazardous Materials

- a. Developer shall complete any required environmental site assessments 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 mitigation, or environmental cleanup of the Property of any hazardous materials required by the State of Hawaii Department of Health prior to commencement of construction 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.

36. 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 \$_____ 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 be responsible for the preparation of Condominium Property Regime ("CPR") units subject to HHFDC's approval of the CPR components, for development of the Project and conveyance to the Developer;
- b. HHFDC reserves the right to require additional division(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 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 CPR unit(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 Project shall commence construction by the Construction Commencement Deadline, unless otherwise extended at the sole discretion of HHFDC; and
- p. The Project shall be completed by the Completion Date, unless otherwise extended at the sole discretion of HHFDC.

37. 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 Section 27 of this Agreement. Developer agrees to defend, indemnify, and hold harmless the State of Hawaii and HHFDC as set forth in Section 19 of this Agreement.

38. 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 Section 40.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;
- 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.

39. 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.

40. HHFDC Remedies

After Developer has been declared to be in default and Developer fails to cure such default within the time period prescribed in Section 39 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, specifications, 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

41. 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.

42. 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.

43. 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.

44. Binding Effect of Agreement

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

45. Gender; Number; Certain Definitions

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. The term “including” shall be construed as to mean “including but not limited to” and shall in no way be construed as exclusionary unless the context clearly demands otherwise.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. Governing Law

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

52. 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.

53. 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.

54. 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 receipt of the email is confirmed and a copy of such email notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery or 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: denise.iseri-matsubara@hawaii.gov

If to Developer: _____

Each party is responsible for timely informing the other party of any changes to their contact information.

55. Attorneys' Fees and Costs

Should any litigation be commenced between the parties hereto concerning this Agreement, the subject matter of this transaction, or the rights and duties of either in relation thereto, each party shall pay their own attorneys' fees and costs of litigation.

56. Time of the Essence

Time is of the essence in the performance of all obligations under this Agreement.

ADDITIONAL PROJECT SPECIFIC REQUIREMENTS

57. Condominium Property Regime

The Developer shall seek HHFDC approval of the Project CPR units and/or boundaries before seeking final CPR documents or legal descriptions of the Project site. The Developer shall not create remnant lots for ownership by HHFDC; any remnant lots shall be incorporated into the Project Site.

58. Entitlement Approvals

The Developer shall be responsible for all entitlement approvals necessary for development of the Project, including working with the County, HHFDC, or HCDA, to obtain approvals of any land use planning, zoning, subdivision, development permit, or building code exemptions required for the Project.

59. 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.

60. 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.

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

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

Approved as to Form:	HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION “HHFDC”
_____ Deputy Attorney General	By: _____ Francis Paul Keeno Its Executive Assistant
_____ a _____ “Developer”	
By: _____ [name] Its _____ [title]	
Date: _____	

Reviewed by ____, _____

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

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, 690 Pohukaina Affordable Family Rental Housing
Project

Notary Signature

Date

NOTARY CERTIFICATION

Reviewed by ____, _____

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

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, 690 Pohukaina Affordable Family Rental Housing
Project

Notary Signature

Date

NOTARY CERTIFICATION

Reviewed by ____, _____

EXHIBIT “A”

Property Location Map or
Property description

FORM - SUBJECT TO CHANGE

Reviewed by ____, _____

Attachment 6 – HHFDC Ground Lease

Attachment 6

Request for Proposals: 690 Pohukaina Multi-Family Affordable Housing

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail to:

Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
ATTN: Real Estate Portfolio and Compliance Section

Total Pages: ____

Tax Map Key Nos.: (1) 2-1-051: 041 (Por.)

GROUND LEASE

(690 Pohukaina Multi Family Affordable Housing Project)

THIS GROUND LEASE (this “**Lease**”) is made this ____ day of _____, 20__ (the “**Effective Date**”), by and between **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, (“**Lessor**”), and _____, a _____ [state & entity type], the principal place of business and mailing address of which is _____ (“**Lessee**”).

W I T N E S S E T H:

WHEREAS, the State of Hawaii is the owner in fee simple of the parcel of property situated at 690 Pohukaina Street, Kakaako, Honolulu, City and County of Honolulu, State of Hawaii, TMK No.: (1) 2-1-051: 041, being approximately 2.167 acres (the “**Parcel**”).

WHEREAS, by Executive Order No. 4533, dated May 19, 2017 (the “**Executive Order**”), the Parcel was set aside to HHFDC for educational and affordable housing purposes.

WHEREAS, Lessor and Lessee have also entered into the certain unrecorded Development Agreement for the Project (as hereinafter defined) on or around the same date as this Lease (the “**Development Agreement**”), which contains among other things certain requirements for the development of the Project.

ATTACHMENT 6

WHEREAS, Lessor and Lessee would like to enter into this Lease for a portion of the Parcel more particularly described in **Exhibit "A"**, which is attached and incorporated by reference (the **"Premises"**), for the Project herein described. *[Premises language to be revised in future to account for condominium.]*

NOW, THEREFORE, 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 hereby lease unto the Lessee, and the Lessee does lease from the Lessor, the Premises.

It being expressly understood and agreed by Lessor that Lessee is the owner of all buildings and real property improvements and fixtures existing as of the Effective Date or hereafter situated on such land described in **Exhibit "A"** during the term of this Lease, and Lessor retains fee interest in such land; provided that Lessee, for itself and its successors and assigns, covenants that, except as provided by Sections 9 and 28 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 a conveyance or encumbrance of this Lease subject to Lessor's approval or consent as provided below in Section 14, even though not expressly mentioned or described in the conveyance or other instrument.

SUBJECT to all liens and encumbrances affecting the Premises as of the Effective Date, including without limitation leases, licenses, rental agreements and contracts, and occupancy, use, and similar agreements, whether recorded or unrecorded.

TO HAVE AND TO HOLD the Premises unto Lessee for the term of _____ **years**, commencing on the Effective Date, up to and including the _____ **day of _____, 20**, unless sooner terminated as hereinafter provided, Lessor reserving and Lessee yielding and paying to Lessor at the office of Lessor, an annual rental as provided hereinbelow, payable annually in advance, without notice or demand, as follows (the **"Annual Rent"**):

The sum of _____ **AND 00/100 U.S. DOLLARS (US \$ _____)** per annum, increasing by three percent (3%) on each _____.

RESERVING UNTO LESSOR, ITS SUCCESSORS AND ASSIGNS, THE FOLLOWING:

(A) **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, sulfur, 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 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 Lessor of the rights reserved in this paragraph, Lessor shall make reasonable efforts to minimize the taking of any improvements or any interference to Lessee's use or enjoyment of the Premises, and just compensation shall be paid to Lessee for any of Lessee's improvements taken.

(B) Prehistoric and Historic Remains. All prehistoric and historic remains found on the Premises.

(C) Lessor Reservations. The right to subdivide the Premises and designate easements thereon and thereupon to grant such easements as shall be shown on a duly approved subdivision map to any public utility, or governmental authority or adjoining or nearby owner(s) of land and to record any documents against the Premises, as amended, with respect to such grant(s), subject to the prior written consent of Lessee, which consent may not be unreasonably withheld, delayed, or conditioned. Lessee shall not withhold, delay, or condition its consent so long as any such recorded document or easement granted with respect to the Premises, as amended, after the date hereof does not (i) contravene, hinder, or impair any right or privilege granted Lessee in this Lease, or (ii) result in any material interference with the use by Lessee of the Premises for the purposes permitted hereunder, or result in damage to existing structures or improvements and/or unrepaired damage to existing water, sewer, electrical, or cable systems and roads.

LESSEE COVENANTS AND AGREES WITH LESSOR AS FOLLOWS:

1. Payment of Rent. Lessee shall pay the Annual Rent to Lessor at the times and in the manner and form provided in this Lease and at the place specified above, or at any other place Lessor may from time to time designate, in legal tender of the United States of America. Any and all amounts payable by Lessee to Lessor pursuant to the terms of this Lease, other than the Annual Rent, are hereinafter collectively referred to as the **"Additional Rent"**, and the Annual Rent and Additional Rent are collectively referred to as **"Rent"**. All Additional Rent which is payable to Lessor shall be paid at the time and place specified in this Lease, and if no specific time or place shall otherwise be provided in this Lease with respect to the payment of Additional Rent, such Additional Rent shall be payable by Lessee to Lessor within thirty (30) days after written demand by Lessor at the place for the payment of Annual Rent. Lessor will have the same remedies for a default in the payment of any Additional Rent as for a default in the payment of Annual Rent.

2. Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, before due, the amount of all taxes, rates, and assessments of every description as to which the Premises or any part, or any improvements, or 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. Concurrently with Lessee's execution of this Lease, Lessee shall pay the actual amount of the conveyance tax due in connection with the execution of this Lease. Lessee shall pay the entire amount of any conveyance tax or related tax imposed by law on account of this Lease or any amendment to this Lease (including, without limitation, to the extent any conveyance tax or related tax results from any increase in Annual Rent under this Lease). At the request of Lessor, Lessee shall within ten (10) days after receipt thereof execute such affidavits and other documents as may be required by law in connection with such tax.

3. Utility Services. Lessee shall pay when due all charges, duties, and rates of every description related to utility services provided to the Premises, including water, sewer, gas, refuse collection, or any other charges, as to which the Premises or any part, or any improvements, or Lessor or Lessee may become liable for during the term, whether assessed to or payable by Lessor or Lessee. Lessee shall be solely responsible for obtaining any and all utilities and other services for the Premises, and in no event shall Lessor be responsible for interruption or failure in the supply of any utility or services to the Premises.

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, including gender identity or expression, sexual orientation, age, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, or HIV (human immunodeficiency virus) infection. Additionally, Lessee shall not discriminate against the use of vouchers by residential tenants pursuant to the Housing Choice Voucher Program provided by the United States Department of Housing and Urban Development or similar housing assistance program.

5. Sanitation. Lessee shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition in accordance with customary operational standards for similar types of properties in the same geographical area as the Premises.

6. Waste and Unlawful, Improper or Offensive Use of Premises. Lessee shall be responsible for the repair and 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, improper, or offensive use of the Premises or any part. Lessee shall be responsible for responding to any complaints against the Premises and for resolving any issues arising from the complaints, including but not limited to, taking commercially reasonable action to halt any waste, nuisance, or unlawful use of the Premises. Upon Lessor's receipt of actual notice that illegal acts are taking place on the Premises, or the Premises are being used for an illegal purpose that could result in criminal or civil forfeiture, or both, of the Premises or any portion of the Premises, to any governmental authority, Lessor shall so notify Lessee, and Lessee shall thereafter take all reasonable and appropriate action as may be necessary to stop such illegal activity. IF LESSEE DOES NOT OR REFUSES TO TAKE REASONABLE AND APPROPRIATE ACTION INTENDED TO CAUSE THE CESSATION OF SUCH ILLEGAL ACTIVITY WITHIN TWO (2) BUSINESS DAYS OF RECEIPT OF WRITTEN NOTICE FROM LESSOR, THEN SUCH FAILURE OR REFUSAL SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER THIS LEASE and Lessor may thereafter take all reasonable and

appropriate action as may be necessary to stop such illegal activity, including entry onto the Premises. Lessor, merely by having the right to take certain actions in this Section, is neither obligated nor required to take any such action and shall not be liable to Lessee or any governmental authority if Lessor does not exercise such right.

7. Compliance with Laws. Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state, and federal laws applicable to the use, condition, or occupancy of the Premises, or to Lessee's business conducted at the Premises, now in force or which may be in force. Lessee shall, at its sole cost and expense, make all alterations to the Premises, and to any adjacent land between the Premises and any public street, that are required to comply with applicable laws, whether in effect as of the Effective Date or thereafter. Lessee's obligations under this Section shall include the obligation that Lessee, at Lessee's own expense, in accordance with the terms of this Lease, make, build, maintain, and repair all fences, sewers, drains, roads, curbs, sidewalks, parking areas, and other improvements that may be required by laws to be made, built, maintained, and repaired in connection with or for the use of the Premises, whether located on the Premises or on other property. Lessee acknowledges and agrees that Lessor has no obligations under this Lease with respect to the compliance of the Premises with any applicable laws, whether in effect as of the Effective Date or thereafter; provided, however, the foregoing shall not relieve Lessor of Lessor's obligation to comply with all applicable laws with respect to Lessor's activities on the Premises, if any. Without limiting Lessee's obligation to comply generally with all applicable laws, Lessee, at its sole cost and expense, shall cause the Premises, including all improvements, and Lessee's use and occupancy of the Premises, and Lessee's performance of its obligations under this Lease, to comply with the requirements of the Public Accommodations Laws (as hereinafter defined), and shall take such actions and make such alterations as are necessary for such compliance. If the Premises are not in compliance with Public Accommodations Laws as of the Effective Date, or if the Premises thereafter fail to comply with Public Accommodations Laws, and Lessee receives notice from a governmental authority (other than Lessor) that Lessee is required to bring the Premises into compliance with applicable Public Accommodations Laws, then Lessee shall provide to Lessor a plan for compliance within thirty (30) days following such notice or such shorter period as may be required under such notice from the governmental authority. At minimum, such plan shall identify the work to be done to cause the Premises to be in compliance with Public Accommodations Laws and the timetable for completing such work. Any such work shall be subject to Lessor's reasonable approval. As used herein, the term "Public Accommodations Laws" means Title III of the Americans with Disabilities Act of 1990 (the "ADA"), 42 USC § 12181, 12183, 12186(b), 12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 USC § 2000a et. seq., the Architectural Barriers Act of Rehabilitation Act of 1968, 42, USC § 4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 USC § 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 CFR Part 1190, and the Uniform Federal Accessibility Standards, and any similar laws in effect on the Effective Date or adopted, published, or promulgated thereafter, as the same may have been modified, amended, or supplemented prior to the Effective Date, or may be modified, amended, or supplemented thereafter. Additionally, Lessee shall comply with, as applicable, Hawaii Revised Statutes section 102-14, as the same may be amended, and Hawaii Revised Statutes chapters 104 and 155, as the same may be amended, as the same may relate to improvements made to the Premises by Lessee.

8. Inspection of Premises. Lessor, the State of Hawaii, or the City and County of Honolulu and their agents, representatives, successors, and assigns shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties, including without limitation examining the state of its repair and condition; provided, however, in the exercise of these rights, Lessor, the State of Hawaii, or the City and County of Honolulu shall not interfere unreasonably with Lessee's use and enjoyment of the Premises. Lessor shall be responsible for any loss, liability, claim, damage, or expense (including cost of defense and reasonable attorneys' fees) arising from any such entry onto the Premises by Lessor.

9. Improvements. Except with respect to: (a) the work contemplated in the Development Agreement, (b) emergency repairs, (c) interior alterations or minor repairs that are non-structural in nature, do not alter mechanical or electrical systems, and do not materially alter the external appearance or view of any improvements, and (d) routine maintenance work, 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 Lessor. When the approval of the Lessor is required, such approval may be subject to those conditions Lessor may reasonably impose, including, without limitation: (i) the requirement that Lessee only use licensed contractors, subcontractors, materials, mechanics, and materialmen approved by Lessor, (ii) the requirement that Lessee only use certain materials or types of construction, and (iii) the requirement that Lessee provide evidence satisfactory to Lessor that there are funds available and committed to Lessee sufficient to pay for one hundred percent (100%) of the total hard costs and one hundred percent (100%) of any other indirect or "soft costs" associated with such work. Lessee shall reimburse Lessor, as Additional Rent, for any costs and expenses incurred by Lessor in connection with such improvement work, including, without limitation, any costs incurred in connection with Lessor's review and/or approval of such work (whether internal or related to the engagement of third parties). Additionally, Lessee shall not commence construction of any improvement to the Premises 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 therefor 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. Neither Lessor's approval nor the approval of any architect or engineer engaged by Lessor of any plans or specifications reviewed by Lessor or such architect or engineer pursuant to the provisions of this Lease, or of the construction of any improvements, shall be deemed a warranty or other representation by Lessor that such plans or specifications or the construction of the improvements are legal, structurally safe or sound, or adequate for Lessee's use. Lessee shall own these improvements until the expiration or earlier termination of this Lease, at which time the ownership shall, at the option of Lessor, become the property of Lessor, or upon written notice by Lessor shall be removed by Lessee, at its sole cost and expense, as set forth in Section 28 below.

10. Capital Improvements Pursuant to Development Agreement. As a material inducement to Lessor to enter into this Lease with Lessee, Lessee has agreed to invest substantial capital in the Premises for the improvements as described in the Development Agreement. The Lessee shall satisfy the requirements of the Development Agreement.

11. Repairs to Improvements. 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, which obligations shall include, without limitation, all structural and non-structural and capital and non-capital repairs and replacements. Lessee shall also, at its own expense, make any and all repairs and perform all work required by applicable law to keep the property, buildings, and improvements on the Premises in compliance with all applicable County, State, and Federal laws and regulations, including but not limited to environmental, Americans with Disabilities Act, and other requirements.

Lessee shall establish and maintain a reserve fund for replacements by depositing to an account (the **“Reserve Fund for Replacements”**) an annual amount of at least \$300 per dwelling unit in the Project on the Premises per year. The Reserve Fund for Replacements shall be held in a safe, responsible, and federally insured depository approved by Lessor. Such fund, whether in the form of a cash deposit or obligations of, or fully guaranteed as to principal by, the United States of America, shall at all times be under the control of Lessor, an Authorized Mortgagee (as hereinafter defined), or other entity approved by Lessor. Disbursements from the Reserve Fund for Replacements shall require prior written approval of Lessor, which shall not be unreasonably withheld, conditioned, or delayed; provided, however, if an Authorized Mortgagee requires the use of funds in the Reserve Fund for Replacements, Lessee shall be entitled to disbursements from the Reserve Fund for Replacements in order to satisfy such requirement. Notwithstanding anything in this paragraph to the contrary, at any time an Authorized Mortgagee or a limited partner of Lessee requires Lessee to maintain an account for similar purposes as the Reserve Fund for Replacements and the said account (i) is required to be held in a safe, responsible, and federally insured depository, (ii) requires the deposit of at least \$300 per dwelling unit in the Project on the Premises per year, and (iii) contains a balance of at least \$300 per dwelling unit in the Project on the Premises deposited per year since the commencement of the account, less authorized expenditures, the requirements of such Authorized Mortgagee or limited partner with respect to the treatment and use of the funds in such account shall control, and the requirements of Lessor pertaining to the Reserve Fund for Replacements in this Section 11 shall be deemed satisfied by virtue of the maintenance of such account.

12. Liens and Encumbrances. Lessee shall not commit or suffer any act or neglect which results in the Premises, any improvement, or the leasehold estate of Lessee becoming subject to any attachment, lien, charge, or monetary encumbrance, except as provided in this Lease, and shall defend, indemnify, and hold harmless Lessor and the State of Hawaii from and against all attachments, liens, charges, and encumbrances and all resulting expenses. Lessee shall keep the Premises free from any liens or encumbrances arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Lessee. Lessee shall remove any lien or encumbrance by bond or otherwise within ten (10) days after Lessee becomes aware of the existence of such lien or encumbrance or application or claim therefor, and if Lessee shall fail to do so, Lessor may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, in addition to such other remedies available to Lessor under this Lease. Lessee covenants and agrees that it will not subordinate its leasehold interest in the Premises to any mortgage, deed of trust, easement, lien,

security interest, encumbrance, and/or restriction recorded against Lessor's fee interest in the Premises without the prior written consent of each Authorized Mortgagee. Notwithstanding any provision in this Lease to the contrary, Lessee may place and/or record non-monetary liens and encumbrances (e.g., easements) that do not affect Lessor's interest in the Premises and solely affect Lessee's leasehold interest in the Premises, without having to obtain Lessor's consent or approval, but Lessee shall provide written notice thereof to Lessor within two (2) business days after such placement or recordation.

Lessor shall not (i) change or modify the zoning or land use designations applicable to the Premises; (ii) make any development, land use, or other applications related to the Premises other than as a co-applicant with Lessee; or (iii) cause any liens, encumbrances, or any other items to be recorded against the Premises, without the prior written consent of Lessee and any Authorized Mortgagee, which consent may not be unreasonably withheld, delayed, or conditioned. Lessee and any Authorized Mortgagee shall not withhold, delay, or condition their consent so long as any such action does not (a) contravene, hinder, or impair any right or privilege granted Lessee in this Lease, or (b) result in any material interference with the use by Lessee of the Premises, for the purposes permitted hereunder or result in damage to existing structures or improvements and/or unrepaired damage to existing water, sewer, electrical, or cable systems and roads, and so long as such lien, encumbrance, or any other items to be recorded against the Premises expressly provides that it is and shall remain subject and subordinate at all times in lien, operation, and otherwise to this Lease and to all renewals, modifications, amendments, consolidations, and replacements hereof (including new leases entered into pursuant to Section 23 and extensions).

13. Character of Use. Lessee shall at all times use or cause the Premises to be used for the purposes of developing, constructing, operating, and maintaining a ___-unit (including 1 resident manager's unit) affordable multifamily housing project (the "**Project**"), as described and subject to the affordability and use restrictions prescribed herein including but not limited to in **Exhibit "B"**, which is attached and incorporated by reference, and for no other purpose whatsoever. Lessee shall ensure that the use and occupancy of the Premises complies with all applicable County, State, and Federal laws and regulations. Lessee shall manage and operate the Premises and perform its duties and obligations under this Lease in a manner consistent with the standards followed by institutional quality owners and management companies that are managing comparable multifamily housing projects for affordable families. Lessee shall cause the Premises to be inspected periodically by qualified personnel to ensure that the repair, maintenance, and replacement obligations of Lessee pursuant to the terms of this Lease are being satisfied.

14. Assignment of Lease. Lessee shall not assign this Lease without the written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed. In the exercise of its reasonable discretion, Lessor may refuse to provide its consent because of a reasonable belief on its part that: (A) the proposed assignee does not possess a level of experience in the ownership and operation of comparable rental housing projects equivalent to or better than the assigning Lessee; or (B) the proposed assignee has a record of material violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects; or (C) the proposed assignee will not be retaining a property management firm with the experience and record described in clause (A) above; or (D) the proposed assignee

would be financially unable to perform in accordance with the terms of this Lease. An approved assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, no such assignment shall be effective to transfer any interest in this Lease unless Lessor shall have received an executed copy of such assignment that includes the written undertaking of the assignee to perform all obligations of Lessee hereunder accruing from and after the effective date of such assignment. No such assignment shall release Lessee or assignor from further liability hereunder unless Lessor shall consent in writing to such assignment and release. With respect to its review of a requested assignment of this Lease, Lessor may impose a service charge for the processing of such request for approval, which may include the out-of-pocket costs incurred by Lessor in processing such request for approval, including without limitation fees permitted under Title 15, Subtitle 14, Chapter 307 of the Hawaii Administrative Rules, as may be amended or repealed and replaced from time to time. If Lessee shall participate in the Low Income Housing Tax Credit Program described in Section 42 of the Internal Revenue Code of 1986, Lessee may sell and assign this Lease, subject to the foregoing provisions of this Section 14. Notwithstanding anything to the contrary set forth in this Lease, Lessee is not permitted to assign this Lease during the first year of the term of this Lease.

An "assignment" of this Lease shall include one or more sales or transfers by operation of law or otherwise by which: (i) an aggregate of at least fifty percent (50%) of: (a) the total capital stock of a corporate Lessee; (b) the total partnership interests of a general partnership Lessee; (c) the total membership interests of a limited liability company Lessee; or (d) the total beneficial interests of a trust Lessee; (ii) if the Lessee is a limited partnership, at least fifty percent (50%) of the interest in the general partner of such limited partnership or, if there is more than one general partner, at least fifty percent (50%) of the interests in all such general partners in the aggregate; or (iii) if the Lessee is a limited liability company that is manager-managed, at least fifty percent (50%) of the interest in the manager of such limited liability company or, if there is more than one manager, at least fifty percent (50%) of the interests in all such managers in the aggregate, shall become vested in one or more individuals, firms, or corporations who or which were not stockholders, partners, members, or beneficiaries of Lessee, either legally or equitably, as of the date that Lessee acquired an interest in the Premises; provided, however, that "assignment" shall not include sales or transfers of stock of a corporate Lessee whose capital stock is listed on a nationally recognized stock exchange. An assignment shall also be deemed to have occurred upon the occurrence of any one or more of the following: (a) any change in "control" of Lessee; (b) any transfer to an entity resulting, by operation of law or otherwise, from the merger, consolidation, or other reorganization of Lessee; or (c) any transfer to a transferee of substantially all of the assets, stock, or operating units of Lessee. "Control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, or ownership of any sort, whether through the ownership of voting securities, by contract, or otherwise.

15. Subletting. Except for the renting of the dwelling units in the Project, together with the parking spaces, to eligible persons and families consistent with the provisions of this Lease, and except for the renting of the commercial spaces to commercial tenants consistent with the provisions of this Lease, both of which may be done without the approval or consent of Lessor, Lessee shall not be allowed to sublet the whole or any portion of the Premises without the prior written approval of Lessor.

16. Indemnity. Lessee shall defend, indemnify, and hold harmless Lessor and the State of Hawaii from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (a) any occurrence in, on, or about or otherwise relating to the Premises occurring from and after the Effective Date; (b) any acts, omissions, or negligence of Lessee or of any person claiming by, through or under Lessee, in, on, or about the Premises; (c) any failure on the part of Lessee to maintain the Premises and sidewalks, roadways, and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire, or nuisance, growing out of or caused by any failure on the part of Lessee to maintain the Premises in a safe condition; (d) the use, occupancy, or manner of use or occupancy of the Premises by Lessee, any sublessee, or any other person claiming by, through, or under Lessee; (e) the conduct or management of any work or thing done in or on the Premises by Lessee, any sublessee, or any other person claiming by, through, or under Lessee; (f) the design, construction, maintenance, or condition of any improvements to the extent constructed or altered by Lessee during the term; (g) the condition of the Premises to the extent modified by Lessee, and (h) any breach of the terms of this Lease.

17. Lessor Expenses. Lessee shall pay to Lessor, within thirty (30) days after written demand therefor, all reasonable costs and expenses, including attorneys' fees, paid or incurred by Lessor: (a) but required to be paid by Lessee under any covenant in this Lease (including without limitation any indemnity provision), (b) in enforcing any of Lessee's covenants or obligations in this Lease, (c) in protecting Lessor against any breach of this Lease by Lessee, (d) in remedying any breach of this Lease by Lessee, (e) in recovering possession of the Premises or any part of the Premises, (f) in collecting or causing to be paid any delinquent Rent, taxes or other charges payable by Lessee under this Lease, (g) in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor or the State of Hawaii shall without fault be made a party, or (h) for performing any obligations of Lessee. All such costs, expenses, and fees shall constitute Additional Rent. LESSEE'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE TERM OF THIS LEASE.

18. Liability Insurance. Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policy or policies of insurance maintained by Lessee shall provide the following minimum policy limits and coverages:

<u>Coverage</u>	<u>Minimum Policy Limits</u>
Commercial General Liability and Automobile Insurance	<p>Lessee'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 \$1,000,000 per occurrence, and \$2,000,000 in the aggregate (the maximum amount paid for claims during a policy term) arising out of or in connection with operations performed under this Lease.</p> <p>Automobile insurance, including automobile contractual liability, uninsured and underinsured motorist coverage, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If Lessee does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.</p>
Workers' Compensation	As required by Hawaii laws.
Property	<p>Including Flood and Windstorm written on a replacement cost basis as is reasonably available in the market at a reasonable cost for risks a prudent person would insure against. Lessee shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. Coverage should be evidenced on form Acord 27 – Evidence of Property Insurance.</p>
Builder's Risk	<p>Lessee shall procure, prior to commencement of construction, an Inland Marine Builder's Risk coverage form providing coverage to protect the interests of the State of Hawaii, Lessor, Lessee, Lessee's contractors, sub-contractors, architects, and engineers including but not limited to property in transit on and off-Premises, which should become a part of the project. The builder's risk insurance shall be written on an all risk, replacement cost, and completed value form basis for 100% of the projected completed value of current improvements to be constructed. Coverage should be evidenced on form Acord 27, Evidence of Property Insurance.</p>
Pollution Liability	<p>Lessee's pollution legal liability environmental insurance shall be written on occurrence form with a combined single limit of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate (the maximum amount paid for claims during a policy term) 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.</p>

Contractor's
Pollution
Liability

Any general contractor contracted to build a building or undertake substantial rehabilitation of the Project on the Premises shall be required to obtain and maintain pollution legal liability environmental 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 \$1,000,000 and aggregate limit of not less than \$2,000,000. The policy shall have tail coverage extending five (5) years beyond the completion of the work contemplated by the applicable construction contract. The policy shall name Lessor and the State of Hawaii as additional insureds.

The Commercial General Liability Insurance, Automobile Insurance, and Pollution Legal Liability Environmental Insurance shall contain the following four 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 Lessor specifically are added as additional insured parties for operations performed on the Premises.
- 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.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Lease and on the 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 Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, 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 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. Lessee shall immediately provide written notice to Lessor should any of the insurance policies evidenced on its certificates of insurance be cancelled, limited in scope, or not renewed upon expiration of the current policy period.

If the State of Hawaii comptroller requires any changes to the insurance requirements set forth in this Lease, including without limitation, coverage, form, and amount to provide adequate protection, Lessee shall obtain such insurance as so required. Notwithstanding the foregoing, every ten (10) years during the term of this Lease, Lessee shall automatically be required to increase the Commercial General Liability Insurance, Automobile Insurance, and Pollution Legal Liability Environmental Insurance coverages carried by Lessee under this Lease by the percentage increase in the CPI Index over the same period of time. As used herein, "CPI Index" means the Consumer Price Index for all Urban Consumers, All Cities (base year 1982-1984 - 100), published by the United States Department of Labor, Bureau of Labor Statistics. If the base of the CPI Index changes from the 1982-84 base (100), the CPI Index shall, thereafter, be adjusted to the 1982-84 base 100 before the computation indicated above is made. If the CPI Index is at any time no longer published, a comparable index generally accepted and employed by the real estate profession shall be used.

Lessor shall notify Lessee in writing of any changes in the insurance requirements pursuant to the preceding paragraph. If Lessee does not deposit copies of insurance policies with Lessor incorporating such changes requested by Lessor within sixty (60) days of receipt of such notice, this Lease shall be in default without further notice to Lessee and Lessor shall be entitled to all legal remedies, including termination of this Lease, and Lessee 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 Lessee's liability under this Lease nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Lease.

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

19. Property Insurance. 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 and with a minimum financial strength rating of "A" as assigned by A.M. Best Company, insuring all buildings and improvements erected on the 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.

In the event of total or partial loss, an Authorized Mortgagee shall have the right to participate in the adjustment of any losses as to casualty or hazard insurance proceeds. Any

proceeds derived from the policy(s) shall be paid to the Authorized Mortgagee, if any, or such Authorized Mortgagee 's designee to be used to repair or restore the Premises as nearly as possible to the condition the Premises were in immediately prior thereto, it being understood that, so long as Lessee has fully complied with the requirements of the first sentence of this Section 19, Lessee's obligation to rebuild the Premises shall be limited to the amount of available casualty/hazard insurance proceeds. In such event, neither party shall have the right to terminate this Lease, and this Lease shall continue in effect. If there is no Authorized Mortgagee, the proceeds shall be paid to Lessee and used by 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 Lessor, in which event, following such restoration, the balance of the proceeds shall be paid to Lessee. Lessee may, with the consent of the Authorized Mortgagee, surrender this Lease and pay the balance owing on any mortgage and Lessee shall then receive that portion of the proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, Lessor to be paid the balance of the proceeds.

Lessee shall furnish Lessor on or before the commencement 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). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to Lessor.

20. Mortgage. Except with respect to financing existing as of the Effective Date or as provided in this Lease, Lessee shall not mortgage, hypothecate, or pledge the Premises or any interest in this Lease without the prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed, and which shall be granted so long as the loan: (A) is made by an institutional lender, which shall include, without limitation, any bank, life insurance company, real estate investment trust, pension fund, the Department of Housing and Urban Development, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other state or federal agency, and (B) is on terms and conditions consistent with a standard loan program offered by such institutional lender for similar projects at the time the loan is made, and (C) shall be payable over not more than the remaining term of this Lease, and (D) shall be in an amount that, when aggregated with the outstanding amount of all other Authorized Mortgages affecting the Premises, does not exceed seventy-five percent (75%) of the then fair market value of Lessee's interest in this Lease based on the appraisal of the proposed lender. A mortgage to which Lessor has provided its prior written approval is called an "**Authorized Mortgage**" in this Lease, and the mortgagee thereunder is called an "**Authorized Mortgagee**" in this Lease.

21. Breach. Time is of the essence in this Lease, and if 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 Lessor of a written notice of breach or default, or if 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 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 ten (10) days after delivery by Lessor of a written notice of breach or default, by personal service, registered mail, or certified mail to Lessee at its last known address and to each

Authorized Mortgagee (however, in the case where the Lessee has commenced to cure such default within such ten (10) day period and is continuing such cure with all due diligence but cannot by the exercise of due diligence cure such default within such period, such period will be extended for such additional period as may be reasonably required under the circumstances to complete such cure), 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 Lessor, all buildings and improvements shall remain and become the property of 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. If this Lease is recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, such termination may but need not necessarily be made effective by recording or filing in such place an affidavit thereof by Lessor or a judgment thereof by a court of competent jurisdiction. Lessor hereby agrees that any cure of any default made or tendered by Lessee's limited partner or an Authorized Mortgagee shall be accepted or rejected on the same basis as if such cure were made or tendered by Lessee. If Lessor will elect to terminate this Lease pursuant to the foregoing, then an Authorized Mortgagee will have the right to postpone and extend the specified date for the termination of this Lease for a period sufficient to enable such Authorized Mortgagee to acquire Lessee's interest in this Lease by foreclosure of its mortgage or otherwise. Notwithstanding anything in this Section 21 to the contrary, this Section 21 is subject in its entirety to the provisions of Section 22 below.

22. Right of Holder of Record of a Security Interest. Notwithstanding anything to the contrary in Section 21, the following provisions shall apply with respect to any Authorized Mortgagee.

a. Notices to Authorized Mortgagee. Lessor shall give to any Authorized Mortgagee who has given Lessor written notice of its name and address, concurrently when given to or served on Lessee, a duplicate copy of any and all notices Lessor may from time to time give to or serve on Lessee in accordance with or relating to this Lease, including but not limited to any notice of default, notice of termination, or notice regarding any matter on which Lessor may predicate or claim a default. Any notices or other communications permitted by this or any other section of this Lease or by law to be served on or given to an Authorized Mortgagee by Lessor shall be deemed duly served on or given to such Authorized Mortgagee in the manner provided for under this Lease at the last mailing address for such Authorized Mortgagee, furnished in writing by such Authorized Mortgagee or Lessee to Lessor.

b. No Modification or Termination Without Authorized Mortgagee's Consent. For as long as there is any Authorized Mortgage in effect, Lessee and Lessor hereby expressly stipulate and agree that they will not modify, amend, restate, or surrender this Lease in any way, and Lessee will not waive any of its rights under this Lease, without the express prior written consent of the Authorized Mortgagee, and any attempt to take any such action without the Authorized Mortgagee's consent shall not be binding on such Authorized Mortgagee at the option of such Authorized Mortgagee. For so long as there is any Authorized Mortgage in effect, Lessee and Lessor hereby expressly stipulate and agree that they will not, by mutual agreement, cancel or terminate this Lease without the express prior written consent of the Authorized Mortgagee. Lessor agrees for the benefit of any Authorized Mortgagee that this Lease is not

terminable by Lessor as a result of status or other defaults of Lessee that by their nature are not capable of being cured by the Authorized Mortgagee so long as Rent and other obligations which are capable of performance by the Authorized Mortgagee are being paid and/or performed.

c. Cure Rights. During the continuance in effect of any Authorized Mortgage of this Lease, Lessor will not terminate this Lease because of any monetary default on the part of Lessee if the Authorized Mortgagee or its assigns, within the later of: (a) sixty (60) days after Lessor has mailed to the Authorized Mortgagee or its assigns at the last known address thereof a written notice of intention to terminate the interest of Lessee under this Lease for such cause, or (b) sixty (60) days after the expiration of the time period granted to Lessee under this Lease for curing such default, shall cure such default. Further, as to any non-monetary default, the Authorized Mortgagee shall have one hundred eighty (180) days after receipt of such written notice from Lessor, and a reasonable time after the expiration of said one hundred eighty (180) days if it shall have commenced foreclosure or other appropriate proceeding in the nature thereof within said one hundred eighty (180) day period and is diligently prosecuting the same, within which to endeavor to cure such default. In case of such undertaking, Lessor will not so terminate if the Authorized Mortgagee has commenced foreclosure proceedings or within such further time as may be required by the Authorized Mortgagee to complete foreclosure of such Authorized Mortgage or other remedy thereunder provided (i) that such remedy is pursued promptly and completed with due diligence, and (ii) that the Authorized Mortgagee has paid all Rent and other charges accruing hereunder as the same become due and has performed all the covenants of this Lease until such time as this Lease shall be sold upon foreclosure of the Authorized Mortgage. Any default consisting of Lessee's failure promptly to discharge any lien, charge or encumbrance against the Premises junior in priority to the Authorized Mortgage shall be deemed to be duly cured if such Authorized Mortgage shall be foreclosed by appropriate action instituted within said sixty (60) day period and thereafter prosecuted in diligent and timely manner. Ownership of Lessor's interest and Lessee's interest by or for the same person shall not affect the merger thereof without the prior written consent of any Authorized Mortgagee to such merger.

d. Other Rights. An Authorized Mortgagee or its assigns under an Authorized Mortgage shall also have the right, at any time during the term of this Lease and the existence of such Authorized Mortgage, to do any one or more of the following:

i. Acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Lessee by this Lease or otherwise by law, subject to the provisions, if any, in the Authorized Mortgage, which may limit any exercise of any such right, remedy or privilege;

ii. Rely upon and enforce any provisions of this Lease to the extent that such provisions are for the benefit of the Authorized Mortgagee;

iii. Perform any of Lessee's obligations under this Lease, or do any such act or thing required of Lessee under this Lease, and Lessor agrees to accept the performance by such Authorized Mortgagee of Lessee's obligations under this Lease and/or any such act or thing done and performed by such Authorized Mortgagee for and on behalf of Lessee or in the place of Lessee, as if such performance, action or thing were done by Lessee;

iv. Realize on the security afforded by the leasehold estate by foreclosure proceedings, accepting an assignment in lieu of foreclosure, or other remedy afforded in law or in equity or by the security instrument evidencing the Authorized Mortgage;

v. Transfer, convey, or assign the title of Lessee to the leasehold estate created by this Lease to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted under court order or a power of sale contained in the Authorized Mortgage, or to an assignee under an assignment in lieu of foreclosure;

vi. Acquire and succeed to the interest of Lessee under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted under a court order or a power of sale contained in the Authorized Mortgage, or by virtue of an assignment in lieu of foreclosure.

No Authorized Mortgagee shall, as a condition to the exercise of its rights hereunder, be required to assume personal liability for the payment and performance of the obligations of Lessee hereunder. Any such payment or performance or other act by an Authorized Mortgagee hereunder shall not be construed as an agreement by such Authorized Mortgagee to assume such personal liability except to the extent such Authorized Mortgagee actually takes possession of the Premises.

e. New Lease to Authorized Mortgagee. If this Lease is terminated for any reason, or in the event of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors' rights, Lessor agrees to give immediate written notice of the termination of this Lease to the Authorized Mortgagee and shall include in the notice a statement of all sums which would be due under this Lease at the time of termination and all other defaults of Lessee existing at such time, and to enter into a new lease for the Premises with such Authorized Mortgagee, as Lessee (a "New Lease"), provided all of the following conditions are satisfied:

i. A written request for the New Lease is served on Lessor by the Authorized Mortgagee within thirty (30) days after such Authorized Mortgagee's receipt of written notice from Lessor of the termination of this Lease;

ii. The New Lease is for a term ending on the same date the term of this Lease would have ended had this Lease not been terminated; provides for the payment of rent at the same rate that would have been payable under this Lease during the remaining term of this Lease had this Lease not been terminated; and contains the same terms, covenants, conditions, and provisions as are contained in this Lease (except those that in the reasonable determination of Lessor (i) have already been fulfilled, (ii) are prohibited by virtue of Authorized Mortgagee's legal status; (iii) are impossible for the Authorized Mortgagee to perform; or (iv) are no longer applicable);

iii. The Authorized Mortgagee, upon execution of the New Lease by Lessor, shall pay any and all sums that would at the time of the execution of the New Lease be due under this Lease but for its termination and shall otherwise fully remedy, or agree in writing to remedy, any other defaults under or breaches of this Lease committed by Lessee that are capable of being remedied by the Authorized Mortgagee, and any defaults or breaches of

this Lease which are not capable of being remedied by the Authorized Mortgagee shall be deemed cured or waived;

iv. The Authorized Mortgagee, on execution of the New Lease, shall pay all reasonable costs and expenses, including attorneys' fees and court costs, incurred in terminating this Lease, recovering possession of the Premises from Lessee or the representative of Lessee, and preparing the New Lease;

v. The New Lease shall be subject to all existing subleases between Lessee and subtenants;

vi. The New Lease shall be assignable by the Authorized Mortgagee and by any affiliate of the Authorized Mortgagee or nominee of the Authorized Mortgagee, but not by their respective successors, without the prior written consent of Lessor, and upon any such assignment to an assignee assuming the obligations of Lessee under this Lease, the Authorized Mortgagee shall be released from any and all further liability under the New Lease arising following the date of such assignment; and

vii. Any New Lease made pursuant to this Section will have the same priority with respect to other interests in the Premises as this Lease. The provisions of this Section will survive the termination, rejection or disaffirmance of this Lease and will continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by Lessor, Lessee and the Authorized Mortgagee.

f. Obligations of Authorized Mortgagee Upon Foreclosure. No Authorized Mortgagee shall be liable to Lessor as an assignee of this Lease unless and until such Authorized Mortgagee acquires all rights of Lessee under this Lease through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating the Authorized Mortgage, and such liability shall be limited to (a) the monetary obligations that arise during the period of time that such Authorized Mortgagee has ownership of the leasehold estate created by this Lease; and (b) the value of the Authorized Mortgagee's interest in such leasehold estate. Furthermore, any Authorized Mortgagee or other subsequent owner shall only be liable for acts or omissions arising out of events or conditions first occurring during the period that such Authorized Mortgagee or subsequent owner holds title to the Premises.

g. Lessee's Personal Property. In the event of any default by Lessee under this Lease or any loan documents, Lessor will allow Authorized Mortgagee to enforce its lien and security interest in Lessee's personal property located at the Premises and Lessor will allow Authorized Mortgagee to assemble and remove all of Lessee's personal property located on the Premises to the extent that such personal property does not inhibit or limit the ongoing operation of the Project or negatively impact the health and safety of persons on the Premises. Lessor hereby waives any Lessor's lien it might hold, statutory, constitutional, contractual or otherwise, in any personal property owned or leased by Lessee and now or hereafter located on the Premises. If so requested by Lessee, Lessor shall execute a waiver of any right, title or interest or right to seize any of Lessee's personal property on the Premises that

may be subject to a lien or security interest in favor of Authorized Mortgagee or a seller of Lessee's personal property or creditor holding a security interest in such personal property.

h. No Merger of Leasehold and Fee Estates. So long as any Authorized Mortgage is in existence, unless the Authorized Mortgagee shall otherwise expressly consent in writing, or unless this Lease has expired, has been terminated in accordance with its terms as a result of a default under this Lease by Lessee, or has otherwise terminated earlier in accordance with its terms, the fee title to the Premises and the leasehold estate of Lessee therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and/or said leasehold estate by Lessor or by Lessee, or by a third party, by purchase or otherwise.

i. Authorized Mortgagee as Including Subsequent Security Holders. The term "Authorized Mortgagee" as used in this Lease shall mean not only the party that is named as mortgagee, secured party, or security holder in the Authorized Mortgage but also its affiliates to the Authorized Mortgagee's interest as mortgagee and/or secured party, as applicable, of the Authorized Mortgage.

j. Two or More Authorized Mortgagees. In the event two or more Authorized Mortgagees each exercise their rights under this Lease and there is a conflict that renders it impossible to comply with all requests of such Authorized Mortgagees, the Authorized Mortgagee whose mortgage would have senior priority in the event of a foreclosure shall prevail.

k. Extension of Time for Authorized Mortgagee Performance. All time periods for an Authorized Mortgagee's cure of non-monetary defaults under this Lease that require possession of the Premises for such cure and all time periods for the Authorized Mortgagee's foreclosure or exercise of other remedies for Lessee's default are extended for a period of time equal to any stay, prevention or other delay resulting from bankruptcy, injunction or similar legal action or proceeding.

l. Bankruptcy.

i. Affecting Lessee. If Lessee (as debtor in possession) or a trustee in bankruptcy for Lessee rejects this Lease in any bankruptcy, insolvency, reorganization, composition, or similar proceeding, whether voluntary or involuntary, under Title 11, United States Code, or any similar state or federal statute for the relief of debtors, including any assignment for the benefit of creditors or similar proceeding (each, a "Bankruptcy Proceeding") affecting Lessee, then such rejection shall be deemed Lessee's assignment of its interest in this Lease and the leasehold estate created by this Lease to a new tenant to be designated in writing by the Authorized Mortgagee holding the most senior Authorized Mortgage, in the nature of an assignment in lieu of foreclosure, subject to all security instruments. Upon such deemed assignment, this Lease shall not terminate. Each Authorized Mortgagee shall continue to have all the rights of an Authorized Mortgagee as if the Bankruptcy Proceeding had not occurred, unless such Authorized Mortgagee shall disapprove such deemed assignment by written notice delivered to Lessor within thirty (30) days after such Authorized Mortgagee receives written notice of the rejection of this Lease in any Bankruptcy Proceeding. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the

deemed assignment provided for in place of rejection of this Lease, then each Authorized Mortgagee shall continue to be entitled to a New Lease as provided in this Lease.

ii. Affecting Lessor. If Lessor (as debtor in possession) or a trustee in bankruptcy for Lessor rejects this Lease in any Bankruptcy Proceeding affecting Lessor, then:

(1) Assignment. Lessor and Lessee acknowledge that an Authorized Mortgagee 's collateral includes all rights of Lessee under 11 U.S.C. § 365(h), all of which rights have been validly and effectively assigned to such Authorized Mortgagee.

(2) Lessee's Election. Lessee's right to elect to treat this Lease as terminated is subject to and conditioned upon each Authorized Mortgagee 's express prior written consent. If Lessee purports, without each Authorized Mortgagee 's express prior written consent, to elect to treat this Lease as terminated, then such election and purported termination shall be null, void, and of no force or effect at the option of such Authorized Mortgagee. Each Authorized Mortgagee shall have the right, to the exclusion of Lessee, to make any election and exercise any rights of Lessee under 11 U.S.C. § 365(h)(1). Provided that an Authorized Mortgagee shall have received written notice of Lessor's Bankruptcy Proceeding simultaneously with written notice delivered to Lessee, such Authorized Mortgagee 's rights under the preceding sentence must be exercised, if at all, subject to such time limits and requirements as would apply to Lessee, except that as against an Authorized Mortgagee, every such time period shall be extended by thirty (30) days.

(3) Continuation of Lease. If Lessee does not, with each Authorized Mortgagee 's express written consent, treat this Lease as terminated, then (notwithstanding any purported election by Lessee to the contrary made without each Authorized Mortgagee 's express prior written consent) Lessee shall be deemed to have elected to continue this Lease pursuant to 11 U.S.C. § 365(h)(1)(A)(ii). This Lease shall continue in effect without change upon all the terms and conditions set forth in this Lease.

(4) Continuation of Security Instruments. The lien of any security instrument that was in effect before rejection of this Lease shall extend to Lessee's continuing possessory and other rights under 11 U.S.C. § 365(h) in the Premises and this Lease following such rejection, with the same priority as such lien would have enjoyed against the leasehold estate created by this Lease had such rejection not taken place.

m. Additional Lender Assurances. To facilitate any financing or refinancing by Lessee which involves the hypothecation of Lessee's leasehold estate created by this Lease and rights hereunder, Lessor, if requested so to do by Lessee, agrees to join in executing any instruments, including, without limitation, amendments to this Lease, which legal counsel for any lender which is or may become a lender and the holder of a security instrument may reasonably request to grant to the lender the right to act for Lessee in enforcing or exercising any of Lessee's rights or remedies under this Lease, provided that in no event shall Lessor be required to incur any personal liability for the repayment of any obligations secured by any such hypothecation of the leasehold estate of Lessee nor to subordinate Lessor's rights and reversionary interests in and to the Premises to any such hypothecation nor shall any such

instrument adversely affect Lessor's rental, Lessee's payment of taxes, assessments, insurance and/or Lessee's payment or performance of other obligations under this Lease or otherwise diminish or reduce Lessor's rights under this Lease (including without limitation, Lessor's rights under this Article).

n. Mezzanine Protections. Provided Lessee provides to Lessor a notice setting forth the name and address of any lender having a security interest in a direct or indirect equity or other ownership interest in Lessee pursuant to a mezzanine loan (a "Mezzanine Loan" and such lender, a "Mezzanine Lender"), Lessor shall thereafter deliver to Mezzanine Lender a copy of any notice required to be sent to an Authorized Mortgagee pursuant to the terms hereof. Mezzanine Lender shall be entitled to exercise any rights granted to an Authorized Mortgagee herein. Nothing contained herein shall be deemed to impose upon Mezzanine Lender the obligation to perform any obligation hereunder or to remedy any default by Lessee; provided that Lessor shall accept performance by Mezzanine Lender of any covenant, condition or agreement on Lessee's part to be performed hereunder, with the same force and effect as though performed by Lessee. Notwithstanding any provision hereof to the contrary, the rights of Mezzanine Lender shall be subject to the rights of any Authorized Mortgagee, whose rights shall take priority and precedence vis-à-vis Mezzanine Lender.

o. Third Party Beneficiary. Each Authorized Mortgagee shall be a third-party beneficiary of the rights and benefits granted to Authorized Mortgagees under this Lease. Neither Lessee nor Lessor shall be deemed to be a third party beneficiary of the rights granted hereunder to an Authorized Mortgagee and no Authorized Mortgagee shall have any obligation to Lessee or Lessor to account for any decision, action or election it may take or the exercise of its rights hereunder, nor shall any Authorized Mortgagee have any duty to Lessee or Lessor to exercise any right hereunder in any particular manner or order, other than that which such Authorized Mortgagee, in its sole discretion (but in any event subject to the terms of this Lease) shall deem appropriate and in its own best interests.

23. 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, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's interest in the Premises and this Lease and the permanent improvements so taken in the proportion that it bears to the total value of the Premises, and further in proportion that the unexpired term of this Lease bears to the original term. The foregoing rights of Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Any proceeds payable to Lessee hereunder shall be paid to the Authorized Mortgagee, if any, or such Authorized Mortgagee's designee. Following a partial condemnation, Lessee shall have the option to rebuild and restore the improvements on the remaining portion of the Premises, or, subject to the consent of the Authorized Mortgagee, receive a distribution of the proceeds, in which event such proceeds shall first be applied in accordance with the applicable loan documents. The Authorized Mortgagee shall have the right to supervise and control the receipt and disbursement of any condemnation awards and participate in any condemnation proceedings and settlement discussions. Where the portion taken renders the remainder unsuitable for the use or uses for which the Premises were leased, 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 Lessor. Lessor, Lessee, and the Authorized Mortgagee, if any, shall each be entitled to appear and participate in any proceeding which determines any condemnation award. Lessor agrees to not settle or compromise any condemnation proceeding without the consent of Lessee and any Authorized Mortgagee.

24. No Extension. Upon expiration or earlier termination of this Lease, Lessor shall have no obligation to extend or renew this Lease, nor to enter into a new lease with Lessee, and Lessor may lease the Premises to whomever it chooses for the operation in the Premises of a business that is the same as or different from that operated by Lessee in the Premises or for any other reason or use whatsoever. If, during the term of this Lease, Lessee requests to extend the term of this Lease, Lessor may agree to do so as determined in Lessor's sole and absolute discretion and subject to such terms and conditions as Lessor may require in Lessor's sole and absolute discretion, including without limitation, increasing the Annual Rent payable hereunder to a fair market rent.

25. Acceptance of Rent Not a Waiver. The acceptance of Rent by Lessor shall not be deemed a waiver of any breach by Lessee of any term, covenant, or condition of this Lease, nor of Lessor's right of re-entry for breach of covenant, nor of Lessor's right to declare and enforce a forfeiture for any breach, and the failure of 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.

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

27. Quiet Enjoyment. Lessor covenants and agrees with 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 Lessee to be observed and performed, Lessee shall and may have, hold, possess, and enjoy the Premises for the term of this Lease, without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through, or under it. The foregoing covenant is in lieu of any other covenant, express or implied.

28. Surrender. 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 Lessee, in either case, at no cost or expense of Lessor. Furthermore, upon the expiration, termination, and/or revocation of this Lease, Lessee, at Lessee's option, may surrender the Premises with such personal property Lessee may elect to transfer to Lessor, or may elect to remove the same from the Premises, and should Lessee fail to remove said Lessee's personal property from the Premises, after notice thereof, Lessor may remove any and all such personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at Lessor's expense. This provision shall survive the termination of this Lease.

29. Non-warranty. This Lease is made “AS IS” with all faults and Lessee expressly acknowledges and agrees that LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE PREMISES, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE CONDUCT OF LESSEE’S BUSINESS. Lessee acknowledges and agrees that Lessee has carefully inspected the Premises and accepts the same on an “AS IS” and “WHERE IS” basis, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of Lessor, regarding the Premises or matters affecting the Premises. Lessee fully and irrevocably releases Lessee and the State of Hawaii, their successors, and each past, present, or future officer, director, employee, attorney, or agent of Lessor, the State of Hawaii, and their successors, from any and all claims that Lessee may now have or hereafter acquire against it or them from any costs, loss, liability, damage, expense, demand, action, or cause of action arising from information or documentation provided to Lessee with respect to the condition of the Premises.

This Lease is and shall be subject to any matter of record existing as of the Effective Date, including, without limitation, the encumbrances described in **Exhibit “A”** (the “**Encumbrances**”). Lessee covenants as a material part of the consideration for this Lease to observe, keep, comply with, and perform at Lessee’s sole cost and expense, all of such terms, covenants, and conditions to be kept and performed by or as an owner, occupant, or user of the Premises under the Encumbrances and agrees that this Lease is made upon the condition of such performance.

30. Hazardous Materials. 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 (collectively, “**Hazardous Materials Laws**”).

Lessee EXPRESSLY AND FULLY RELEASES Lessor and the State of Hawaii, their successors, and each past, present, or future officer, director, employee, attorney, or agent of Lessor, the State of Hawaii, and their successors, from any and all liability and claims Lessee or Lessee’s successors or assigns may have against it or them, which may arise out of or may directly or indirectly be attributable to the past, present or future use, generation, manufacture, treatment, handling, refining, production, storage, release, discharge, disposal or presence of any Hazardous Materials or any distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, release, storage, transfer, transportation, treatment, or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about or from the Premises or any part thereof into the environment, not in compliance with Hazardous Materials Laws.

Lessee shall not cause or permit the escape, disposal, or release of any Hazardous Materials except as permitted by Hazardous Materials Laws. Lessee shall not allow the storage

or use of such materials in any manner not sanctioned by Hazardous Materials Laws 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 or except as may be contained in household products brought onto the Premises by subtenants. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of Hazardous Materials on the Premises, then Lessee shall be responsible for the reasonable costs thereof.

Unless Lessee is required by applicable law to give earlier notice to Lessor, Lessee shall notify Lessor in writing as soon as possible but in no event later than three (3) days after: (i) Lessee becomes aware of the occurrence of any actual release of any Hazardous Materials in, on, under, from, or about the Premises (whether past or present), regardless of the source or quantity of any such release, or (ii) Lessee becomes aware of any regulatory actions, investigations, or proceedings (including any threatened or contemplated investigations or proceedings) relating to or potentially affecting the Premises, or (iii) Lessee becomes aware of any claims relating to any Hazardous Materials in, on, under, from, or about the Premise (all such matters set forth in clauses (i), (ii) and (iii) hereinafter referred to as "Hazardous Materials Claims"). Lessee shall promptly forward to Lessor copies of all orders, notices, and other communications in connection with any Hazardous Materials Claims. Additionally, Lessee shall promptly advise Lessor in writing of Lessee's discovery of any occurrence or condition on, in, under, or about the Premises that could subject Lessee or Lessor to any liability, or restrictions on ownership, occupancy, transferability, or use of the Premises under any Hazardous Materials Laws. Lessee shall not enter into any legal proceeding or other action, settlement, consent decree, or other compromise with respect to any Hazardous Materials Claims without first notifying Lessor of Lessee's intention to do so and affording Lessor the opportunity to join and participate, as a party if Lessor so elects, in such proceedings, and in no event shall Lessee enter into any agreements which are binding on Lessor or the Premises without Lessor's prior written consent. Lessor shall have the right to appear at and participate in any and all legal or other administrative proceedings concerning any Hazardous Materials Claim.

If the existence or any release of any Hazardous Materials in, on, under, from, or about the Premises shall occur at any time during the term of this Lease that requires response actions of any kind, in addition to notifying Lessor as specified above, Lessee, at its own sole cost and expense, shall: (i) immediately comply with any and all reporting requirements imposed pursuant to any and all Hazardous Materials Laws, and (ii) take any and all necessary investigation, corrective, and remedial action in accordance with any and all applicable Hazardous Materials Laws.

Lessee shall be responsible for and shall protect, defend, indemnify, and hold Lessor and the State of Hawaii harmless from and against any and all losses, liabilities, costs, and expenses that first arise during the term of this Lease while Lessee is in possession and Lessor is not in possession, foreseeable or unforeseeable, directly or indirectly arising out of or attributable to the presence, use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, or presence of Hazardous Materials in, on, under, or about the Premises. The foregoing obligations of Lessee shall include, including without limitation: (i) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; (ii)

judgments for personal injury or property damages; and (iii) all costs and expenses incurred by Lessor in connection therewith. Except as set forth above, it is the express intention of the parties to this Lease that Lessee assumes all losses, liabilities, costs, and expenses, and holds Lessor and the State of Hawaii harmless from the same. THIS COVENANT SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

31. No Changes to Project. Lessee shall not without the prior written consent of Lessor, which may be withheld in Lessor's sole and absolute discretion, take any action before any governmental authority the object of which would be to modify, amend, or change the present zoning, land use classifications, or development permits for the Premises, or any portion thereof, or subdivide the Premises, or any portion thereof, or consolidate the Premises, or any portion thereof, with any other land.

32. Annual Rent Adjustment. 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 this Lease to the mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument, if any of the dwelling units in the Project on the Premises are not used as affordable units as described in Section 13 above, the Annual Rent shall be increased in the following manner:

(a) From and upon the first day of the first full calendar month after the use of any or all of such dwelling units as other than affordable units (the "Rent Increase Commencement Date"), the Annual Rent shall be increased by the product of the fair market value of the land comprising the Premises, multiplied by eight percent (8%) and multiplied by the percentage of such dwelling units not used as affordable units.

For purposes hereof, the fair market value of the land comprising the Premises shall be determined exclusive of buildings and improvements, and based upon the actual then existing use for which Lessee shall use the improvements on such land, and exclusive of the encumbrance of this Lease.

(b) The fair market value of the land comprising the Premises shall be determined as of the Rent Increase Commencement Date and re-determined as of each fifth anniversary of the Rent Increase Commencement Date thereafter for the remainder of the term of this Lease. If Lessor and the Lessee are unable to agree upon the fair market value of the land comprising the Premises not later than forty-five (45) days after the Rent Increase Commencement Date or each such re-determination date, then fair market value of the land comprising the Premises shall be determined in the manner set forth in subparagraph (g) hereof.

(c) 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 Lessor by 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 Lessor with the Annual Rent payment then due.

(d) Notwithstanding anything elsewhere stated in this Lease, adjustments to the fair market value of the land or to such percentages may be upwards but not

downwards, and the Annual Rent due under the above formula shall in no event be less than the Annual Rent paid for the previous rental period.

(e) The re-determined Annual Rent shall be paid in advance in equal monthly installments on the first day of each calendar month.

(f) Notwithstanding anything elsewhere stated in this Lease, if the dwelling unit in the Project 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.

(g) In the event of failure to agree on a fair market value of the land comprising the Premises for any of the periods specified in subparagraph (b) 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 Second 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 comprising the Premises 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 comprising the Premises, 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, Lessor and 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 Lessor and Lessee. If and whenever the fixing of such Annual Rent is under arbitration, Lessee, pending the determination thereof, shall continue to pay the same Annual Rent which Lessee had been paying during the last preceding rental period. However, 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 Annual Rent due in accordance with subparagraph (a) hereof. Lessor shall promptly repay Lessee for rental overcharge, if any, 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.

33. Project Rules and Regulations. Lessee shall maintain rules and regulations for the Project applicable to the use and occupancy of the Project by residential tenants, which shall include a prohibition against smoking in housing units, common areas, and

community facilities on and around the Project and the area within twenty (20) feet of each individual building of the Project and any entrance, exit, window, and ventilation intake that serves an enclosed or partially enclosed area where smoking is prohibited, but excluding designated smoking areas, if any, and otherwise in accordance with Hawaii Revised Statutes Chapters 328J and 356D, as may be amended or repealed and replaced from time to time.

34. Education and Counseling Services Plan. As a material inducement to Lessor to enter into this Lease with Lessee, Lessee has agreed to provide the residential tenants of the Project with education and counseling services to help them maintain financial stability, including without limitation, activities such as planning for rent increases, increasing income to maintain housing, addressing health issues that may jeopardize housing, and moving to long-term affordable housing which includes homeownership, and establishing a case management program that includes a combination of direct service provision and coordination of, and referral to, targeted services that the residential tenants will access on- and off-site of the Project. Attached hereto as **Exhibit "D"** is a general description of a tenant counseling and education program that has been provided to, and approved by, Lessor prior to the Effective Date. No later than six (6) months after the Effective Date, Lessee shall submit to Lessor and obtain Lessor's approval of a tenant counseling and education program specific to the Project. Lessee shall not materially modify the tenant counseling and education program without the prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed.

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

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

37. 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.

38. 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.

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

40. Archeological Sites. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, Lessee and Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office at 587-0047 in compliance with Chapter 6E, Hawaii Revised Statutes as the same may be amended.

41. Counterparts. This Lease may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

42. Merger. This Lease, along with any exhibits, appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written, relating to the leasing of the Premises and the lessor-lessee relationship between the parties. The parties hereby acknowledge and represent, by affixing their hands and seals hereto, that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract, or other assurance, except those set out in this Lease, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Lease. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, warranty collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party's right to remedies associated with the gross negligence, willful misconduct, or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Lease.

43. 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 (a) delivered personally with a delivery receipt, or (b) delivered by e-mail so long as receipt of the e-mail is confirmed and a copy of such email notice is provided immediately thereafter in accordance with the requirements of this Section by one of the other delivery methods or by first-class mail, or (c) forwarded by registered or certified mail, postage prepaid, return receipt requested, or (d) by commercial delivery service with a delivery receipt, to the following addresses:

Lessor: Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
Attention: Executive Director

And to: Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813
Attention: Supervising Deputy Attorney General
Public Safety, Hawaiian Home Lands, and Housing Division

Lessee: _____

And to: _____

All notices delivered by personal delivery, facsimile, 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, the date the item was returned as undeliverable, or the date that receipt was confirmed by the receiving party, whichever is earlier. Either party may change its address for the purposes of this Section by giving prior written notice of the change to the other party in the manner provided in this Section.

44. Estoppel Certificates. At any time and from time to time, within fifteen (15) days after notice of request by either party, the other party shall execute and deliver to the requesting party, or to such other recipient as the notice shall direct, a statement (an "Estoppel") certifying that (a) this Lease is unmodified and in full force and effect, or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement; and (b) to the knowledge of the certifying party, there are no defaults (and no events or circumstances that have occurred, that with the passage of time would, if left unchanged, become a default) in the performance of either party of its obligations under this Lease, or if there are defaults or events or circumstances that will constitute a default, specifying the nature of the default and/or event or circumstance that may become a default. The Estoppel shall also state the amount of Rent then payable, the dates to which the Rent and any other charges have been paid in advance, and shall include such assurances of satisfaction of conditions or other factual matters provided for in this Lease or respecting the Premises as the party seeking the Estoppel may reasonably request, including but not limited to all such matters covered by the required form of estoppel certificate published by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation from time to time. The Estoppel shall be such that it can be relied on by the express addressee of the Estoppel, who may include an auditor, creditor, commercial banker, or investment banker of either party or a prospective purchaser or encumbrancer of the Premises or both or of all or any part or parts of Lessee's or Lessor's interests under this Lease, including, without limitation, a lender.

45. SNDAs. At any time and from time to time, within fifteen (15) days after notice of request by Lessee or an Authorized Mortgagee, Lessor shall execute, acknowledge, and deliver to Lessee, or to such other recipient as the notice shall reasonably direct, such subordination, non-disturbance and attornment agreements with respect to any current or prospective commercial sublessees of any portion of the Premises identified in such notice, which subordination, non-disturbance and attornment agreements shall be on a commercially reasonable recordable form and shall provide that Lessor will not disturb the sublessee's occupancy and possession under its sublease so long as no event of default has occurred thereunder and is continuing and the sublessee shall attorn to Lessor or its designee.

46. Special Terms and Conditions. This Lease is also subject to the special terms and conditions set forth in Exhibit "B" and Exhibit "C" attached hereto and made a part hereof.

47. Certain Definitions. The term "including", when used herein, shall be construed as to mean "including but not limited to", and shall in no way be construed as exclusionary unless the context clearly demands otherwise.

48. 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.

49. No Partnership Intended. Lessor and Lessee hereby agree that Lessor in no event and for no purpose is a partner of Lessee in the conduct of any of its business or other affairs or a joint venturer or a member of a joint enterprise with Lessee as a result of this Lease or Lessee's occupancy or use of the Premises.

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FORM - SUBJECT TO CHANGE

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: _____

IN WITNESS WHEREOF, the parties have executed this Lease as of the date set forth above.

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

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

By _____
Denise Iseri-Matsubara
Its Executive Director

“Lessor”

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: _____

By _____

“Lessee”

FORM - SUBJECT TO CHANGE

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

On this _____ day of _____, 2022, before me personally appeared DENISE-ISERI MATSUBARA such person executed the foregoing instrument 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.

Print Name: _____
Notary Public, State of Hawaii
My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Ground Lease (Kulia I Ka Nuu)

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

No. of Pages: _____ Jurisdiction: 1st Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

(Official Stamp or Seal)

Printed Name of Notary

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

On this _____ day of _____, 2022, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is the _____ of _____; that this _____-page Ground Lease was signed on behalf of _____, and said _____ acknowledged said instrument to be the free act and deed of _____.

Name:
Notary Public, State of Hawaii
1st Judicial Circuit

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Ground Lease (Kulia I Ka Nuu)

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

No. of Pages: _____ Jurisdiction: 1st Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

(Official Stamp or Seal)

Printed Name of Notary

EXHIBIT "A"

PROPERTY DESCRIPTION

FORM - SUBJECT TO CHANGE

EXHIBIT A

Page 1 of 1

ATTACHMENT 6

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 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 ___% or below the HUD area median income ("AMI")
		1-Bedroom, 1-Bath Units at ___% or below the AMI
		2-Bedroom, 1-Bath Units at ___% or below the AMI
		2-Bedroom, 2-Bath Units at ___% or below the AMI
		2-Bedroom, 2-Bath Resident Manager's Unit
		3-Bedroom, 1-Bath Units at ___% or below the AMI
		3-Bedroom, 2-Bath Units at ___% or below the AMI
		Total Affordable Units
		Market Units
		Units Total
		* Maximum rents are net of the applicable Utility Allowance.

___ 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. 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.

SECTION 3. Rent

a. Affordable Units must be rent-restricted to no more than the maximum rent limits approved by Lessor for 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. [Intentionally Omitted]

SECTION 5. Annual Certification

The requirements under this Lease, and the Lessee’s compliance therewith, shall be certified annually by 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 Effective Date of this Lease. This date shall be known as the “**Annual Report Effective Date**”. 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. Records Retention

Lessee shall maintain copies of the rental contracts, rent invoices, and other documents relating to the amount being paid by tenants as rent. Lessee will be required to maintain records regarding the number of units (including number of bathrooms and square footage of each bedroom); percentage of rental units that are affordable; rent charged per unit including utility allowances; number of occupants in each unit; and documentation regarding vacancies. All books and records of Lessee for the Project shall be subject to audit and all expenditures of Lessee for the Project shall be subject to cost certification.

SECTION 7. 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 adult persons (i.e., those over the age of eighteen) 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 8. 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 9. 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 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, excepting minors (i.e., person under 18 years of age) who may live in an Affordable Unit when legally residing with an adult family member or legal guardian who has been certified under the TIC and has executed a tenant lease.

The original TIC form is to be retained by 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. Lessee must retain the TIC and the supporting documentation verifying the TIC for a minimum of three years.

SECTION 10. Recertification

(a) To ensure that each unit is complying with the income restrictions, (1) Lessee shall annually recertify each tenant's income and household composition, and (2) 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. Provided, however, at no time shall the percentage or amount of Affordable Units in the Project be less than the minimums described in Section 2 of this exhibit.

(c) 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 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. Management must exercise good faith in scheduling times for the interview that work for the tenant.

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

SECTION 11. 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 Lessee of past due certifications and, within sixty (60) days, will process formal notice to Lessee that the Premises may be in non-compliance.

SECTION 12. 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 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 13. 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.

Rents shall be net of the applicable Utility Allowance.

SECTION 14. 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 15. 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 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 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) 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 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 Lessee's response, Lessor or its designated representative shall stipulate the remedial actions to be carried out or observed by Lessee.

(e) 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 16. Other 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 Annual Report 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 17. 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 Annual Report Effective Date for each year of the compliance period. It will be the responsibility of Lessor or its designated representative to inform Lessee of any changes in the annual compliance fee prior to Lessee's Annual Report Effective Date and submittal of fees. The fee may be adjusted annually each July 1.

SECTION 18. 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 19. Nondiscrimination.

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

SECTION 20. 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 21. Reservation for Recapture of General Excise Tax Exemptions.

If the Project is completed with exemptions from Hawaii's General Excise Tax 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, 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, 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 22. 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, Lessee shall promptly execute a Cancellation of Lease provided by Lessor reflecting such termination.

c. The Project shall be completed no later than the completion deadline listed in the Development Agreement, unless otherwise approved by Lessor.

End of Exhibit “B”

EXHIBIT "C"

SPECIAL TERMS AND CONDITIONS

The following Special Terms and Conditions set forth in this Exhibit "C" (the "Special Conditions") are incorporated into that certain Ground Lease made as of _____, 20__ (the "**Lease**"), by and between **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii ("Lessor"), and _____, a _____ ("**Lessee**"). Capitalized terms shall have the meaning set forth in the Lease or as otherwise defined in the Special Conditions. In the event of any inconsistency between the terms of the Lease and the Special Conditions, the terms of the Special Conditions shall control.

1. Ceded Lands Additional Rent. ~~[Twenty percent (20%) of all gross receipts Lessee derives from the Premises, other than revenue from housing, shall be paid quarterly to Lessor, by the end of the calendar month following the quarter for which such amount is based. For the avoidance of doubt, such revenues subject to the 20% payment shall include, without limitation, parking stall fees, laundry facility revenue, and other ancillary revenues related to housing operations. This amount shall be submitted in arrears with an itemized list of all gross receipts Lessee derives from the Premises, other than the excluded revenue described above, for the quarter upon which such amount is based.]~~ The Premises is NOT ceded land; the 20% payment to the Office of Hawaiian Affairs does not apply.

2. Prohibited Uses. With respect to the commercial use permitted within the Project, the following uses are strictly prohibited:

- billiard room;
- massage parlor;
- adult book or video store or any other purpose that includes the production, display, or sale of pornographic, x- or NC17- rated, lewd, or obscene materials or entertainment;
- strip club or similar establishment promoting or displaying entertainment of an explicit sexual content or nature ;
- betting or gaming facilities or any gambling operations;
- liquor store or store whose primary purpose is the sale of alcoholic beverages for off-premises consumption;
- head shop or other store selling any paraphernalia commonly employed in the use or ingestion of illicit drugs;
- tattoo parlor;
- flea markets, "swap meets" and similar operations;
- operations where weapons or firearms are used or brought onto the Premises in the ordinary course of business, including, without limitation, firing ranges and/or gun clubs;
- on-site dry cleaning operations.

3. **Condominium.** [insert provisions related to condominium]

4. **Parking Structure.** [insert provisions related to DOE parking and shared access]

5. **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 Lessee 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.

6. **Maintenance of Undeveloped Property.** Lessee shall be responsible for the monthly trimming of weeds and vegetation on the portion of the Parcel not leased to Lessee which is to be used by the Department of Education 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 property is 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 or other party acting for, on behalf of, or with the permission of Lessor.

7. **Security of Undeveloped Property.** 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 portion of the Parcel to be used by the Department of Education, by tenants, guests, invitees, and children who may be attracted to any hazards or nuisances on undeveloped lands beyond the premises.

End of Exhibit "C"

EXHIBIT “D”

EDUCATION AND COUNSELING SERVICES PLAN

(See attached.)

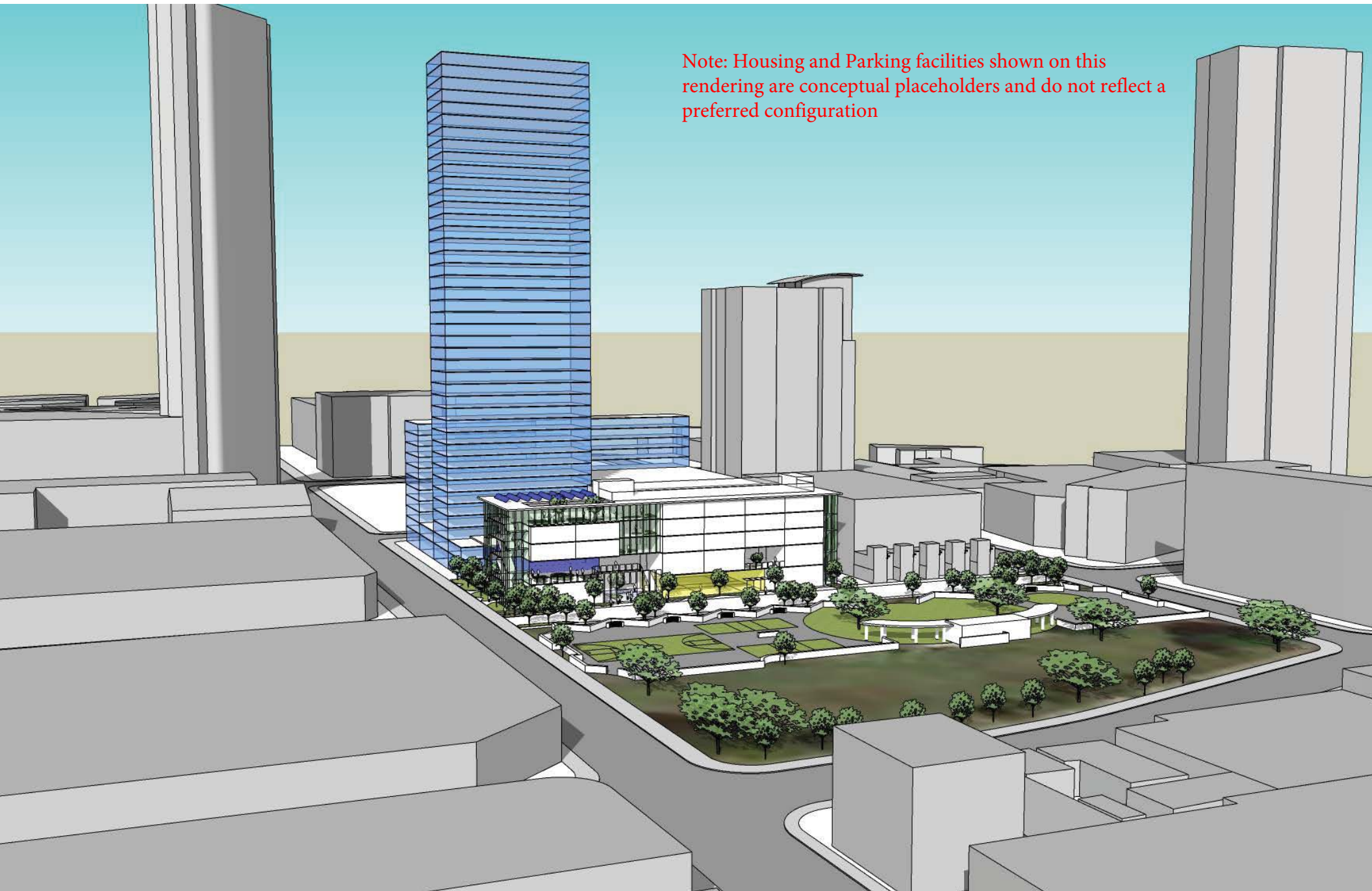
FORM - SUBJECT TO CHANGE

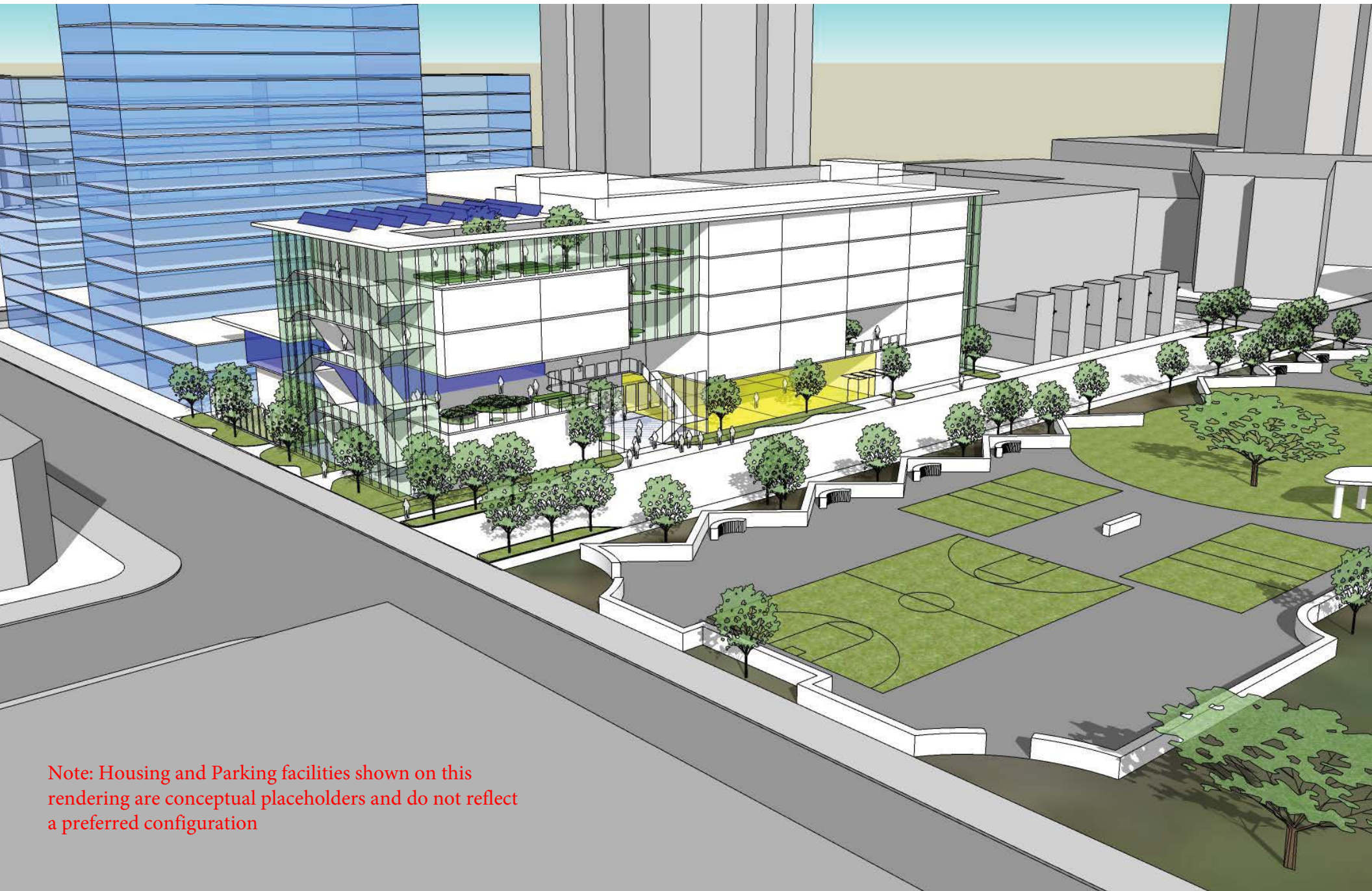
Attachment 7 – DOE's Conceptual Renderings

Attachment 7

Request for Proposals: 690 Pohukaina Multi-Family Affordable Housing

Note: Housing and Parking facilities shown on this rendering are conceptual placeholders and do not reflect a preferred configuration





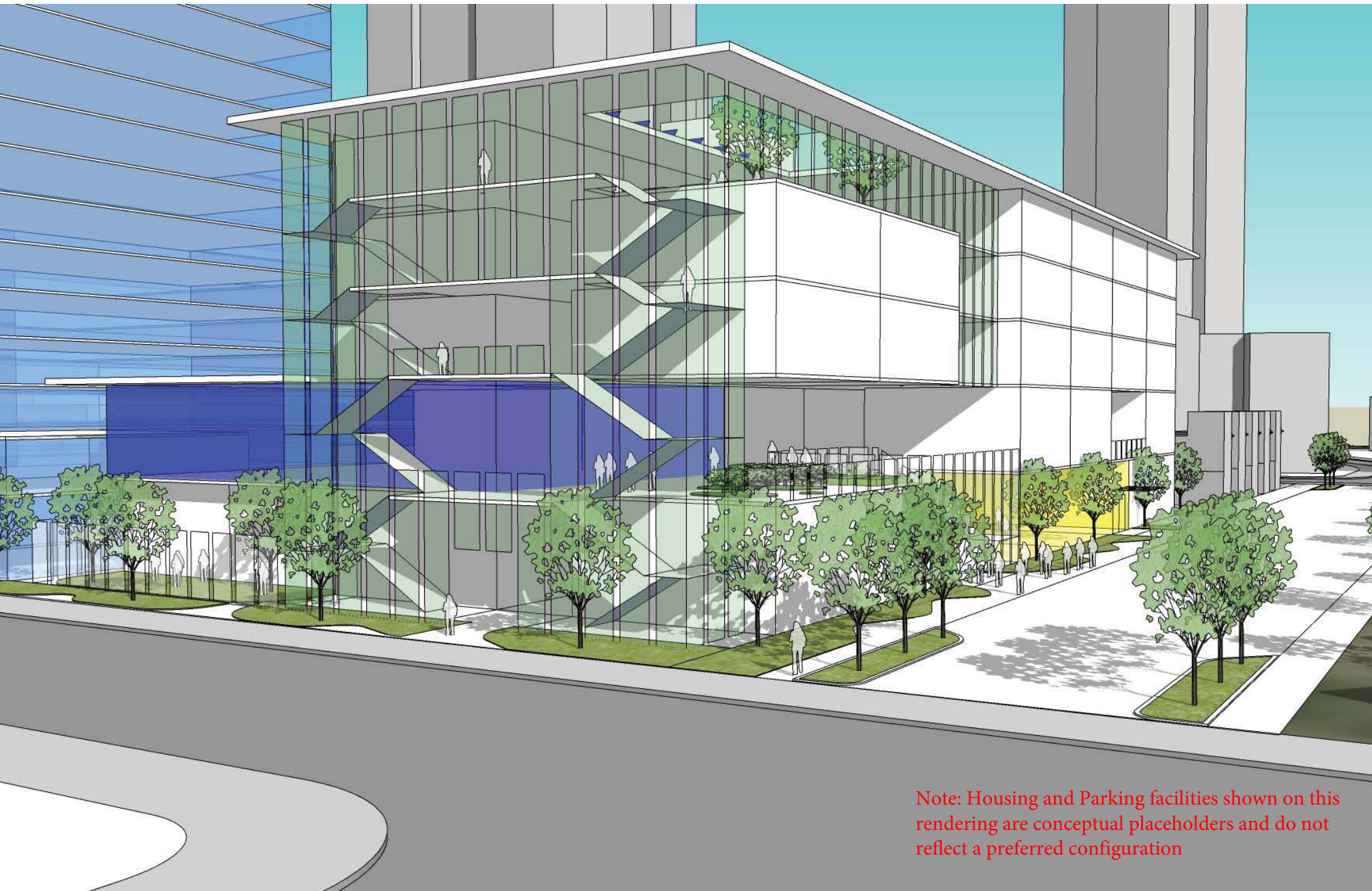
Note: Housing and Parking facilities shown on this rendering are conceptual placeholders and do not reflect a preferred configuration



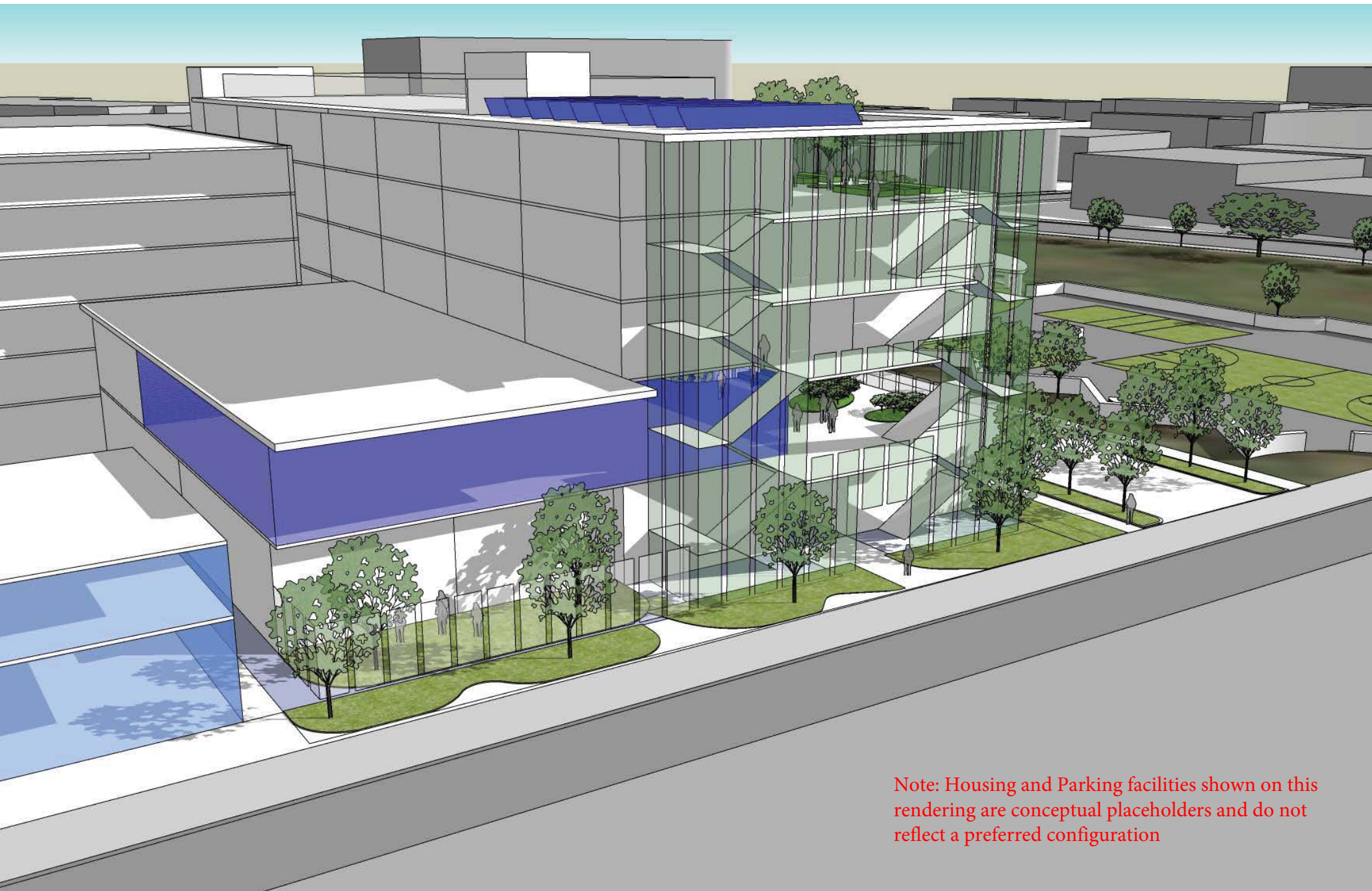
Note: Housing and Parking facilities shown on this rendering are conceptual placeholders and do not reflect a preferred configuration

Note: Housing and Parking facilities shown on this rendering are conceptual placeholders and do not reflect a preferred configuration





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Note: Housing and Parking facilities shown on this rendering are conceptual placeholders and do not reflect a preferred configuration