**DEVELOPMENT AGREEMENT**

**RESIDENTIAL COMPONENT**

**KAHULUI CIVIC CENTER MIXED-USE COMPLEX**

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

 WHEREAS, the State of Hawaii is the owner in fee simple of approximately 5.572 acres of land located at 153 West Kaahumanu Avenue, Kahului, Maui, Hawaii, Tax Map Key No. (2) 3-7-004: 003, as shown on the attached **Exhibit A**, which is incorporated herein by reference (“**Property**”);

 WHEREAS, the Property was set aside to HHFDC by Executive Order No. 4590 dated July 29, 2019, for development of a mixed-use project consisting of multi-family affordable rental housing, office space/civic center, parking, new Maui bus hub and other incidental uses purposes;

 WHEREAS, the County of Maui Department of Transportation completed a Chapter 343, Hawaii Revised Statutes (“**HRS**”) Environmental Assessment (“**EA**”) in October 2019 and obtained a Special Management Area use permit for the new Maui bus hub in November 2019, and the bus hub is currently under construction on approximately 0.85 acre at the southeastern portion of the Property;

 WHEREAS, the Property is presently occupied by the Department of Education (“**DOE**”) McKinley Community School for Adults – Maui Campus (“**MCSA**”) for educational purposes consisting of adult education and lawnmower operations;

 WHEREAS, on May 8, 2022, HHFDC, in collaboration with the Department of Accounting and General Services (“**DAGS**”), published a final EA (“**FEA**”) in The Environmental Notice of the Environmental Review Program for a mixed-use project on the balance of approximately 4.722 acres at the Property (“**Project Site**”) consisting of affordable and market multi-family units, civic center office space, a public library, community oriented commercial space, parking and incidental uses;

 WHEREAS, on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, HHFDC issued a Request For Proposals (“**RFP**”) for a developer to complete a master plan, subdivision or creation of spatial units (“**Spatial Units**”) under a condominium property regime (“**CPR**”) for the residential component (“**Residential Component**”), the civic center component (“**Civic Center Component**”), the bus hub component (“**Bus Hub Component**”), the commercial space component (if any)(“**Commercial Component**”), appurtenant parking, common area and incidental uses (“**Project**”), and the leasehold development, sale of for-sale units, and/or ownership and operation of the Residential Component by the Developer;

 WHEREAS, the Residential Component may consist of leasehold for-sale and/or rental apartment units, however more than 50% of the total residential units shall be Affordable Units (defined below). The Civic Center Component will consist of the civic center office space and public library uses. Separate ground leases will be issued by HHFDC to the Developer for the Residential Component, to DAGS for the Civic Center Component, and to the County of Maui (“**County**”) for the Bus Hub Component. If community-oriented commercial space is proposed by the Developer and a separate spatial unit is required for such use, the ground lease for the Commercial Space will be issued to the Developer for ownership and operation. The lease premium and lease rent for the ground leases for the Residential and Commercial Components shall be as proposed by the Developer for lease terms of up to 99 years, as approved by HHFDC at HHFDC’s sole discretion; the ground leases for the Civic Center and Bus Hub Components shall be at $1/year for 65 years;

 WHEREAS, on \_\_\_\_\_\_\_\_\_\_\_\_\_, Developer submitted a proposal in response to the RFP (“**Proposal**”) and proposes to develop the Residential Component with a total of \_\_\_ residential dwelling units, \_\_\_\_\_ square feet of community-oriented commercial space, \_\_\_\_ parking stalls, on-site recreation, open space and other incidental uses. \_\_\_ residential units will be Affordable Units (defined below) for households earning between \_\_\_% and \_\_\_% of the area median income (“**AMI**”) for the County as established by the U.S. Department of Housing and Urban Development (“**HUD**”), \_\_\_ market-rate residential units, and \_\_\_ managers’ units; \_\_\_\_\_\_ units will be leasehold for-sale units and \_\_\_\_\_ units will be rental units.

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

 HHFDC and Developer would like to enter into this Agreement for the master plan, subdivision or CPR of spatial units for the various Components at the Project Site and the leasehold development, sale of for-sale units, and/or ownership, and operation of the Residential Component.

 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:

 **W I T N E S S E T H:**

1. Purpose

 This Agreement governs the master plan, subdivision or CPR of spatial units for the various Components at the Project Site and the leasehold development, sale of for-sale units, and/or ownership and operation of the Residential Component by the Developer.

2. Project Scope

Developer shall complete a master plan for approval by HHFDC and DAGS, subdivision or CPR of spatial units for the various Components at the Project Site and the leasehold planning, design, financing, entitlements, construction, sale of for-sale residential units and/or ownership, rental, management and operation of rental apartments in the Residential Component, 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. A total of \_\_\_ units or approximately \_\_\_ percent (\_\_\_%) of the units will be targeted for families making \_\_\_% - \_\_\_% of the AMI for the County, adjusted for family size, as established by HHFDC for exclusive use with its programs using income amounts provided by HUD, as follows:

 Affordable For-Sale Units:

 \_\_\_ units at \_\_\_% - \_\_\_% AMI

 \_\_\_ units at \_\_\_% - \_\_\_% AMI

 \_\_\_ units at \_\_\_% - \_\_\_% AMI

 \_\_\_ resident manager’s unit

 \_\_\_ units total for-sale Affordable Units

 Affordable Rental Units:

 \_\_\_ units at \_\_\_% - \_\_\_% AMI

 \_\_\_ units at \_\_\_% - \_\_\_% AMI

 \_\_\_ units at \_\_\_% - \_\_\_% AMI

 \_\_\_ resident manager’s unit

 \_\_\_ units total rental Affordable Units

 (2) Market For-Sale Units:

 \_\_\_ units market priced units

 (3) Market Rental Units:

 \_\_\_ units market priced units

 (4) Total Units in Project:

 \_\_\_ total residential units in Project

 (5) Commercial project

 (6) Parking

 (7) Amenities

 The names of the Project and the Residential Component shall be: \_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_, respectively, unless otherwise approved by HHFDC.

 The estimated total development cost of the Project is: $ .

 The applicable portion of the Project Site will be conveyed to the Developer in leasehold for the Residential and Commercial Components.

 As used in this Agreement, “**Affordable Units**” shall mean units that are sold or rented to qualified residents whose incomes do not exceed 140% of the AMI for the County. More than 50% of the total residential units at the Project shall be Affordable Units. Affordable For-Sale Units shall be subject to HHFDC’s buy-back and SAE Program requirements as described in Section 8.b. of this Agreement. The Affordable Rental Units shall remain affordable for the term of the Ground Lease (defined below).

 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 Action

 Third Priority—the RFP, then

 Fourth Priority—the Developer’s Proposal.

3. Property Description

 The Project is located on a portion of the Kahului Civic Center parcel at the intersection of 153 West Kaahumanu Avenue and Kane Street, at Kahului, Maui, Hawaii, TMK (2) 3-7-004: 003 (por), as shown on the attached Exhibit A.

4. Term of this Agreement

 The Project shall be completed by \_\_\_\_\_\_\_\_\_\_\_\_, unless otherwise approved at the sole discretion of HHFDC (“**Completion Date**”). The term of this Agreement shall commence on the Effective Date of this Agreement and terminate one calendar year after the Completion Date defined herein, unless otherwise approved at the sole discretion of HHFDC (the “**Development Period**”).

The Project shall commence construction by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Construction Commencement Deadline**”), unless otherwise extended at the sole discretion of HHFDC.

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 have 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 as is customary in the Hawaii construction industry.

 e. Developer shall engage an experienced and qualified project manager to be directly responsible for managing and facilitating the development of the Project. HHFDC acknowledges that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall be the project manager for development of the Project. Any changes or substitutions of said project manager shall be subject to the approval of HHFDC.

7. Minimum Prevailing Wages

 a. 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, Hawaii Revised Statutes (“**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,that hours reported for each laborer and mechanic employed on the Project are for both covered and non-covered projects, 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 pursuant to Paragraph **\_\_41\_\_**.

b. The Developer, its contractors, and subcontractors shall comply with Section 103-55, HRS, and Developer certifies that services under this Agreement in excess of $25,000 shall be performed in accordance with the requirements of Section 103-55, HRS.

 (1) The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work. For contracts for services performed by laborers and mechanics, the Developer, its contractors and subcontractors shall give a copy of the rates of wages to each laborer and mechanic employed under the contract by the Developer, its contractors and subcontractors at the time each laborer and mechanic is employed; provided that the Developer, its contractors and subcontractors do not have to provide their employees the wage rate schedules where there is a collective bargaining agreement.

 (2) For contracts or services performed by laborers and mechanics, HHFDC may withhold from the Developer so much of any accrued payments as HHFDC may consider necessary to pay to the laborers and mechanics employed by the Developer, its contractors and subcontractors on the job site the difference between the required wages and the wages received and not refunded by the laborers and mechanics.

 (3) Every contract covered by Section 103-55, HRS, for services performed by laborers and mechanics and the specifications for the contract shall contain a provision that a certified copy of all payrolls shall be submitted weekly to HHFDC for review. The Developer shall be responsible for the submission of certified copies of the payrolls of its contractors and subcontractors. The certification shall affirm that the payrolls are correct and complete, the wage rates contained therein are not less than the applicable rates, and the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Any certification discrepancy found by HHFDC shall be reported to the Developer to effect compliance. Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the Developer, its contractors and subcontractors, if any, during the course of the work and preserved for a period of three years thereafter. The records shall contain the name of each employee, the employee’s correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The Developer, its contractors and subcontractors shall make payroll records available for examination within ten days from the date of a written request by HHFDC or any authorized representatives thereof.

 (4) For contracts for services performed by laborers and mechanics, HHFDC shall:

 (a) Pay or cause to be paid, within sixty days of a determination made by HHFDC, directly to laborers and mechanics, from any accrued payment withheld under the terms of this Agreement, any wages or overtime compensation found to be due to laborers or mechanics under the terms of the contract subject to Section 103-55, HRS; and

 (b) Order Developer to pay, within sixty days of a determination made by HHFDC, any wages or overtime compensation that the Developer, its contractors and subcontractors should have paid to any laborer or mechanic under any contract subject to Section 103-55, HRS.

 (5) Failure to comply with the conditions of Section 103-55, HRS, during the term of this Agreement to perform services shall result in cancellation of this Agreement, unless such noncompliance is corrected within a reasonable period as determined by HHFDC. Final payment under this Agreement or release of bonds or both shall not be made unless HHFDC has determined that the noncompliance has been corrected.

8.a. Residential Rental Program

Residential rental projects shall be developed and operated in leasehold under a Ground Lease as described in Paragraph  **39**  of this Agreement. Residential rental projects shall remain affordable for the term of the Ground Lease, or as otherwise approved by HHFDC.

8.b. Residential Sales Program[[1]](#footnote-1)

Developer’s entire sales program shall be reasonably monitored by HHFDC to ensure compliance with HHFDC’s requirements. HHFDC’s sales program is administered by the Real Estate Services Section in accordance with Chapter 201H, HRS, applicable provisions of Chapter 15-307, Hawaii Administrative Rules (“**HAR**”), related to the sale of the Affordable Units, and current marketing and sales policies and practices, as each may be amended from time to time (collectively, the “**HHFDC Laws**”). At a minimum, Developer’s sales program shall include all of the following:

 a. Developer shall follow HHFDC’s sales and purchaser selection requirements in the sales of the Affordable Units to applicants who meet the eligibility and qualification requirements to purchase an Affordable Unit under this Agreement and HHFDC requirements (“**Eligible Purchaser**”) attached as a part of **Exhibit B.** Developer shall prepare a written description of Developer’s sales program for HHFDC’s review and approval, which approval shall not be unreasonably withheld or delayed. The sales program of the Affordable Units must meet the requirements of HHFDC and other applicable laws relating to the sale of real property.

 The for-sale Affordable Units shall be sold at prices, which are determined to be “affordable” to Eligible Purchasers in accordance with this Agreement. The sales prices shall be provided in a form acceptable to HHFDC for review and approval. Developer agrees not to increase the sales prices of the Affordable Units during the term of this Agreement, other than in proportion to any annual increase in the AMI, without the prior written approval of HHFDC, which approval shall occur on an annual basis coincident with the publishing of the AMI by the HUD and shall otherwise not be withheld or delayed if such increased sales prices are consistent with the terms of this Agreement and do not exceed the maximum affordable sales prices allowed under this Agreement.

 In computing the maximum affordable sales prices under this Agreement, the sum of the principal, interest and Monthly Housing Expense (defined below) shall not exceed 38% of the gross monthly household income for the household size prescribed (the “**Maximum Sales Price**”) for the project unit types. Developer shall use the following assumptions: the principal and interest payments on a fixed-rate 30-year mortgage loan with an acceptable mortgage interest rate based on the Developer’s closing date, shall not exceed twenty-eight percent (28%) of the gross monthly household income for the household size prescribed for the unit types shown below with a down payment of at least five percent (5%) of the sales price. The total “**Monthly Housing Expense**” shall not exceed 10% of the gross monthly household income for the prescribed household size and unit types and shall include appropriate amounts for real property tax rate, condominium association dues and/or maintenance fees (if applicable), percentage of private mortgage insurance rate, estimated homeowner’s insurance, lease rent (if applicable), and any average monthly Community Facilities District payments. The Developer may request that the maximum affordable sales prices be adjusted from time to time to meet the current year’s AMI established by HUD for various household sizes, subject to written approval from HHFDC, which approval shall not be unreasonably withheld or delayed. The maximum sales prices will be set prior to the time of sale in accordance with the household sizes for the unit types as follows:

 Unit Type Household Size

 1 bedroom 2 persons

 2 bedrooms 3 persons

 3 bedrooms 4 persons

 4 bedrooms 5 persons

 HHFDC may request Developer to adjust such prices to be consistent with this paragraph as to the computation of the maximum sales prices. If computation of maximum sales prices are amended, Developer may request adjustment be made to meet HHFDC’s prevailing institutional practices. Developer assumes all risk, including but not limited to interest rate increases for long term mortgage loan financing and other factors that may affect the affordability and the demand for the Affordable Units.

 At Developer’s option, Developer may offer upgrade options for the Affordable Units. Such upgrades shall not increase the established affordable sales prices for the applicable Affordable Unit and must be itemized and contracted for separately from the base sales price for the Affordable Unit. The upgrade option shall not be considered in determination of affordability. The failure of a purchaser to pay or be reimbursed for the cost of upgrade options is the sole responsibility of Developer. The failure of any purchaser to close and/or pay for upgrade options shall in no way increase the established affordable sales price for the applicable Affordable Unit to the next buyer.

 b. For-sale Affordable Units shall only be sold to Eligible Purchasers whose income does not exceed one hundred forty percent (140%) of the AMI.

 c. At a minimum, the Affordable Units shall include a range/oven, range hood, garbage disposal, water heater, and refrigerator, in standard sizes selected by Developer and reasonably acceptable to HHFDC.

 d. Persons and families who apply to purchase an Affordable Unit must also satisfy all of the following requirements or conditions:

 (1) Each person shall complete, sign and deliver to Developer or Developer’s representative an Application to Purchase Real Property under 201H, HRS, in substantially the form provided by HHFDC upon initial meeting with the Developer and Developer’s sales team for the applicable project.

 (2) Each person buying an Affordable Unit must be an “Eligible Purchaser” which means a “qualified resident” as that term is defined under Sections 201H-32, HRS, and Sections 201H-47 through -51, HRS, inclusive, who demonstrates a need for assistance in obtaining housing, and satisfy all other eligibility requirements under HHFDC Laws.

 (3) The HHFDC requirements and restrictions under the HHFDC Laws (i.e., eligibility requirements, Shared Appreciation Program (defined below), Ten (10) Year Use, Sale and Transfer Restriction) shall apply to all purchasers of Affordable Units.

 Should the HHFDC Laws be amended in the future, such changes shall apply to the Project from the effective date of such amended legislation.

 (4) Eligible Purchaser applicants may select a Unit and execute a sales contract according to their property selection number (“**PSN**”). HHFDC shall provide Developer with the PSN list and instructions to implement the selection of the Affordable Units. Developer shall be responsible for expenses incurred in providing HHFDC with reports, as reasonably required by HHFDC.

 Applicants will be ranked by HHFDC on the PSN list according to the following priority: (i) size of household (households of 4 or more first, then households of 3 person, then households of 2 person, then households of 1 person); (ii) public drawing number; and (iii) HHFDC approved preferences. The Developer shall conduct a public drawing with the assistance of Developer’s sales agent. Preferences are required to be provided to applicants who: (1) were displaced, as former owners of an HHFDC sponsored project; (2) were displaced as former owners due to government action; (3) have relocated from public housing due to income disqualification or are residents in public housing administered by the State Hawaii Public Housing Authority, or are currently residing in an HHFDC subsidized rental project and receiving rental assistance; (4) have dependents (for single family projects only); and (5) are qualified according to project household incomes.

 (5) After entering into a contract to purchase an Affordable Unit, but before closing on the purchase of the Affordable Unit, Eligible Purchasers shall be required to attend and complete a homeownership counseling and training program (homeownership counseling course) provided by the Developer, conducted by a HUD-approved housing counseling agency, and reasonably approved by HHFDC.

 (6) Each Eligible Purchaser shall commit in writing, to use the Affordable Unit as their principal dwelling, must be an owner-occupant of the Affordable Unit while HHFDC’s restrictions encumber the Unit and must sign a certificate of owner- occupancy to that effect.

 (7) The for-sale Affordable Units shall be sold subject to the following, unless HHFDC modifies or waives any of these restrictions:

 (a) HHFDC’s Ten (10) Year Use, Sale and Transfer Restriction pursuant to Sections 201H-47 through -51, HRS, inclusive.

 (b) HHFDC‘s Shared Appreciation Equity Program (“**SAE Program**”) pursuant to Sections 15-308-101 to -110, HAR. HHFDC shall be entitled to a percentage share of the net appreciation and/or equity which the Eligible Purchaser shall realize under the terms of that program when the Eligible Purchaser subsequently rents, sells or transfers title without HHFDC prior written consent, the Affordable Unit or no longer uses the Affordable Unit as the Eligible Purchaser’s principal residence.

 (c) Current versions shall be provided by HHFDC upon initial meeting with the Developer and Developer’s sales team.

 The Developer shall become familiar with the provisions of the Ten (10) Year Use, Sale and Transfer Restrictions and the SAE Program attached as a part of **Exhibit C** , and applicable rules and shall be responsible for informing applicants and Eligible Purchasers of the Affordable Units about the requirements of such provisions in the Developer’s sales program and sales documents.

 (8) Each Eligible Purchaser shall meet such other qualifications as reasonably established by HHFDC procedures or other rules adopted by HHFDC. HHFDC will inform Developer in writing about these other qualifications.

 e. Other matters affecting the sale of Affordable Units include all of the following:

 (1) As part of HHFDC’s SAE Program, before closing the initial sale of each Affordable Unit in the Project, HHFDC shall have an independent appraiser prepare an appraisal for each such individual Affordable Unit. The appraisal shall be paid for by the buyer’s additional deposits held in escrow and shall be paid directly from escrow to HHFDC’s selected appraiser. Developer shall disclose buyer’s additional cost for such approval as part of the sales contract.

 (2) Developer shall prepare the advertisement fact sheet and other sales materials and reproduce the HHFDC application and information forms. HHFDC shall review and approve in a reasonable and timely manner all sales materials prior to reproduction, distribution, and any multi-media advertising (e.g., website, TV, radio). No presales, pre-reservations or advance project information (e.g., unit type, prices, etc.), shall be released by the Developer, or its representatives prior to the initial public offering notice/advertisement.

 (3) Developer shall require that the Developer’s sales agent shall distribute applications, answer questions pertaining to applications, and receive completed HHFDC application forms. Sales agents shall review such applications for completeness before submitting to HHFDC for review.

 (4) HHFDC shall review applications for the Affordable Units to determine the eligibility and any preference of each applicant to purchase an Affordable Unit. Developer shall require that Developer’s sales agent shall cooperate with HHFDC in the review and processing of applications to purchase.

 (5) HHFDC shall prepare and provide Developer with the PSN list and instructions to Developer’s sales agent for the selection of Affordable Units by eligible applicants according to the PSN list.

 (6) Developer shall be responsible for purchasers of the Affordable Units fulfilling the requirement to complete the homeownership counseling course with a curriculum reasonably approved by HHFDC in order to close the purchase of an Affordable Unit. Developer shall require that the onsite developer shall be responsible for educating and notifying all purchasers regarding all other matters as appropriate. Such matters include but are not limited to any condominium association requirements created for a condominium project, HHFDC’s requirements and restrictions, or any other special conditions or disclosures applicable to such purchasers.

 (7) In the event an Affordable Unit has been marketed to applicants on the PSN list for forty-five (45) days, the Developer shall have the right to sell such Affordable Unit to any Eligible Purchaser with an income of one hundred forty percent (140%) or less of the AMI.

 (8) All costs to administer the sale of the Affordable Units shall be paid by Developer. These costs include, but are not limited to: advertising, printing, computer programming assistance, sales coordination, homeownership counseling, and promotion.

 f. The initial sale of each market-priced unit shall be subject to a preference to qualified residents pursuant to Sections 15-308-151 to -154, HAR, Section 201H-47(g), HRS, and Section 201H-32, HRS, which provides, in relevant part, that a qualified resident is a person who:

 (1) Is a citizen of the United States or a resident alien;

 (2) Is domiciled in the State and shall physically reside in the dwelling unit purchased;

 (3) Is at least eighteen (18) years of age; and

 (4) Meets other qualifications as determined by the onsite developer and approved by HHFDC.

g. As required by Section 15-308-152, HAR, Developer shall designate 100% of for-sale market units in the Project for sale to prospective owner-occupant “qualified residents” during an initial offering period of 30 calendar days.

For projects submitted to a condominium property regime under Chapter 514B, HRS, to ensure compliance with the owner-occupancy requirement, Developer shall elect to be subject to Chapter 514B, Part V, Subpart B, HRS (“**Subpart B**”) by written notification to the Real Estate Commission of the State of Hawaii, as provided in Section 514B-99.5, HRS.

At the time of written notification to the Real Estate Commission, Developer shall waive the following provisions of Subpart B in favor of the more restrictive requirements of Chapter 15-308, Subchapter 8, HAR:

* Section 514B-95.5, HRS;
* Section 514B-96, HRS;
* Section 514B-96.5, HRS; and
* Section 514B-98, HRS.

Developer shall provide HHFDC with the opportunity to comment on the content of Developer’s written notification before it is transmitted to the Real Estate Commission.

Developer and HHFDC hereby agree that the Real Estate Commission shall have full power and authority to enforce the provisions of Subpart B that are applied to this Project, as provided in Section 514B-98.5, HRS.

 h. Developer shall submit all of Developer’s project documents and sales materials, including the following, to HHFDC for approval (which approval shall not be unreasonably withheld or delayed) as soon as practicable and within a time frame that is consistent with the Project schedule, as amended:

1. Schedule of prices for all for-sale Units.
2. Escrow agreement.
3. Specimen form of sales contract for Affordable and market-priced Units.
4. Specimen form of deed for Affordable and market-priced Units.
5. Sales broker’s agreement.
6. Declaration of covenants, conditions, and restrictions, and supplemental declarations.
7. Community association documents, if applicable.
8. Condominium association documents, including By-Laws and House Rules.
9. Marketing plan, including all price lists and schedules.
10. Homeowner’s handbook.
11. Warranty information.
12. Certificate of owner-occupancy affidavit.

 i. Developer shall enter into a written escrow agreement with an escrow agent licensed pursuant to HRS Chapter 449. All funds received from purchasers shall be collected by the escrow agent to be disbursed in accordance with the terms of the escrow agreement.

9. Project Presentations

The Developer shall be responsible for obtaining community input on the Project from interested community groups, and other organizations as requested by HHFDC. The Developer shall conduct a public informational briefing on its proposed master plan for the Project Site and receive input on the design and development of the Project in the community commencing within six calendar months of the HHFDC For Action, unless otherwise extended at HHFDC’s sole discretion.

The Developer shall develop and implement a robust public engagement program to obtain input from the residents, businesses, community stakeholders, and government agencies, which will inform the final design of the Project. Besides the public information briefing described in the previous paragraph, the Developer shall hold additional public meetings or design charrettes as necessary during the planning process to receive input on the design and development of the Project. It is important to get the public input.

 The Developer shall be responsible for any additional governmental briefings on the proposed master plan for the Project Site and design and development of the Project including but not limited to required public hearings and briefings before the Urban Design Review Board and the Maui Planning Commission for the Special Management Area use permit for the Project.

10. Environmental Assessment

The Developer shall be responsible for compliance with the requirements of HRS Chapter 343. The Developer acknowledges that a Final Environmental Assessment (“**FEA**”) for the Kahului Civic Center Mixed-Use Complex was published in the Environmental Review Program’s bulletin on May 8, 2022. The Developer shall comply with the recommendations for best practices and mitigation measures and code requirements of the FEA. If the Project proposed by the Developer is not in compliance with the FEA, the Developer shall be responsible to complete a supplement to the FEA, a new environmental assessment, or other document as required to comply with HRS Chapter 343. Selected compliance requirements and mitigation measures discussed in the FEA include, but are not limited to the following:

a. HRS Chapter 6E, Historic Preservation. The Developer shall be responsible for consulting with the State Historic Preservation Division (“**SHPD**”) of the Department of Land and Natural Resources (“**DLNR**”) 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.

A Draft Archaeological Inventory Survey (“**Draft AIS**”) was prepared by Keala Pono for the Property (January 2022) and included in the FEA. The Developer will comply with the recommendations of the Draft AIS. The Draft AIS identified the former Kahului School Campus (SIHP 50-50-04-08872) as being within the Project Site, which includes 4 features – a historic stone boundary wall and three historic buildings. The stone boundary wall, constructed in 1939 (Feature 1), and the MCSA/Administration building, built in 1920 (Feature 2) are historically significant and are contributing resources to the Kahului School Campus (SIHP 50-50-0408872). The Developer shall use its best efforts to preserve as much of the Feature 1 wall as possible. Subject to SHPD approval of the Draft AIS, if a portion of the Feature 1 wall is proposed to be removed, it could be moved to a nearby location on the Project Site or the rocks incorporated in the design of the buildings with accompanying interpretive signage. Subject to SHPD approval of the Draft AIS, if the MCSA/Administration building and cafeteria are demolished, a Historic American Building Survey (“**HABS**”) or similar documentation will be required. Subject to SHPD approval of the Draft AIS, if a portion of the Feature 1 wall and the MCSA/Administration building are demolished a Historic American Landscapes Survey (“**HALS**”) for the Property, including the Feature 1 wall and the MCSA/Administration building will be required. At its meeting on December 1, 2022, the Maui County Cultural Resources Commission (“**CRC**”) adopted consultation comments to the proposed Project described in the FEA. The Developer shall be responsible for any follow-up work with the CRC as necessary for approval of the Project. The Developer shall continue consultation with SHPD to obtain acceptance and approval of the Draft AIS and applicable preservation and archaeological monitoring plans and construction monitoring reports for the Project.

 b. Department of Education Requirements. The Project is located within the Central Maui School Impact Fee District with a fee amount of $2,371 per multi-family unit. Chapter 302A-1606, HRS, requires that residential development with 50 or more units, execute an agreement with the Department of Education prior to the issuance of any building permit. This agreement sets forth how and when payments will occur. The Developer is encouraged to meet with the Department of Education early on in the development process to execute this agreement. See Department of Education comment letter dated February 22, 2022 included in the FEA.

 c. Flora and Fauna Requirements. Per early consultation letter from the Department of Land and Natural Resources, Division of Forestry and Wildlife (“**DLNR, DOFAW**”) dated November 10, 2020, the Developer shall consult the Hawaii-Pacific Weed Risk Assessment website to determine the potential invasiveness of proposed landscaping plants. An automatic drip irrigation system will be considered to conserve water.

 Per early consultation with the DLNR, DOFAW, the movement of plant or soil material between worksites will be avoided throughout construction; and equipment, materials, and personnel will be cleaned of excess soil and debris to minimize the risk of spreading fungal pathogens (e.g., Rapid ‘Ohi‘a Death), vertebrate and invertebrate pests (e.g., Little Fire Ants), or invasive plant parts. Additionally, per early consultation with the United State Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (“**USFWS**”) and DLNR, DOFAW, the following mitigation measures will be implemented prior to or during construction to minimize potential impacts to the following species:

* Hawaiian Hoary Bat. Woody plants greater than 15 feet tall will not be disturbed, removed, or trimmed during the bat birthing and pup-rearing season (June 1 through September 15). Additionally, barbed wire will not be used for fencing. If this cannot be avoided, woody plants greater than 15 feet tall should not be disturbed, removed, or trimmed without consulting USFWS and DLNR, DOFAW.
* Hawaiian Seabirds. Nighttime construction will be avoided during the seabird fledging period (September 15 through December 15) to prevent injury to seabirds. Outdoor lights will be shielded to the maximum extent possible, so the bulb can only be seen from below and as much as possible the lowest wattage bulbs will be used. The Developer will provide construction crews with information about seabird fallout prior to the initiation of work. If a downed seabird is found, the Developer will contact the USFWS immediately.
* Blackburn’s Sphinx Moth. Prior to clearing vegetation, a biologist will survey the Project Site and confirm that eggs, larvae and host plants of native ‘aiea or tree tobacco are not present. The biologist will concurrently contact the DLNR, DOFAW Maui office for further information about where the Blackburn’s Sphinx Moth may be present. Surveys should be conducted during the wettest portion of the year (November – April) or several weeks after a significant rain and within four to six weeks prior to construction. The USFWS and DLNR, DOFAW will be contacted if Blackburn’s Sphinx Moth or the native ‘aiea or tree tobacco over 3 feet tall are found. The Developer will remove any tree tobacco that is less than 3 feet tall and monitor the Project Site for new tree tobacco growth throughout construction.
* Hawaiian Waterbirds. Hawaiian waterbirds attracted to sub-optimal habitat may suffer adverse impacts, such as predation and reduced reproductive success, and thus the Project may create an attractive nuisance. Therefore, USFWS recommends working with their office during project planning so that they may assist the Developer in developing measures to avoid impacts to listed species (e.g., fencing, vegetation control, predator management). To avoid and minimize potential project impacts to Hawaiian waterbirds USFWS recommends the following measures:
	+ In areas where waterbirds are known to be present, post and implement reduced speed limits, and inform project personnel and contractors about the presence of endangered species on-site.
	+ If water resources are located within or adjacent to the project site, incorporate applicable best management practices regarding work in aquatic environments into the project design.
	+ Have a biological monitor that is familiar with the species’ biology conduct Hawaiian waterbird nest surveys where appropriate habitat occurs within the vicinity of the proposed Project Site prior to Project initiation. Repeat surveys again within 3 days of Project initiation and after any subsequent delay of work of 3 or more days (during which the birds may attempt to nest). If a nest or active brood is found:
		- Contact the USFWS within 48 hours for further guidance.
		- Establish and maintain a 100-foot buffer around all active nests and/or broods until the chicks/ducklings have fledged. Do not conduct potentially disruptive activities or habitat alteration within this buffer.
		- Have a biological monitor that is familiar with the species’ biology present on the Project Site during all construction or earth moving activities until the chicks/ducklings fledge to ensure that Hawaiian waterbirds and nests are not adversely impacted.
* Hawaiian goose. Hawaiian geese may be observed in a variety of habitats, but prefer open areas, such as pastures, golf courses, wetlands, natural grasslands and shrublands, and lava flows. Threats to the species include introduced mammalian and avian predators, wind facilities, and vehicle strikes. To avoid and minimize potential Project impacts to Hawaiian geese, USFWS recommends the following mitigation measures:
	+ Do not approach, feed, or disturb Hawaiian geese.
	+ If Hawaiian geese are observed loafing or foraging within the Project Area during the breeding season (September through April), halt work and have a biologist familiar with the nesting behavior of Hawaiian geese survey for nests in and around the Project area prior to the resumption of any work. Repeat surveys after any subsequent delay of work of 3 or more days (during which the birds may attempt to nest).
	+ Cease all work immediately and contact the USFWS for further guidance if a nest is discovered within a radius of 150 feet of proposed work, or a previously undiscovered nest is found within said radius after work begins.
	+ In areas where Hawaiian geese are known to be present, post and implement reduced speed limits, and inform Project personnel and contractors about the presence of threatened species on-site.

 To avoid impacts to seabirds, permanent exterior lights will be shielded to the maximum extent possible; automatic motion sensor switches and timer controls will be installed in low-traffic areas, so slights turn off when human activity is not present. For security reasons, walkways and lighting around the Civic Center may be continuously lit. Exterior lights will comply with HRS Section 201-8.5, *Night Sky Protection Strategy*.

 State-listed waterbirds such as the Hawaiian Duck (*Anas wyvilliana*), Hawaiian Stilt (*Himantoput mexicanus knudseni*), Hawaiian Coot (*Fulica alai*), and Hawaiian Goose or Nene (*Branta sandvicensis*) could potentially occur in the vicinity of the proposed Project Site. It is against State law to harm or harass these species. If any of these species are present during construction activities, all activities within 100 feet (30 meters) should cease, and the bird should not be approached. Work may continue after the bird leaves the area of its own accord. If a nest is discovered at any point, the Developer will contact the DLNR, DOFAW Maui office at (808) 984-8100.

The Developer will minimize nonnative predator presence at the Project Site: remove cats, place bait stations for rodents and mongoose, and provide covered trash receptacles to minimize attracting vulnerable birds to areas that may host nonnative predators such as cats, rodents, and mongoose.

 d. Mitigation Against Light Pollution. The Developer shall comply with the mitigation recommendations against light pollution described in the University of Hawaii Institute for Astronomy comment letter dated February 18, 2022. Appropriate steps to reduce the impact on the observatories include:

 (1) The minimum possible amount of outdoor lighting should be used.

 (2) Any outdoor lighting must follow the Maui County lighting ordinance: all lighting must be fully shielded, i.e., all lighting fixtures must emit zero light above the horizontal plane.

 (3) HRS Section 201-8.5 is insufficient for protection of both migrating seabirds and astronomical observations. This statute allows the use of LEDs with a correlated color temperature (CCT) up to 4000 K; these LEDs emit a large amount of blue light which brightens the night sky more than any other color of light, and is especially damaging for astronomy. Ideally, any white light used for this Project would be limited to a CCT of 2700 K or below to minimize the amount of blue light emitted. In general, the use of blue-wavelength light should be limited as much as possible.

 (4) The best choices for outdoor/exterior lighting are filtered LED lights, or amber LED lights.

 Please note that Maui County Council is presently considering Bill 21 (2022) which will revise the Maui County Lighting Ordinance. Among the proposed measures in this bill are restrictions on the amount of blue and green light: specifically, to require that new outdoor lights emit less than 5% of their energy at wavelengths shorter than 550 nm. If enacted, the Developer shall comply with the new requirements for outdoor lighting on Maui.

 e. Design Comments. Developer shall consider design recommendations provided in the FEA, including but not limited to the following:

 (1) Early consultation comments from the County Department of Planning, dated November 9, 2020, including but not limited to the following:

* Consider design recommendations to ensure that the Project aids in the creation of a vibrant community consistent with the TOD Corridor Master Plan principles.
* Consider scale and massing of the Project design and connectivity, as it relates to existing surrounding developments and the pedestrian experience.
* Consider setback from the street to enable a continuation of the open landscaped buffer at Queen Kaahumanu Mall and Maui Beach Hotel and incorporation of aesthetically-pleasing pedestrian amenities.
* Incorporate green infrastructure in the Project design.
* Acknowledge that certain commercial uses in the B-2 Community Business District zoning designation require Planning Commission’s approval.
* Consider design features that will encourage multi-modal transportation and foster a safe and efficient pedestrian experience.
* Consider designing the proposed parking lot/structure to reduce potential visual impacts and to be utilized for other purposes such as offices or community space in the future.
* Provide onsite, convenient short- and long-term bicycle parking, which complies with Americans with Disabilities Act requirements.
* Consider designing wider pedestrian paths (at least five-feet wide) and incorporating pedestrian amenities to support a healthy pedestrian environment.
* Consider providing street trees with canopies for shade and heat mitigation or the installation of awnings along the frontages where trees are not feasible.
* Consider locating taller buildings at the rear of the Project Site away from Kaahuman Avenue and sidewalk frontages. The Special Management Area Use Permit will analyze visual impacts from Kaahumanu Avenue toward Haleakala and Kahului Harbor.

 (2) The recommended urban design principles and best practices discussed in the early consultation comments from Kaahumanu Avenue Community Corridor dated June 28, 2021 shall be considered for incorporation in the Project design and vetted by the community.

 (3) Comments and recommendations from the County Department of Planning dated February 21, 2022.

 (4) The urban design principles discussed in Section 2.2 of the FEA and the Wailuku- Kahului Community Plan (2002).

11. Disability and Communication Access Board

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

12. Energy Conservation

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

 a. Design and construct buildings to meeting the Leadership in Energy and Environmental Design (“**LEED**”) silver or two green globes rating system or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, except when the guideline, standard, or system interferes or conflicts with the use of the building or facility as an emergency shelter.

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

 c. Install solar water heating systems where it is cost-effective, based on a comparative analysis to determine the cost-benefit of using a conventional water heating system or a solar water heating system. The analysis shall be based on the projected life cycle costs to purchase and operate the water hearing system. If the life cycle analysis is positive, the facility shall incorporate solar water heating. If water heating entirely by solar is not cost-effective, the analysis shall evaluate the life cycle, cost-benefit of solar water heating for preheating water. If a multi-story building is centrally air conditioned, heat recovery shall be employed as the primary water heating system. Single family residential clients of the Department of Hawaiian Home Lands and any agency or program that can take advantage of utility rebates shall be exempted from the requirements of this paragraph so they may continue to qualify for utility rebates for solar water heating.

 d. Implement water and energy efficiency practices in operations to reduce waste and increase conservation.

 e. Incorporate principles of waste minimization and pollution prevention, such as reducing, revising, and recycling as a standard operating practice in programs, including programs for waste management in construction and demolition projects and office paper and packaging recycling programs.

 f. Use life cycle cost-benefit analysis to purchase energy efficient equipment such as Energy Star products and use utility rebates, where available, to reduce purchase and installation costs.

 g. Procure environmentally preferable products, including recycled and recycled-content, bio-based, and other resource-efficient products and materials.

13. Other Energy Conservation Measures

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

 a. Site homes to maximize use of natural light and ventilation over artificial light and air-conditioning;

 b. CFL or LED lighting;

 c. Energy Star appliances;

 d. Skylights to promote natural interior lighting;

 e. Solar water heating;

 f. Insulated roofs, e.g.,

1. Attic space between roof and ceiling;
2. Insulation materials;
3. Solar powered attic vents to remove hot air from attic space;

 g. High performance windows to minimize heat gain and cool air loss;

 h. Wider eaves and overhangs to create more shade earlier in the day;

1. Insulated exterior walls, e.g.,
2. Double wall;
3. Heat insulation materials, e.g., concrete;

 j. To minimize waste, installation of individual electric meters and payment of utilities by tenants;

 k. New single-family dwellings shall include a solar water heater system unless a variance is granted by the Director of the Department of Budget, Economic Development and Tourism pursuant to Section 196-6.5, HRS.

14. Water Conservation Measures

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

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

1. Monitor and control abuses; or
2. Prorate water charges to each tenant;

 b. Plumbing fixtures that comply with the Energy Policy Act of 1992, e.g., ultra low flush toilets (A listing of fixtures certified by the EPA as having high water efficiency can be found at http://www.epa.gov/watersense/pp/index.htm);

 c. Horizontal axis washing machines rather than top loading washing machines;

 d. Energy Star water consuming appliances;

 e. Trees, shrubs, perennials, and ground cover rather than turf grass;

 f. Local indigenous Hawaiian plants that thrive on natural rainfall;

 g. Installation of rain shut offs and smart controllers on all automated irrigation systems to avoid landscape irrigation when raining. Any controllers which do not provide for soil moisture or evapotranspiration based response should be checked and reset at least once a month to reflect the monthly changes in evapo-transpiration rates at the site. As an alternative, provide the more automated, soil-moisture sensors on controllers;

 h. Limit irrigation to early morning or late evening; and

1. Maintain fixtures to repair and prevent leaks.

15. Stormwater Management

The Developer shall consider incorporation of best management practices (“**BMP**”) for stormwater management to minimize the impact of the Project to the existing area’s hydrology while maintaining on-site infiltration and preventing polluted runoff from storm events. Stormwater management BMPs may earn credit toward LEED Certification. More information on stormwater BMPs can be found at <http://planning.hawaii.gov/czm/initiatives/low-impact-development/>.

16. 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.

17. Hawaiian and Indigenous Plants

a. The Developer shall comply with Section 103D-408, HRS, for the incorporation of Hawaiian plants in new or renovated landscaping of any project developed with public moneys within the following timetable:

 1. By January 1, 2019, Hawaiian plants shall constitute a combined minimum of ten per cent of the total plant footprint for landscaping plans, designs, and specifications;

 2. By January 1, 2025, Hawaiian plants shall constitute a combined minimum of twenty-five per cent of the total plant footprint for landscaping plans, designs, and specifications; and

 3. By January 1, 2030, Hawaiian plants shall constitute a combined minimum of thirty-five per cent of the total plant footprint for landscaping plans, designs, and specifications;

 Provided that:

 1. Suitable cultivated plants can be made available for this purpose without jeopardizing wild plants in their natural habitat; and

 2. Wherever and whenever possible, Hawaiian plants shall be used for landscaping on, and sourced from, the island and ahupua’a in which the species was found or known to occur prior to European contact.

b. The Project shall utilize indigenous species of plants for its landscaping whenever and wherever feasible pursuant to Section 15-307-27(9), HAR.

18. 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.

19. On-site and Off-site Infrastructure

 Developer shall be responsible to build and maintain all on-site and off-site infrastructure, including but not limited to, planning, design, payment of permit fees, and infrastructure such as roadways, waterlines, sewers, drainage, and electrical, telephone, gas, and cable television lines, conduits, and hookups. The Developer shall be responsible for the maintenance and operation of any offsite and/or onsite improvements required for the Project that is not dedicated to the County. Dedication to the County shall be subject to the approvals of HHFDC and DLNR. Dedication in fee simple shall be subject to the approval of two-thirds of both houses of the State Legislature pursuant to Section 171-64.7, HRS.[[2]](#footnote-2) Dedication to the County by Governor’s Executive Order requires a letter from the County to DLNR requesting a set aside of the dedication parcel for a public purpose.

By way of example and not limitation, Developer acknowledges that the Project may require the widening of Kane Street to align with the western property boundary of the Kahului Lani property located across Vevau Street to the south of the Project. The Developer shall be responsible for the subdivision, improvements to County standards, and dedication to the County of any road widening improvements required for the Project.

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

As described in the RFP, if required for development of the Project, the Developer shall be responsible for the relocation of Pole No. E4 at the corner of Vevau and Kane Streets, and Pole No. E5 at Kane Street, and, if necessary, the undergrounding of the applicable overhead utilities at Vevau and Kane Streets so there is no easement impacts to the Property. HHFDC may issue rights of entry and easements at the Property as shown in Figure 10 of the RFP to enable the relocation of Pole Nos. E4 and E5 at Kane Street and the dedication of Vevau Street to the County. If development of the Project requires a relocation of the easements at the Property issued for the relocation of Pole Nos. E4 and E5, the Developer shall be responsible for undergrounding the applicable overhead utilities at Vevau and Kane Streets so the easements are removed from the Property. If undergrounding of the overhead utilities are unfeasible as approved by HHFDC, the Developer shall work with HHFDC to minimize the easement impacts to the Property.

20. Interim and Permanent Financing

 The HHFDC Board of Directors approved $5.0 million from the Dwelling Unit revolving Fund (“**DURF**”) for interim financing for planning and development of the Project, subject to availability of DURF funds and approval of release of funds by the Governor, as described in the DURF For Action dated September 8, 2022 (“**DURF For Action**”). As described in the DURF For Action, the Residential Component shall receive all discretionary approvals by **June 30, 2025**, unless otherwise extended by HHFDC.

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

 The Ground Lease (defined below) shall not be subordinated to Developer’s financing.

21. GET Exemptions

HHFDC shall be responsible for certifying 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.

22. 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, DLNR, the State of Hawaii, and their officers, employees, directors, agents, representatives, officials, successors or assigns 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 and management 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.

23. 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 be issued by insurance company(s) authorized to do business in the State of Hawaii with a minimum financial strength rating of A- VII from A.M. Best or as otherwise acceptable to HHFDC, and provide the following minimum policy limits and coverage:

|  |  |
| --- | --- |
| Coverage | Minimum Policy Limits |
| Commercial GeneralLiability Insurance | Developer's commercial general liability, including products and completed operations coverage, shall be written on occurrence form with limits of not less than $3,000,000 per occurrence and $5,000,000 in the aggregate arising out of or in connection with operations, servicing, and maintenance performed under this Agreement. |
| Automobile Insurance | Automobile insurance, 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 | Intentionally Omitted. |
| Builder’s Risk for Property During Construction | All risk policy 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, DLNR, and HHFDC shall be loss payees under the Property Insurance. Coverage shall be evidenced on form Acord 27 – Evidence of Property Insurance. |
| Workers' Compensation | As required by Hawaii laws. |
| Contractor’s Pollution Liability Insurance | As described below. |
| Property Insurance | As described below.  |

 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, DLNR, 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.

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

 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.

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.

23.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, DLNR, and HHFDC as additional insured parties.

23.b. Property Insurance.

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

Subject to the prior written approval of any prior mortgagee, in the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Developer for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by HHFDC.

The Developer shall furnish HHFDC on or before the date of this Agreement, 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).

24. 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. Without limiting the generality of the foregoing:

 a. The Developer shall be responsible for complying with the requirements of SHPD, including but not limited to Sections 6E-8, 6E-42 and 6E-43, HRS. Requirements may include consultation with SHPD, archaeological inventory survey, data recovery, excavations and/or archaeological monitoring of construction work at the Property. In addition, if human burials are found during the survey and determined to be Native Hawaiian in ethnicity, their treatment and disposition will need to be decided in consultation with the Oahu Island Burial Council. Treatment and disposition of burials can include preservation in place.

 During construction, Developer shall monitor all excavations in accordance with an archaeological monitoring plan approved by SHPD. If any archaeological resources are uncovered during the course of site construction, Developer shall immediately stop work and contact the SHPD in Honolulu, Hawaii at (808) 692-8015 and abide by instructions or procedures to deal with such archaeological resources. Whether or not findings are uncovered, Developer shall prepare and submit an archaeological monitoring report to SHPD. HHFDC shall not be responsible for any delays caused by archaeological resources uncovered at the Property.

 b. As required by County rules, the Developer shall be responsible for a drainage report and any mitigation measures to return the Property to pre-development runoff conditions when the grading/construction plans are submitted to the County for approval.

 c. As may be required by applicable County rules, roof drains and surface runoff from paved surfaces shall be routed through vegetated filters or storm water quality inlets prior to discharging into the municipal or HHFDC drainage system to the extent required by the County or HHFDC, respectively.

 d. As may be required by applicable County rules, a dust control management plan shall be developed which identifies and addresses activities that have significant potential for fugitive dust to be generated. Implementation of adequate dust control measures during all phases of the Project is necessary. Construction activities must comply with provisions of HAR, Chapter 11-60.1, “Air Pollution Control,” and Section 11-60.133 on Fugitive Dust. Developer’s contractor should provide adequate means to control dust from road areas and during the various phases of construction activities. These measures include, but are not limited to:

 (1) Planning for the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing material transfer points and on-site vehicular traffic routes, and locating potential dust equipment in areas of the lease impact;

 (2) Providing an adequate water source at the site prior to start-up of construction activities;

 (3) Landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase;

 (4) Controlling of dust from shoulders, project entrances, and access roads; and

 (5) Providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities.

25. 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.

26. 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.
3. 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.

27. 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.

28. 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.

29. [Reserved]

30. 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 an electronic file in “pdf” format 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 foundation or building permit for the construction proposed.

 e. Developer shall furnish to HHFDC evidence satisfactory to HHFDC that the Developer has obtained a Special Management Use permit for the construction proposed.

 f. 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.

 g. Developer shall furnish to HHFDC a copy of the construction contract(s) for the proposed work to be commenced (“Construction Contract”).

 h. Developer shall furnish to HHFDC a copy of a performance and payment bond equal to 100% of the Construction Contract 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, DLNR and HHFDC shall be additional co-obligees on the bonds.

 i. Developer shall furnish to HHFDC a construction schedule for the Project.

 j. Developer shall furnish to HHFDC a breakdown of the total development cost of the Project, including estimated contingencies.

 k. Developer shall provide evidence satisfactory to HHFDC that Developer has sufficient funds secured and available to pay for the proposed construction.

 l. The Property has been conveyed to the Developer, or for work off the Property, Developer shall furnish to HHFDC evidence that Developer has obtained a right-of-entry from the respective landowner.

 m. 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.

31. 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.

32. HHFDC Inspection

 Upon 24 hours prior written notice to Developer, HHFDC and its agents shall have the right of entry upon the Property. 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.

33. Coordination of Construction with Ongoing Activities

 Developer shall make reasonable efforts to coordinate its construction on the Property 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.

34. 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:

1. 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:
2. Area of Project Site;
3. Gross building area of Project (excluding parking);
4. Gross building area of any non-residential uses;
5. Total number of residential units and number of each residential unit type and average size of each unit type;
6. Number of buildings, stories, and elevators in each building;
7. Number of parking stalls, as allocated between residential and non-residential uses;
8. Number of handicapped parking stalls, as allocated between residential and non-residential uses; and
9. Number of loading stalls;

b. An electronic file in “pdf” format of "as-built" drawings reflecting all construction changes, alterations or deletions and bearing the stamp or seal and the signature of the registered professional engineer or architect, after each increment of construction work has been completed;

1. All copies of applicable Certificates of Occupancy issued by the County; and
2. 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.

35. Warranty

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

36. 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.

37. Nondiscrimination

[HHFDC acknowledges that, except for the resident manager, the Project is an affordable senior rental housing project for tenants 55 years old and older. Except for this requirement,][[3]](#footnote-3) the development, sale or use of the Property shall not be in support of any policy which discriminates against anyone based upon race, sex, including gender identity or expression, sexual orientation, color, 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.

38. Hazardous Materials

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

b. Developer shall not cause or permit the escape, disposal, or release of any hazardous materials. Developer shall not allow the storage or use of such materials in any manner not allowed 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, DLNR, 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.

39. Conveyance of Property to Developer

Conveyance of the applicable portion of the Property to Developer for the Residential and Commercial Components shall be by ground lease (“**Ground Lease**”). The Ground Lease term shall be up to 99 years, subject to HHFDC approval at HHFDC’s sole discretion, at a lease premium of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the Residential Component and $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the Commercial Component, lease rent of $\_\_\_\_\_\_\_\_\_\_\_ per year base lease rent, for a \_\_\_-year term for the Residential Component and lease rent of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per year base lease rent, for a \_\_\_-year term for the Commercial Component, substantially in a form provided by HHFDC. As described in the RFP, the lease rent shall be paid annually in advance and subject to HHFDC’s policy for minimum base lease rents for ground leases approved by the HHFDC Board of Directors on November 18, 2021.[[4]](#footnote-4) Conveyance of the Property shall be subject to the following:

a. As applicable, the Developer shall obtain final subdivision approval from the County, or create Spatial Units pursuant to a CPR of the Property, as approved by HHFDC and DLNR;

b. HHFDC reserves the right to require additional or less subdivision(s) and/or Spatial Units of the Property and to convey Ground Leases to Developer in phases;

c. HHFDC reserves the right to withhold conveyance of title until after the completion of the process for an Environmental Assessment or Environmental Impact Statement as required pursuant to Chapter 343, HRS;

d. HHFDC reserves the right to withhold conveyance of title until after the approval of the last discretionary approval necessary for construction of the applicable phase of the Project;

e. HHFDC reserves the right to withhold conveyance of title until after all the offsite improvements necessary for the development of the phase for which title is requested have been completed or bonded in accordance with the County’s subdivision regulations;

f. 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;

g. HHFDC reserves the right to withhold conveyance of title until HHFDC has received the lease premium and applicable lease rent for the applicable portion of the Property;

h. Developer shall be responsible for preparation of the legal descriptions of the parcel(s) to be conveyed to Developer, as well as the remaining portions of the Property created by Developer’s subdivision and/or CPR but not conveyed to Developer;

i. Developer shall be responsible for all closing costs, fees, expenses and taxes, including those that are reasonably and necessarily incurred by HHFDC;

j. Developer shall accept 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;

k. The parties acknowledge that the lease rent under the Ground Lease may be substantially less than the fair market rent for the demised premises and, if so, is in furtherance of the public purpose of providing affordable housing opportunities to tenants or homeowners of the Project;

l. For affordable rental projects, the applicable project shall remain affordable for the term of the Ground Lease;

m. For affordable for-sale projects, the applicable project shall be subject to restrictions for HHFDC’s Ten (10) Year Use, Sale and Transfer Restrictions and the SAE Program;

n. HHFDC reserves the right to amend the CPR documents and Ground Leases, including documents for the Residential and Commercial Components, in order to accommodate the Bus Hub and future Civic Center Components;

o. The Residential Component has received all its discretionary approvals by June 30, 2025, unless extended by HHFDC;

p. The Project shall commence construction by the Construction Commencement Deadline; and

q. The Project shall be completed by the Completion Date.

40. Right of Entry to Developer

Subject to HHFDC’s Non-Exclusive Revocable Right of Entry to DOE for MCSA dated January 15, 2020, Right of Entry – Planning, Construction and Operation to the County for the new Maui bus hub dated May 13, 2020, and Amendment #1 to Right of Entry – Planning, Construction and Operation to the County dated March 3, 2021, HHFDC grants the Developer a right-of-entry for itself, its volunteer workers, agents, employees, consultants, contractors, and anyone else who works on the Project on behalf of the Developer to enter the Property for the purposes of conducting engineering studies and maintenance of the Property under this Agreement. Developer shall not permit any other person to occupy or use the Property or any portion of the Property, nor shall Developer occupy the Property for any other purpose, without HHFDC’s prior approval. Developer shall not undertake any construction on the Property without HHFDC’s written approval or HHFDC’s issuance of a Notice to Proceed with Construction pursuant to Paragraph \_**30**\_ of this Agreement. Developer agrees to defend, indemnify, and hold harmless the State of Hawaii, DLNR, and HHFDC as set forth in Paragraphs \_**22**\_ and **\_\_38\_\_** of this Agreement.

Developer shall coordinate entry upon the Property with DOE and the County and shall work cooperatively with DOE and the County under this right-of-entry. Developer shall not detrimentally affect DOE’s or the County’s rights under their Right of Entry to the Property from HHFDC. Should DOE, the County, or any other party be affected detrimentally by Developer under this right-of-entry or this Agreement, all costs incurred by DOE, the County, or other party for damages or repairs shall be borne by Developer.

 41. Default

 Developer shall be in default if:

 a. Developer shall fail to complete the Project by the Completion Date, or timely pay, perform and/or complete Developer’s other obligations under this Agreement;

 b. Developer shall become insolvent, or shall voluntarily or involuntarily be dissolved or shall make any assignment for the benefit of creditors or shall generally fail to pay Developer’s debts as they become due;

 c. Developer shall become the subject of an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted and such order shall remain in effect and unstayed for a period of sixty (60) consecutive days;

 d. Developer shall commence a voluntary case under the bankruptcy laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law, or regulation;

 e. Developer shall file any answer admitting the material allegations of any petition filed against Developer in any such proceedings;

 f. Developer shall seek or consent to or acquiesce in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of Developer or of all or a substantial part of Developer’s properties or assets;

 g. Developer shall file any proceeding requesting Developer’s dissolution or liquidation; or within sixty (60) days after commencement of any proceedings against Developer seeking any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which Developer may be entitled under any present or future statute, law or regulation and such proceedings shall not have been dismissed;

 h. Within sixty (60) days after the appointment of, or taking possession by, any custodian, trustee, receiver or liquidator of any or of all or a substantial part of the properties or assets of Developer, without HHFDC’s consent or acquiescence, any such appointment or possession shall not have been vacated or terminated;

 i. There shall be any attachment, execution or other judicial seizure of, or otherwise materially affecting all or any part of this Agreement, the Property or any improvements thereon unless such attachment, execution or seizure is set aside, dissolved, bonded off or otherwise eliminated within thirty (30) days of its occurrence;

 j. Any third person shall obtain an order or decree in any court of competent jurisdiction enjoining or prohibiting Developer from performing this Agreement as a result of the negligent or willful acts or omissions of Developer, and (1) such proceedings shall not be discontinued and such order or decree shall not be vacated within thirty (30) days after the granting thereof and (2) Developer shall fail to provide reasonable assurances to HHFDC of its ability to complete the Project;

 k. There shall be a sale, transfer, hypothecation, assignment or conveyance of all or any part of this Agreement, the Project, including the housing units and other improvements comprising the Project, or the Property by Developer without the prior written consent of HHFDC, except as expressly allowed and contemplated by this Agreement;

 l. Any representation or warranty made by or on behalf of Developer, in any other writings in connection with the Project shall prove to have been false or incorrect in any material respect on the date as of which such representation or warranty was made;

 m. A final judgment is entered which alone or with other outstanding final judgments against Developer or any of its partners would have a material adverse effect on their financial ability to perform their obligations in connection with this Agreement and (1) such judgment shall not be discharged, or (2) within thirty (30) days after entry of such judgment the execution thereof shall not be stayed pending appeal, or (3) such judgment shall not be discharged within thirty (30) days after the expiration of any such stay;

 n. Any of the above events b. through m., inclusive, occur as to any of the members or managers or partners of the Developer, and additional security is not provided as provided in Paragraph \_**43.f**\_ of this Agreement;

 o. Abandonment or suspension of development or construction of improvements required by this Agreement for a period of four (4) consecutive calendar months;

 p. An event of default under any loans and loan agreements issued by HHFDC to the Developer, or HHFDC programs approved by HHFDC to the Developer for the Project; or

 q. If all or a portion of the Ground Lease has been issued to the Developer, an event of default under the Ground Lease, or any phase of the Ground Lease.

42. 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.

43. HHFDC Remedies

After Developer has been declared to be in default and Developer fails to cure such default within the time period prescribed in Paragraph \_**42**\_ 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:

1. 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;
2. To retain all fees, deposits, funds, or security that have been paid or delivered to HHFDC or escrow;
3. 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;
4. 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;
5. 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;
6. 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;
7. To sue for damages, including but not limited to architectural and engineering fees and costs and attorney fees and costs;
8. To seek specific performance;
9. 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;
10. 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;
11. To terminate any HHFDC programs approved by HHFDC for the Project and seek to recapture any benefits received by Developer for the Project; or
12. 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.

44. Termination for Convenience

 a. HHFDC may, when the interests of the State of Hawaii so require, terminate this Agreement in whole or in part, for the convenience of HHFDC. HHFDC shall give written notice of the termination to Developer specifying the part of the Agreement terminated and when termination becomes effective.

 b. Developer shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination Developer will stop performance to the extent specified. Developer shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. Developer shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to HHFDC’s approval. HHFDC may direct Developer to assign Developer’s right, title, and interest under terminated orders or subcontracts to HHFDC. Developer must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

 c. HHFDC may require Developer to transfer title and deliver to HHFDC in the manner and to the extent directed by HHFDC:

 (1) Any completed goods or work product; and

 (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called “**manufacturing material**”) as Developer has specifically produced or specially acquired for the performance of the terminated part of this Agreement.

Developer shall, upon direction of HHFDC, protect and preserve property in the possession of Developer in which HHFDC has an interest. If HHFDC does not exercise this right, Developer shall use best efforts to sell such tools and manufacturing materials. Use of this paragraph in no way implies that HHFDC has breached this Agreement by exercise of this termination for convenience provision.

 d. Compensation to Developer shall be paid as follows:

 (1) Termination of this Agreement in whole:

 (a) Developer shall be reimbursed for third-party Project costs incurred up to the date of HHFDC’s notice of termination as evidenced by invoices, as approved by HHFDC;

 (b) Proceeds of sales of supplies and manufacturing materials under **Section 44.c.(2)** shall be offset or credited against any amounts due Developer;

 (c) Developer shall be paid an overhead and project management fee of up to five percent (5%) of the total Project budget (excluding Developer’s profit and overhead and project management fees), allocated monthly evenly over the term of this Agreement up to the date of HHFDC’s notice of termination; and

 (d) Developer shall be paid no anticipatory profit or consequential damages.

 (2) Termination of this Agreement in part:

 (a) Developer shall be reimbursed for third-party Project costs incurred for the portion of this Agreement that is terminated up to the date of HHFDCʻs notice of termination as evidenced by invoices, as approved by HHFDC;

 (b) Proceeds of sales of supplies and manufacturing materials under **Section 44.c.(2)** shall be offset or credited against any amounts due Developer;

 (c) Developer’s overhead and project management fee for the remaining term of this Agreement (if any) shall be reduced by five percent (5%) of the portion of the total Project budget that is being terminated;

 (d) Developer shall be paid no anticipatory profit or consequential damages for the portion of this Agreement that is terminated. Developer’s profit for the Project for the remaining term of this Agreement shall be reduced by the percentage of the portion of the total Project budget that is terminated over the remaining term of this Agreement, as though the portion of the total Project budget that is terminated is evenly allocated over the term of this Agreement, over the total Project budget (excluding Developer’s profit and overhead and project management fees); and

 (e) Developer shall have the option of terminating this Agreement in whole, in which case, Developer shall be compensated pursuant to **Section 44.d.(1)** above.

45. Cooperation and Continuing Obligations of Parties. In the event of any termination of this Agreement, HHFDC and Developer hereby agree to cooperate with the orderly transition of control over the Property, Project, entitlements and related agreements from Developer to HHFDC or an approved assignee. Further, the Parties hereby acknowledge that there is a possibility that matters and/or issues related to the transition of control over the Property, Project, entitlements and related agreements from Developer to HHFDC may be inadvertently overlooked and discovered after termination of this Agreement. As such, notwithstanding the termination of this Agreement, Developer and HHFDC hereby agree to use commercially reasonable efforts in effectuating the transfer of said Property, Project, entitlements and related agreements. This provision shall survive any expiration, termination of, or release from this Agreement.

**GENERAL PROVISIONS**

46. 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.

47. 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 (10) 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.

48. 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.

49. Binding Effect of Agreement

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

50. Gender Number

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

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. Governing Law

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

57. 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.

58. 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.

59. 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 paragraph by hand delivery or regular 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

60. 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.

**PROJECT SPECIFIC REQUIREMENTS**

61. Developer Obligations

a. Developer shall complete a master plan of the Project Site to ensure that the size, configuration, and dimensions of the various Components and the subdivision or Spatial Units and improvements are feasible for development. The Civic Center Component will preferably contain approximately 66,000 square feet with approximately 182 parking spaces for DAGS office space, classroom and support space for the DOE MCSA, and a new Kahului Public Library. At a minimum, the Civic Center Component shall consist of 44,000 square feet (excluding the Commercial Component) and parking as required by County code. The Residential Component shall be as described in **Section 2** of this Agreement. The Bus Hub Component will be as currently existing and under construction by the County. Up to approximately 5,000 square feet of community-oriented commercial space may be included in either the Residential or Civic Center Component. HHFDC reserves the right to amend the CPR documents without Developer’s consent to enable the Civic Center Component to be developed after the Completion Date.

b. Developer shall either subdivide the Property or create Spatial Units under a CPR for separate leasehold ownership of each Component. Under a CPR, the Developer shall draft the ground leases substantially in the forms provided by HHFDC. HHFDC shall issue a Ground Lease of the Residential Component to the Developer. Ground leases for the Civic Center and Bus Hub Components will be issued to DAGS and the County, respectively, at $1/year for 65 years. If community oriented commercial space is proposed by the Developer, and the space requires a separate subdivided lot or Spatial Unit, the Ground Lease for the Commercial Component will be issued to the Developer. The lease premium, lease rent, and lease term up to 99 years, subject to HHFDC approval at HHFDC’s sole discretion, for the Ground Leases for the Residential and Commercial Components will be as described in the Developer’s Proposal, as approved by HHFDC. The lease rent shall be subject to HHFDC’s policy for minimum base lease rents for ground leases approved by the HHFDC Board of Directors on November 18, 2021 as described in **Section 39** of this Agreement.

 c. Developer shall be responsible for the leasehold planning, design, financing, entitlements, construction, sale of residential units and/or ownership, rental, management and operation of rental apartments in the Residential Component.

d. As described in the RFP, Developer acknowledges and shall comply with the County Department of Housing and Human Concerns’ comment letter of May 25, 2022 indicating that the Project is subject to Chapter 2.96, Maui County Code, and therefore, requires a residential workforce housing agreement for the Project.

62. Security and Maintenance of Project Site

The Developer shall be responsible for security and maintenance of the Project Site commencing when the Department of Education MCSA vacates the Project Site, and continuing until the date that DAGS executes the ground lease for the Civic Center Component.

DAGS shall be responsible for security and maintenance of the Civic Center Component as of the date of the ground lease for the Civic Center Component.

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

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

 HAWAII HOUSING FINANCE AND

Approved as to Form: DEVELOPMENT CORPORATION

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Attorney General Delmond J.H. Won

 Executive Assistant

 “HHFDC”

 A Hawaii limited liability company

 By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

 Developer”

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STATE OF HAWAII )

 ) SS

CITY AND COUNTY OF HONOLULU )

 On this day of , 20 , before me appeared

DELMOND J.H. WON, personally known to me, who, being by me duly sworn, did say that he is the EXECUTIVE ASSISTANT 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, RESIDENTIAL COMPONENT, KAHULUI CIVIC CENTER MIXED-USE COMPLEX dated , was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

Name:

Notary Public, State of Hawaii

 Judicial Circuit

My commission expires: \_

STATE OF HAWAII )

 ) SS.

CITY AND COUNTY OF HONOLULU )

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public, State of Hawaii

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

Document Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Number of Pages: \_\_\_\_

Notary Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ First Judicial Circuit

Document Description: Development Agreement, Residential Component, Kahului Civic Center Mixed-Use Complex

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Signature Date

NOTARY CERTIFICATION

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, Residential Component, Kahului Civic Center Mixed-Use Complex

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Notary Signature Date

NOTARY CERTIFICATION

EXHIBIT A

Property Location Map or

Property description

EXHIBIT B

HHFDC Sales Requirements

EXHIBIT C

SAE Program

1. This Section shall be subject to the revised HHFDC rules, HAR Sec. 15-307-1, et seq, and Sec. 15-308-1, et seq. effective 1/15/22, as amended. [↑](#footnote-ref-1)
2. Section 171-64.7, HRS, requires a ceded lands status letter, an appraisal of the property to be dedicated, and an informational briefing in the community of the proposed dedication, as pre-requisites to the submittal to the Legislature for approval. [↑](#footnote-ref-2)
3. If applicable. [↑](#footnote-ref-3)
4. Section III.C.5. of the HHFDC For Action dated November 18, 2021 provides,

“Annual Base Rent. The new ground lease shall provide for annual base rent payable annually in advance based on the below schedule and increasing by three percent (3%) per year (compounded) during the entire term of the lease. (The purpose of the annual base rent is to help to pay for HHFDC’s estimated allocated lease administration costs, and its is recommended that these costs be reevaluated every five years.)

 Lease Initial

 Commencement Date Annual Rent

 Fiscal Year 2022 $10,000

 Fiscal Year 2023 $10,500

 Fiscal Year 2024 $11,000

 Fiscal Year 2025 $12,500

 Fiscal Year 2026 $13,000” [↑](#footnote-ref-4)