

**DEVELOPMENT AGREEMENT**  
**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, HHFDC is the owner in fee simple of approximately \_\_\_\_\_ acres of land located at \_\_\_\_\_, Oahu, Hawaii, Tax Map Key No. \_\_\_\_\_, as shown on the attached **Exhibit A**, which is incorporated herein by reference ("Property");

B. 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 a \_\_\_\_\_ project on 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 \_\_\_\_\_ project at the Property, as described in the RFP ("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) \_\_\_\_\_ project
  - (2) 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 \_\_\_\_\_), 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”

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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.

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. Approved Use

The Project shall be a \_\_\_\_\_ 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 any Condominium Property Regime (“CPR”) units, if any are utilized for the Project, 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 any CPR unit(s) to be conveyed to Developer, if a CPR is used, 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](mailto: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

If a CPR is utilized for the Project, 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, and other applicable government agencies, 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 maintenance of: (1) any walls and fences which are located on the Property; (2) the Property-facing side of any boundary walls located at or near the Property boundary; (3) the entirety of any boundary fences; and (4) the streetfront area fronting the Property which is not maintained by the City or by the Villages of Kapolei Association, if any.

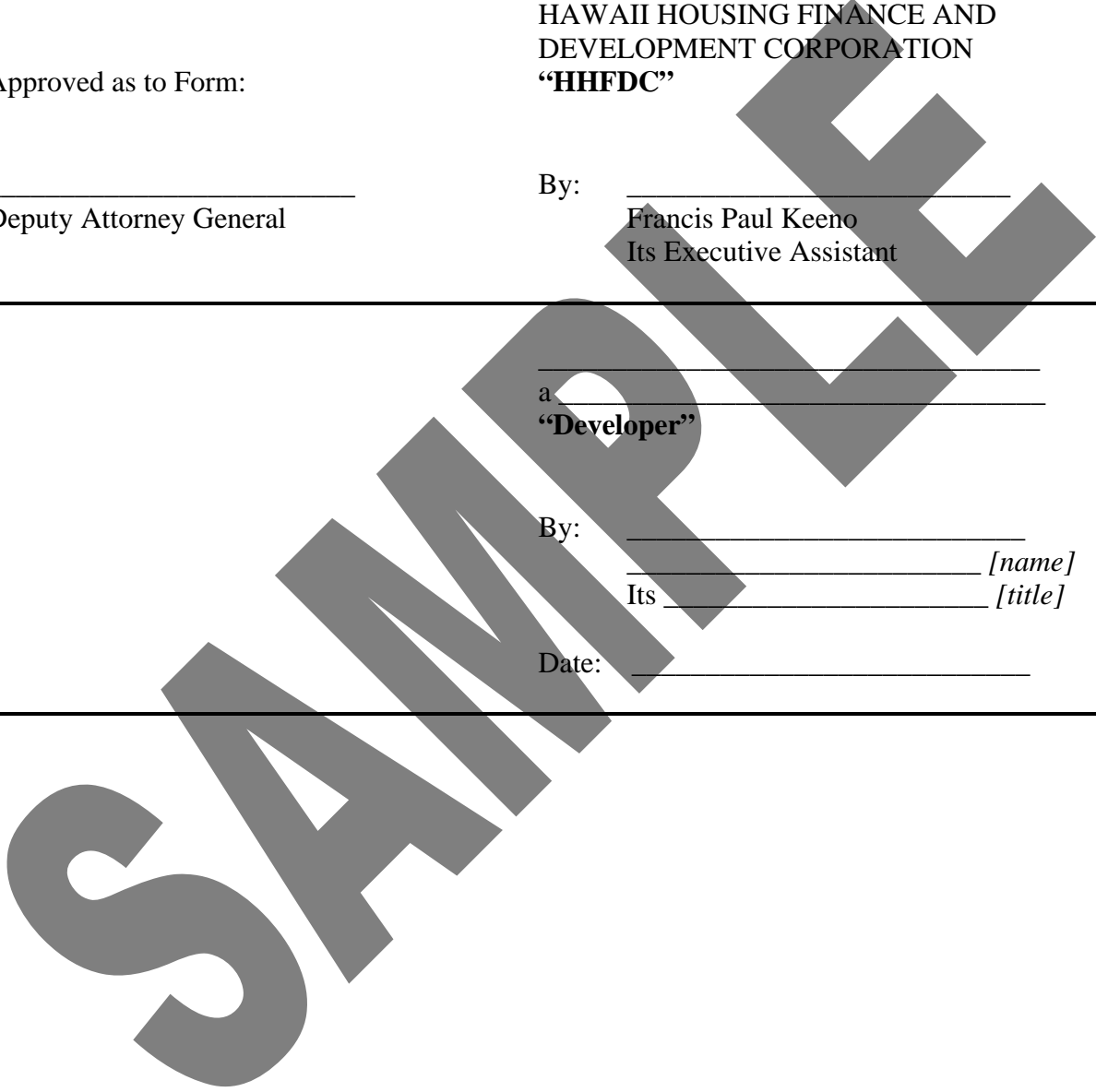
60. Perimeter Fences and Signage

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: _____ _____ Its _____ [name] [title]  Date: _____



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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared DENISE ISERI-MATSUBARA, personally known to me, who, being by me duly sworn, did say that she is the EXECUTIVE DIRECTOR of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that this \_\_\_\_\_-page DEVELOPMENT AGREEMENT, "690 POHUKAINA AFFORDABLE FAMILY RENTAL HOUSING PROJECT" dated \_\_\_\_\_, was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

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

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

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

On \_\_\_\_\_, before me personally appeared \_\_\_\_\_  
and \_\_\_\_\_, to me personally known, who, being by me duly sworn or  
affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such  
person(s), and if applicable, in the capacities shown, having been duly authorized to execute such  
instrument in such capacities.

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

---

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

**SAMPLE**

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