

FOR DISCUSSION AND POSSIBLE ACTION

I. SUBJECT

Discussion and Possible Action on: (1) the Status of Lease Rent Renegotiations; (2) Delegated Authority to Renegotiate Lease Rents; and (3) Possible Disposition Scenarios for the Waiahole Valley Agricultural Park and Residential Lots Subdivision Located at Waiahole, Koolaupoko, Oahu, TMK Nos.: (1) 4-8 (various) in Furtherance of the State’s Public Purpose to Preserve the Rural, Agricultural Character of the Valley

II. FACTS

Project:	Waiahole Valley Agricultural Park and Residential Lots Subdivision			
Location:	Waiahole, Koolaupoko, Oahu			
Project Type:	Agricultural and Residential Subdivision			
TMK Nos.:	(1) 4-8 (various)			
Zoning:	AG-2 (General Agricultural District) and P-1 (Restricted Preservation District) <sup>1</sup>			
Lot Summary:	<u>Designated Use</u> <sup>2</sup>	<u>No.</u>	<u>Acres</u>	<u>Leased</u>
	Residential	65	44.185	84.6%
	Agricultural	39	348.625	89.7%
	Non-rentable <sup>3</sup>	14	194.325	N/A
	Market Rate	2	7.973	0.0% <sup>4</sup>
	Commercial <sup>5</sup>	<u>2</u>	<u>0.711</u>	<u>100.0%</u>
	Total <sup>6</sup>	122	595.819	N/A
Lessor:	Hawaii Housing Finance and Development Corporation (HHFDC)			
Property Manager:	HHFDC			

- A. HHFDC owns an 888-acre land portfolio located in Waiahole Valley on Oahu, the majority of which was acquired in 1977 from Elizabeth Loy McCandless Marks under threat of condemnation (the Marks Acquisition). The purchase price was \$6 million. Approximately 108 acres of the total lands are ceded lands that were transferred from the Department of Land and Natural Resources (DLNR) in 1993 at the direction of the Legislature.

<sup>1</sup> The project received certiation zoning and development exemptions under Hawaii Revised Statutes (HRS) Chapter 359G, which were approved through Honolulu City Council Resolution 86-148.

<sup>2</sup> Lot designations are pursuant to the Declaration of Restrictive Covenants for Waiahole Valley Agricultural Park and Residential Lots Subdivision and Homestead Road Lands.

<sup>3</sup> Includes lots for open spaces, roadways, bridge improvements, water system infrastructure, and a stream floodway.

<sup>4</sup> On February 16, 2023, HHFDC obtained a Writ of Possession to enable the Department of Public Safety to remove unauthorized persons from the parcels, which are not leased. Coordination of ejectment-related activities is in process.

<sup>5</sup> The Waiahole Poi Factory lot and adjacent former farm stand lot, each fronting Kamehameha Highway.

<sup>6</sup> HHFDC owns an additional 17 non-rentable lots totaling 291.83 acres located outside the subdivision that are either located within the Waiahole Forest Reserve or act as buffers to the forest reserve. The Department of Hawaiian Home Lands (DHHL) owns 21 lots totaling 18.47 acres located within the subdivision; these lots were transferred to DHHL by an HHFDC predecessor agency in 1998. Finally, there are 27 exclusions to the subdivision totaling 34.10 acres, composed of 24 privately owned lots and three lots that comprise the site of Waiahole Elementary School.

- B. The public purpose of the State’s acquisition of Waiahole Valley was to preserve the rural, agricultural nature of the valley. From a practical standpoint, the purchase prevented the displacement of many long-time residents and farmers.
- C. Although notable for its historical role in preventing the urbanization of valleys along Oahu’s windward coast beyond Kaneohe and Heeia, the ownership and management of Waiahole Valley for the direct benefit of just over 100 households have long been a substantial burden on the State’s approximately 600,000 individual taxpayers.<sup>7</sup>
  - 1. The Marks Acquisition was funded using the Dwelling Unit Revolving Fund (DURF) which, at the time, was administered by the Hawaii Housing Authority (HHA, a predecessor to HHFDC). In an attempt to recoup some or all of the unanticipated \$6 million DURF cash outlay, HHA developed six concepts for post-acquisition development of the valley ranging from “almost status quo” to a possible maximum concept of 300 new residences<sup>8</sup>, expanded commercial activity, and a campground site.
    - a. The community successfully fought against development Concepts B through F. Concept A (the “almost status quo” plan) was implemented, and the DURF funds were never recovered.
    - b. Subsequent Capital Improvement Project investments for infrastructure improvements cost the State approximately \$18 million. Additionally, a total of \$11.4 million was charged to the project for General Obligation Bond interest through June 30, 2003, when the bonds were retired.
    - c. In addition to their substantial historical investments, taxpayers will soon be required to pay for improvements to the existing potable-water system that is beyond its useful life. These improvements are estimated to cost \$20 million to \$25 million.
    - d. Finally, on a pro forma basis, DURF subsidizes the valley’s operation at a cost of approximately \$1.1 million per year. Annual revenues from HHFDC’s 93 ground leases, water-service charges from its 115 portable-water system customers, and various other fees cover only about \$300,000 of the State’s approximately \$1.4 million in total annual operating expenses.
- D. Lease Portfolio Overview
  - 1. Waiahole residents and farmers paid nominal land rents for approximately two decades while infrastructure improvements were completed and ground lease terms were negotiated between HHFDC predecessor, Housing Finance and Development Corporation (HFDC), and the former Marks tenants.
  - 2. Finally, in 1998, 55-year ground leases between HFDC and former Marks tenants were executed. Pursuant to a land exchange approved by the

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<sup>7</sup> Staff acknowledges that there are various positive externalities resulting from the State’s involvement in Waiahole Valley, but attempts to value them are not practicable to undertake.

<sup>8</sup> By contrast, the developer selected by Mrs. Marks to develop Waiahole and Waikane Valleys planned to construct approximately 4,000 homes.

Board of Land and Natural Resources on October 14, 1994, HFDC was to convey to its Waiahole lands to DLNR which was, in turn, to convey a portion of the lands to DHHL. Other lands were to be managed as an agricultural park by the Department of Agriculture (DOA). DLNR eventually reneged on its Waiahole obligations under the land exchange agreement.

3. As a result, HFDC's successor HHFDC is the lessor pursuant to 93 long-term ground leases for 57 residential, 34 agricultural, and two commercial lots located within the Waiahole Valley subdivision.<sup>9</sup>
4. The ground leases commenced (with few exceptions) on June 30, 1998; provide for fixed monthly base rents through June 29, 2023; and have initial terms expiring on June 29, 2053. Each 55-year lease includes a lessee option to extend the term by an additional 20 years (to June 29, 2073) that is subject to a 51% vote of subdivision lessees to be held during the final five years of the initial term.
5. Current lease rents, which were established in 1998, are at extremely below market rates.
  - a. The median-sized residential lot is approximately 0.55 acres. The rent started at \$89.83/month in June 1998, nominally increased to \$98.16/month in June 2013, and has not changed since.
  - b. The median-sized agricultural lot is approximately four acres. The base rent payable under that lease has not changed since June 1998 and is a mere \$73.83/month.
    - i. Unlike most agricultural leases in the state of Hawaii, HHFDC's leases allows residential uses on its farm lots in return for additional base rent of \$500/year (or about \$41.67/month). This rental rate also has not changed since June 1998.
    - ii. In addition to base rent, agricultural-lot lessees also pay a nominal percentage rent equal to 0.9% of total farm sales derived from the property. In recent years, percentage rents have averaged only \$299/year per lease rent payment.

E. Contractually Required Rent Renegotiations

Each long-term ground lease provides that the base rent and agricultural-lot percentage rent for the 15-year period commencing on June 30, 2023 and ending on June 29, 2038 (the Reopening Period) are to be renegotiated between lessor and lessee. There is a second 15-year reopening period commencing on June 30, 2038 and ending on June 29, 2053.

1. Residential Lots

Under the residential-lot leases, if the parties are unable to agree upon a new lease rent by April 1, 2023, then the rent payable during the Reopening Period **shall** be determined in accordance with [HRS Section](#)

[519-2](#), which mandates arbitration as the ultimate dispute resolution mechanism.

2. Agricultural and Commercial Lots

- a. The agricultural lot-leases<sup>10</sup> specify the following factors that may be considered in determining the annual lease rent for the Reopening Period:
    - i. “*The fair rental value of the demised premises* [emphasis added] based on the use of the demised premises for residential and agricultural uses...”;
    - ii. “The historical productivity and profitability of lessee farming operations”; and
    - iii. “Other factors.”
  - b. If the parties are unable to agree upon a new lease rent by April 1, 2023, then the parties **shall** submit the issue of the **fair rental value of the demised premises** to mediation in accordance with applicable rules of mediation of the American Arbitration Association (AAA).
  - c. If the parties are not able to determine the issue of the fair rental value of the demised premises by mediation, then either lessor or lessee **may** give to the other the written notice of a desire to have the issue of the **fair rental value of the demised premises** settled by arbitration in accordance with the applicable rules of the AAA.
- F. At its special meeting on June 23, 2022, the Board approved a policy and strategy for Waiahole Valley rent renegotiations and authorized the Executive Director or her designee to negotiate reasonable, below-market lease rents for the upcoming 15-year lease period.
1. The approved Board policy acknowledges that the renegotiated lease rents will not be at levels necessary to cover HHFDC’s full operating costs for Waiahole Valley.
  2. The negotiating authority delegated by the Board, which the Executive Director in turn delegated to the Chief Planner, applies to the residential- and agricultural-lot leases only. The Board explicitly reserved its authority to approve renegotiated rents for the two commercial-lot leases.

For a more detailed discussion on the history of the State’s ownership and management of Waiahole Valley and the current lease-rent renegotiations, please refer to the approved June 23, 2022 Board action attached as **Exhibit A**.

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<sup>10</sup> The commercial lots are subject to agricultural-lot form leases.

### III. DISCUSSION

#### A. Initial Lease-Rent Offers

1. HHFDC transmitted its initial lease-rent offers (conservatively representing approximately 50% discounts to market rents based on an analysis generated by the real-estate appraisal firm Medusky & Co., Inc.<sup>11</sup>) to the 91 residential- and agricultural-lot lessees on or about July 8, 2022.
2. Lease-rent offers were transmitted to HHFDC's two commercial-lot lessees on or about January 26, 2023 due to a delay in obtaining market-rent estimates for those parcels. These initial offers represented slight discounts to market rents and, although discussed with the Board in advance, were nonbinding and made subject to Board approval.

#### B. Concluded Rent Renegotiations (22 Lessees)

##### 1. One-Off Rent Renegotiations (12 Lessees)

Rent renegotiations with eight agricultural-lot and four residential-lot leases have concluded and were completed through direct negotiations with lessees on a "one-off" basis.

1. For 10 of the leases, HHFDC's initial offers were accepted by the lessees without the necessity of negotiation.
2. For one residential-lot lease, the agreed-upon average rent over the 15-year lease period equaled the flat rent of HHFDC's initial offer. However, the lessee negotiated periodic rent step-ups, with the lease rent increasing by \$100/month in each of the beginning of Year 6 and Year 11 of the 15-year lease period.
3. For another residential-lot lease, the lessee negotiated periodic step-ups of \$100/month as described above, and the parties also negotiated an average rent over the 15-year lease period that was 17% below HHFDC's initial lease-rent proposal. Staff was agreeable to the negotiated discounted rent in part because the subject parcel is one of the largest-sized residential lots in Waiahole Valley.

##### 2. Tentative Deal with Mahiai O Waiahole (10 Agricultural-Lot Lessees)

In October 2022, a group of 10 agricultural-lot lessees who identify as "Mahiai O Waiahole" responded in a coordinated manner to HHFDC's July 2022 offers to set lease rents for the upcoming 15-year lease period. The group's general position is that the magnitude of HHFDC's initially proposed rent increases (6.6 times current rents) is not in alignment with broader State policies to promote and support local and small-scale agriculture and climate change resiliency in the state.

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<sup>11</sup> In December 2021, the Department of the Attorney General entered into an Agreement for Special Deputy Attorney General Services (the SDAG Contract) with the Honolulu law firm of Lung Rose Voss Wagnild (LRVW) to assist throughout the rent-renegotiation process. LRVW in turn subcontracted with Medusky & Co., Inc. to provide various real estate consulting services. The SDAG Contract cost is being funded by DURF.

Mahiai O Waiahole’s written counteroffers were delivered to HHFDC on or about October 11, 2022 and took an extreme position—that the lease rents should remain unchanged for the entire initial 55-year lease term and possible 20-year extended term of the leases (i.e., potentially through June 29, 2073, or a full 75 years from the lease commencement date).

Staff and Mahiai O Waiahole representatives engaged in a series of meetings and information-sharing sessions beginning in October 2022.<sup>12</sup> On March 2, 2023, the parties reached a tentative agreement regarding rents for the upcoming 15-year lease period.

a. Annual Base Lease Rent

i. Agricultural-Area Base Rent

Under the tentative agreement, **the annual rent for agricultural areas of leased premises** (i.e., areas with no residential use) **will double from \$100/acre to \$200/acre.**

For context, if the current annual rent of \$100/acre were to be inflated beginning in 1998 at an annual rate of 3%, then the average rent for the upcoming 15-year period would be approximately \$260/acre.

ii. Residential-Area Base Rent

Under the existing leases, “if there is any residential dwelling, including employee's quarters, on the demised premises, the annual base lease rent for the first 7,500 square feet shall be \$500.00.”

Under the tentative agreement, **the residential-area rent will increase by 3.3 times** to \$1,650/year (or \$137.50/month). This increase represents half of the rent-increase multiple that HHFDC negotiated with the lessee of Lot 27, a residential lot that is exactly 7,500 s.f. in size and for which the lessee agreed to HHFDC’s initial rent offer of 6.6 times the current rent.

- a) The Mahiai O Waiahole lessees feel strongly that the farmers are “on the front lines” when it comes to responding to urgent and life safety matters in Waiahole, and this is their primary argument in support of lower rents for the residential areas of their farms relative to the rents paid by residential-lot lessees.
- b) Examples of the farmers’ “front line” activities include the clearing of downed trees during extreme weather events (thereby facilitating emergency-vehicle access), rapid responses to mitigate damage from major flood events, and similar situations where the farmers use readily available equipment

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<sup>12</sup> In fact, in February 2021, staff had met to discuss the upcoming lease-rent renegotiation process with certain members of the group that would become Mahiai O Waiahole.

and machinery to provide immediate assistance and help to minimize damages that can occur while the community waits (often for an unacceptably long time) for professional first responders to arrive on the scene in Waiahole.

Additionally, under the tentative agreement, **the residential-area rent will be payable on a per-dwelling basis.** (Some agricultural-lot lessees have more than one dwelling on the premises, but the current lease structure requires no additional rent to be paid in these situations.)

b. Annual Percentage Lease Rent

Under the existing leases, lessees pay 0.9% of the gross agricultural income derived from the demised premises for the preceding calendar year ending on December 31. Under the tentative agreement, the Mahiai O Waiahole lessees have agreed to **simplify the percentage rent payment to a rounded-up one percent (1%).**

c. Financial Impact of Tentative Agreement

As noted above, the financial terms of the tentative agreement are not as favorable as the objective in HHFDC's lease rent renegotiations policy. Rather than achieving rents of 6.6 times current rents, as proposed in HHFDC's initial offers, or the lower rents that the Board determined would be acceptable on a negotiated basis, the rent multiple under the tentative agreement with the Mahiai O Waiahole lessees is approximately 3.0 times current rent. **Exhibit B** summarizes relevant data regarding HHFDC's tentative agreement with the Mahiai O Waiahole lessees.

d. Agricultural-Lot Lease Reporting

- i. Staff and the Mahiai O Waiahole lessees agree that Waiahole and the surrounding communities have a critical need to expand both agricultural production and access to related educational and economic development opportunities, especially as climate change and emerging geopolitical conflicts increase the need for isolated populations to become self-reliant.
- ii. HHFDC's Real Estate Portfolio and Compliance Section (REC) has been planning a phased implementation of a new agricultural-lot lease compliance monitoring plan since hiring new staff in July 2021 and November 2022.
- iii. While the leases do not call for any negotiation of reporting requirements, at staff's request, under the tentative deal, **the Mahiai O Waiahole lessees have agreed to provide staff with monthly summaries of notable farm activities.** These reports would contain a variety of information, such as crop planting activity, farm equipment purchases, grants applied for or awarded, and new farm-product distribution agreements. The information will be compiled by staff for

inclusion in the monthly REC Status Report to the Board. Staff expects that this documentation will provide critical data to supplement the requirements of the new compliance monitoring plan being developed.

e. Conclusion

- i. Although the financial terms of the tentative agreement with the Mahiai O Waiahole lessees fall short of the objectives set by the Board in June 2023, staff believes that these negotiated terms may be more impactful when viewed in a larger context and are in greater alignment with the State's public purpose for its acquisition of Waiahole Valley.
- ii. The Mahiai O Waiahole lessees ratified these terms at their meeting on March 3, 2023, and the lessees have agreed to gather to execute their lease amendments at a location of HHFDC's choice (such as at our corporate offices, at the offices of HHFDC's legal counsel, or at a farm in Waiahole). **This presents a unique and valuable opportunity to publicize a mutually beneficial outcome of the Waiahole Valley lease-rent renegotiations.**
- iii. Mahiai O Waiahole has represented to staff that there are at least two other like-minded agricultural-lot lessees who are interested in accepting the terms described above but, to date, have been unable to devote sufficient time discussing them with the Mahiai O Waiahole lessees.

C. Unresolved Rent Renegotiations (70 Lessees)

1. Waiahole-Waikane Community Association (the WWCA)<sup>13</sup> (41 Lessees)
  - a. HHFDC hosted a June 27, 2022 community meeting regarding the rent-renegotiation matter prior to the issuance of initial offers on or about July 8, 2022. Since that time, HHFDC and the WWCA have largely communicated through their respective legal counsel (Grant Allison of LRVW, representing HHFDC, and Dennis King of Deeley King Pang & Van Etten, representing the WWCA).
  - b. On December 23, 2022, Mr. King transmitted a letter presenting counteroffers on behalf of 27 residential-lot lessees<sup>14</sup> and which are significantly lower than the already-discounted rents initially offered by HHFDC.<sup>15</sup> The basic premise of the counteroffers is that the lease rents proposed by HHFDC are not "affordable."<sup>16</sup>

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<sup>13</sup> The WWCA is a corporation created under HRS Chapter 414D whose stated purpose is "care and representation of tenants (sic), farmers & landowners on this association and its areas; our Waiahole, Waikane community."

<sup>14</sup> The number of residential-lot lessees affiliated with the WWCA was subsequently represented to be 28 after the addition of two lessees to the group and the loss of one lessee who broke with the WWCA and settled with HHFDC.

<sup>15</sup> On March 6, 2023, Mr. King finally transmitted counteroffers on behalf of 13 agricultural-lot lessees. Neither staff nor counsel to HHFDC has had sufficient time to review the information provided.

<sup>16</sup> As mentioned above, HHFDC's initial lease-rent offers are approximately 50% below estimated market rents. The leases, which were negotiated over a period of many years before execution in 1998, contain no provision requiring that rents be "affordable."



- c. By letter dated January 20, 2023, Mr. Allison communicated HHFDC's request for a meeting between a single representative of each of HHFDC and the WWCA who has full negotiating authority, with the representatives accompanied by legal counsel, to further negotiations in the hopes that the parties can mutually agree to rent for the subject 15-year lease period.
  - i. Mr. King subsequently communicated the WWCA's rejection of the meeting request, citing meeting conditions allegedly imposed by HHFDC.
  - ii. Consistent with HHFDC's historical commitment to negotiate in good faith, staff reached out to the WWCA leadership to request a meeting without counsel present. The parties met on March 2, 2023 and held a lengthy conversation that included the topics described in Sections III.F and III.G below.

D. Commercial Lots (2 Lessees)

1. Staff met with Liko Hoe, the proprietor of the Waiahole Poi Factory, on March 2, 2023 and expects that agreement on the new rent will be reached in relatively short order.
2. The lessee of the former farm stand parcel has been nonresponsive to HHFDC's offer, and staff is attempting to follow up on the matter.

E. Other Lessees (27)

1. Fifteen (15) lessees have contacted HHFDC directly regarding the rent renegotiations, of which a handful of lessees made good-faith counteroffers that staff could not accept. Staff is in the process of re-engaging with these lessees.
2. For an additional 12 lessees, no contact has been made regarding the rent-renegotiation matter. Staff is reaching out to these parties to reaffirm HHFDC's initial offers. If the parties remain nonresponsive, staff and counsel will begin preparations for lease-rent arbitrations.

F. Extension of Time

Certain "trigger dates" relating to the lease-rent renegotiations are fast approaching. Due to the meaningful progress made in recent weeks, staff intends to provide a letter notification to certain lessees<sup>17</sup> that HHFDC is exercising its right under Paragraph 23 of the leases to extend the below trigger dates by a period of three months.<sup>18</sup>

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<sup>17</sup> Lessees who have concluded lease-rent renegotiations with HHFDC will not receive such letters. Conversely, lessees who have been nonresponsive to HHFDC regarding the lease-rent renegotiations will not be offered extensions.

<sup>18</sup> Paragraph 23 reads as follows.

"EXTENSION OF TIME. That notwithstanding any provision contained herein to the contrary, wherever applicable, the Lessor may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein. Any extension of time shall not be effective unless it is in writing and signed by Lessor."

1. Residential lot lease arbitrations commence beginning on April 1, 2023.
2. Agricultural lot lease mediations commence beginning on May 1, 2023.

Lessor's exercise of this lease provision will be made with certain appropriate conditions.

G. Subsidized Rent Program for Lessees of Demonstrable Need

1. In executive session at its August 11, 2023 regular meeting (i.e., approximately one month after HHFDC issued its initial lease-rent offers), the Board and staff first discussed the fact that certain Waiahole Valley lessees will be unable to pay increased rents of up to 6.6x times current rents, and staff has been exploring possible ways to mitigate the impact of renegotiated lease rents on lessees of limited financial means.
2. HHFDC's legal counsel has cautioned that any Subsidized Rent Program must be carefully structured so as to not taint future arbitration proceedings, which inevitably will be necessary to set new rents for lessees who refuse to engage in negotiations with HHFDC.
3. Staff suggests that HHFDC and the community form a small working group to further conceptualize a Subsidized Rent Program to be made available to lessees who can document reasonable financial need.

H. Possible Disposition Scenarios in Furtherance of the State's Public Purpose to Preserve the Rural, Agricultural Character of the Valley

1. Staff believes that there is overwhelming consensus among community members, the Executive Branch, the Legislature, and the general public as to the following statement.

**Ownership of Waiahole Valley, administration of its long-term leases, and operation and maintenance of its critical infrastructure is not a core function of HHFDC.**

2. Attempts over many years to transfer stewardship of Waiahole Valley to other State entities (DLNR, DOA, DHHL, Hawaii Community Development Authority, and Agribusiness Development Corporation) have been unsuccessful, in part because these entities would face challenges similar to those currently faced by HHFDC.
3. However, over the past decade, HHFDC has come to accept the reality of its ongoing ownership of the valley, and current and former staff have become acquainted with a growing next generation of energetic farmers and active community members in Waiahole Valley who:
  - a. Embrace new, environmentally conscientious farming practices;
  - b. Possess advanced skills necessary to secure grants and other funding sources to help build up community resources;
  - c. Promote new ideas about community building, localized economic development, and educational opportunities; and

- d. Openly espouse the need to preserve Waiahole Valley for future generations.
4. HHFDC and its lessees are contractually bound to renegotiate the rents for the upcoming 15-year lease period, and this process likely won't conclude for several years due to near-inevitability that some lessees will never engage in negotiations. That said, staff believes that the State and the community should concurrently start to organize serious discussions about a HHFDC's possible disposition of Waiahole Valley to an entity better suited for its management.

The following summarizes **just one possible disposition scenario** that has been discussed among staff.

- a. HHFDC would issue a Request for Proposals from newly formed nonprofit corporations to acquire a 99-year master ground lease of HHFDC's Waiahole lands, with the existing lessees becoming the nonprofit's sublessees. This would create a form of self-governance for Waiahole Valley.
- b. HHFDC (and perhaps another State entity) would hold a seat on the nonprofit board of directors to maintain some level of State oversight.
- c. HHFDC would offer limited DURF cash subsidies during the initial years of the master ground lease while the nonprofit implements more efficient operations and maintenance programs.
- d. Should the Honolulu Board of Water Supply decline to accept dedication of the potable water system after it is upgraded by HHFDC, ownership of the system could possibly be conveyed to the nonprofit.

#### IV. RECOMMENDATION

Staff respectfully requests that the HHFDC Board of Directors:

- A. Delegate to the Executive Director or her designee the full discretion and authority to negotiate and document new rents with all Waiahole Valley lessees (including the Mahiai O Waiahole lessees) on the terms described in Section III.B.2. above, with such authority:
  1. Premised on the expectation that staff will immediately apprise the Board of any emerging matters that warrant the Board's guidance and possible written affirmation of planned actions by staff;
  2. Immediately revocable at any time upon written notice from the Board chairperson to the Executive Director; and
  3. Not applicable to the contemplated Subsidized Rent Program, for which the Board explicitly reserves its right to review and approve such a program; and
- B. Endorse staff's efforts to work with the community to develop disposition scenarios for Waiahole Valley in furtherance of the State's public purpose to preserve the rural, agricultural character of the valley.

Attachments: Exhibit A – Approved Board Action dated June 23, 2023  
Exhibit B – Summary of Relevant Data Regarding HHFDC's Tentative  
Agreement with the Mahiai O Waiahole Lessees.

Prepared by: Chris Woodard, Chief Planner \_\_\_\_\_

**FOR ACTION<sup>1</sup>****I. REQUEST**

Approve a Policy and Strategy for Lease Rent Renegotiations for the Waiahole Valley Agricultural Park and Residential Lots Subdivision Located in Waiahole, Koolaupoko, Oahu, TMK Nos.: (1) 4-8 (various)

**II. FACTS**

Project: Waiahole Valley Agricultural Park and Residential Lots Subdivision  
Location: Waiahole, Koolaupoko, Oahu  
Project Type: Agricultural and Residential Subdivision  
TMK Nos.: (1) 4-8 (various)  
Zoning: AG-2 (General Agricultural District) and P-1 (Restricted Preservation District). Hawaii Revised Statutes (HRS) Chapter 359G development exemptions were obtained through Honolulu City Council Resolution 86-148.  
Trust Land Status: Lands acquired after August 20, 1959 and Section 5(b) lands of the Hawaii Admission Act (i.e., ceded lands)  
Lot Summary:

Type <sup>2</sup>	No.	Acres	Leased
Residential	65	44.185	84.6%
Agricultural	39	348.625	89.7%
Non-rentable <sup>3</sup>	14	194.325	N/A
Market Rate	2	7.973	0.0% <sup>4</sup>
Commercial <sup>5</sup>	2	0.711	100.0%
Total <sup>6</sup>	122	595.819	N/A

Lessor: Hawaii Housing Finance and Development Corporation (HHFDC)  
Property Manager: HHFDC

- A. HHFDC owns in fee simple 122 lots totaling approximately 596 acres within the Waiahole Valley Agricultural Park and Residential Lots Subdivision located in Waiahole, Koolaupoko, Oahu.

<sup>1</sup> This document serves to amend staff's submission relating to agenda item II.A titled "Discussion and Possible Action on a Policy and Strategy for Lease Rent Renegotiations for the Waiahole Valley Agricultural Park and Residential Lots Subdivision Located in Waiahole, Koolaupoko, Oahu, TMK Nos.: (1) 4-8 (various)".

<sup>2</sup> Designation per the Declaration of Restrictive Covenants for Waiahole Valley Agricultural Park and Residential Lots Subdivision and Homestead Road Lands.

<sup>3</sup> Includes lots for open spaces, roadways, water system infrastructure, a Waiahole Stream floodway, and the Waianu Stream Bridge.

<sup>4</sup> Not leased but occupied without HHFDC consent.

<sup>5</sup> The Waiahole Poi Factory lot and adjacent former farm stand lot fronting Kamehameha Highway.

<sup>6</sup> HHFDC owns an additional 17 non-rentable lots totaling 291.83 acres located outside the subdivision which are either located within the Waiahole Forest Reserve or act as buffers to the forest reserve. The Department of Hawaiian Home Lands (DHHL) owns 21 lots totaling 18.47 acres located within the subdivision; these lots were transferred to DHHL by an HHFDC predecessor agency in 1998. There are 27 exclusions to the subdivision totaling 34.10 acres, composed of 24 privately owned lots and three lots that comprise the site of Waiahole Elementary School.



1. Most of the lands were purchased in 1977 from Elizabeth Loy McCandless Marks by the Hawaii Housing Authority (the HHA, a predecessor to HHFDC) under threat of condemnation (the Marks Acquisition).
  - a. The public purpose of the Marks Acquisition was to preserve the rural, agricultural character of the valley.
  - b. The remainder of the lands are ceded lands and were acquired in 1993 from the Department of Land and Natural Resources (DLNR) pursuant to Act 330, Session Laws of Hawaii 1993 (Act 330).
2. After the Marks Acquisition, HHA contemplated moderate-scale development of Waiahole Valley to recoup the investment made by the Dwelling Unit Revolving Fund (DURF). Met with community resistance, HHA shifted to a limited development plan and, pursuant to HRS Chapter 359G (similar to the current Chapter 201H), applied for and received exemptions from City and County of Honolulu requirements relating to planning, zoning, construction standards for subdivisions, development, and improvement of land and the construction of units thereon.
  - a. Subdivision improvements included improvements to roads, stream appurtenances, drainage systems, and utilities in addition to the construction of the Waiahole Water System (the WWS) to provide potable water service. Notably, Council Resolution 86-148, which authorized the subdivision's development exemptions under HRS Chapter 359G, requires that the State of Hawaii maintain and operate the WWS.
  - b. All subdivision lots have vehicular access and potable water service (the latter provided by either the WWS or the City and County of Honolulu Board of Water Supply). Nearly all lots have electricity and landline telecommunications service. Many lots also have stream access, auwai access, and/or piped non-potable water service provided by the McCandless System<sup>7</sup>. There is no public sanitary sewer service on Oahu's windward side north of Ahuimanu, and so sewage disposal in Waiahole is via cesspool or septic system.

A project location map is attached as **Exhibit A**, and a subdivision map is attached as **Exhibit B**.

#### B. Ground Leases Overview

1. HHFDC is the lessor pursuant to 93 long-term ground leases for residential (57), agricultural (34), and commercial (2) lots located within the Waiahole subdivision.<sup>8</sup> The leases commenced on June 30, 1998<sup>9</sup>, have fixed monthly base rents through June 29, 2023, and have initial

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<sup>7</sup> The McCandless system serves at least 15 lots located from the top of the north branch of Waiahole Valley Road to Kamehameha Highway and is supplied by untreated water from Waianu Stream. The State abandoned the system when it developed the potable WWS, but it continues to be used and maintained by members of the Waiahole Valley community.

<sup>8</sup> An additional two long-term ground leases are pending execution: one for a residential lot to be leased to a former DLNR permittee to satisfy HHFDC's obligations under Act 330, and one for an agricultural lot to an individual who signed an interim tenancy agreement in 1983 but never executed a long-term lease.

<sup>9</sup> There are a handful of exceptions for various, unnotable reasons.



terms expiring on June 29, 2053 (55 years). The agreements include an option to extend the lease term by an additional 20 years subject to a 51% vote of the lessees to be held during the final five years of the initial term.

2. Nearly all the leases contain the following language:

“Lessee understands and unconditionally agrees that Lessee’s equity in this Lease and/or the improvements and crops on the demised premises shall not exceed the “Lessee’s Equity”, which is defined as the fair market value of Lessee’s improvements and crops on the demised premises.

If Lessee shall sell or assign this Lease for a consideration (whether in cash or in kind) in excess of Lessee’s Equity, the excess shall belong to and be paid in cash immediately to Lessor. Lessee and Lessee’s assignee shall be jointly and severally liable for the payment of such excess consideration to Lessor.”

Due to the above terms, financial institutions will not accept HHFDC’s Waiahole leases as security for conventional mortgage loans.<sup>10</sup> Essentially, these leases function as long-term use permits.<sup>11</sup>

C. Residential Lots Overview

1. Lot Characteristics

The 64 residential lots range in size from 7,500 square feet (s.f.) to 1.44 acres in size, with an average size of approximately one-half acre. The lots tend to be rectangular in shape, have a relatively flat topography, and are generally concentrated in the lower half of the valley.

2. Current Lease Rents

With one exception<sup>12</sup>, current annual rent for the leased residential lots is \$600 plus \$0.035/s.f. for any lot area over 7,500 s.f. The current average monthly lease rent is \$119.

3. Residential Use

Lessees must use the premises for the placement of a single-family dwelling and must use such dwelling as lessee’s principal dwelling. See Section 8 of the sample lease attached as **Exhibit C** for additional detail.

<sup>10</sup> There are seven exceptions in which cases the leases were amended in the mid-2000s to provide for the financing and construction of self-help homes. Upon signing of the amendments, the lessees paid cash to acquire financeable leasehold interests, with the payments almost wholly financed by an HHFDC predecessor agency.

<sup>11</sup> As an example, a lot with no improvements cannot be sold for any consideration (i.e., the leasehold has no monetary value). By contrast, under a traditional ground lease the same lot would have monetary value based in part on the remaining lease term and rental rate.

<sup>12</sup> The exception is a lease that was not signed until 2014, and therefore the current rent includes payment of back rent from June 30, 1998 through the lease execution date.

D. Agricultural Lots Overview

1. Lot Characteristics

The 39 agricultural lots range in size from 1.56 acres to 57.50 acres in size, with an average size of 8.03 acres. The lots vary considerably in shape, topography, and soil composition, among other characteristics.

2. Current Lease Rents

Current annual base rent for the leased agricultural lots is \$100 per acre, with additional annual base rent of approximately \$500 if there is a residential use on the lot.<sup>13</sup> Furthermore, on a calendar year basis, lessees pay percentage rent equal to 0.9% of gross agricultural income derived from the lot. See page 4 of the sample lease attached as **Exhibit D** for additional detail.

The current average monthly base rent for the leased agricultural lots is \$110. Percentage rent collected in recent fiscal is summarized in **Table 1**.

**Table 1: Recent Historical Percentage Rent Collections**

Fiscal Year	Payments Received	Gross Agricultural Income	Total Percentage Rent	Average Percentage Rent Amount
2019	16	\$ 20,924	\$ 3,013	\$ 188
2020	6	15,037	812	135
2021	8	71,431	5,143	643
2022	10	33,033	2,973	297
Average	10	\$ 35,106	\$ 2,985	\$ 299

3. Agricultural Use

Lessees must qualify as a farmer and:

1. Personally use and operate the property for diversified agricultural purposes; and
2. Either:
  1. Devote at least one-third of the lessee’s time and also derive at least one-third of the lessee’s net annual cash income as reported on the lessee’s federal and state tax returns from direct participation in diversified agriculture on the property; or
  2. Use substantially all of the property for diversified agricultural uses as a trade or business (and not as a hobby). The property must remain in continuous cultivation except for the normal fallow period as required by standard agriculture practices.

<sup>13</sup> With few exceptions, the agricultural lots have residential uses.



Up to a 7,500 s.f. portion of the lot may be used for residential purposes as lessee's principal dwelling and/or as farm employees' quarters.

See Section 8 of the sample lease attached as **Exhibit D** for additional detail.

E. Commercial Lots Overview

1. Lot Characteristics

The subdivision's two commercial lots are located at the southwest intersection of Waiahole Valley Road and Kamehameha Highway. The Waiahole Poi Factory lot is 18,686 s.f. in size, and the leased but unoccupied former farm stand lot is 12,280 s.f. in size. Both parcels are significantly under-parked for commercial use.

2. Current Lease Rents

While encumbered by the same form of lease that encumbers the agricultural lots, the current base rent for the Waiahole Poi Factory lot is at a higher rate of \$160 per month based on mutual agreement prior to lease signing in 1998. The lessee's annual percentage rent payments for the three, most-recent fiscal years have averaged \$8,052.

The former farm stand lot is also encumbered by the standard form agricultural lease, and as a result the current base rent is \$2.35 per month (*i.e.*, \$100 per acre annually). No percentage rent payments have been received for many years.

F. Lease Rent Renegotiation Terms

Each lease provides that the base rent and agricultural lot percentage rent for the 15-year period commencing on June 30, 2023 and ending on June 29, 2038 (the Reopening Period) are to be renegotiated between lessor and lessee. There is a second 15-year reopening period commencing on June 30, 2038 and ending on June 29, 2053.

The leases provide that HHFDC and lessee shall begin renegotiations regarding the new annual lease rent on June 29, 2022 (*i.e.*, next week).

1. For the residential lot leases, if the parties are unable to agree upon a new lease rent by April 1, 2023, then the rent payable during the Reopening Period shall be determined in accordance with HRS Section 519-2, which is attached as **Exhibit E** and has arbitration as the ultimate dispute resolution mechanism. The related rules promulgated in 2005, Hawaii Administrative Rules Chapter 17-105, are attached as **Exhibit F**.

See page 4 of the sample lease attached as **Exhibit C** for additional detail.

2. For the agricultural lot leases, if the parties are unable to agree upon a new lease rent by April 1, 2023, then the parties shall submit the issue of the fair rental value of the demised premises to mediation in accordance with applicable rules of mediation of the American Arbitration Association (AAA). If the parties are not able to determine the issue of the fair rental value of the demised premises by mediation, then either lessor or lessee may give to the other written notice of a desire to have the issue of the fair



rental value of the demised premises settled by arbitration in accordance with the applicable rules of the AAA.

See page 4 of the sample lease attached as **Exhibit D** for additional detail.

G. Strategic Plan

In 2017, HHFDC embarked on a strategic planning process for Waiahole Valley that is intended to address longstanding issues such as historical net operating losses, substandard housing conditions, low agricultural lot utilization, long-term lot vacancies, water system deficiencies, and the upcoming lease rent renegotiations.

1. A proposed Waiahole Valley Community Strategic Plan prepared by HHFDC's consultant SMS Research & Marketing Services, Inc. (SMS) was presented to the Board for approval at its March 14, 2019 regular meeting. Approval of the plan was deferred to enable staff to further engage the Waiahole Valley community and reach consensus on a plan.
2. An alternative strategic plan was prepared under the auspices of the Waiahole-Waikane Community Association (the WWCA)<sup>14</sup> and presented to the Board at its June 13, 2019 regular meeting.
  - a. The WWCA plan was largely a critique of the SMS/HHFDC plan.
  - b. At the meeting, the Board formed the Waiahole Community Strategic Plan Subcommittee.<sup>15</sup>
3. In November 2019, HHFDC contracted with Townscape, Inc. to perform additional strategic planning work. The Covid-19 pandemic made this work particularly challenging due to the restrictions on gathering, and the contract has ended.

H. Recent Events

1. On October 5, 2020, staff attended a virtual community meeting hosted by the WWCA and gave a presentation regarding lease rent renegotiations, among other topics.
2. In March 2021, the WWCA sent a letter to Townscape, Inc. indicating that it was being advised by the Honolulu law firm of Deeley King Pang & Van Etten regarding the lease rent renegotiation process. See **Exhibit G**.
3. On April 29, 2021, HHFDC held a virtual community meeting regarding lease rent renegotiations. The purpose was to present to the lessees a general overview of the process and HHFDC's best estimate on a timeline. Known attendance for the meeting was 34 persons in addition to eight HHFDC staff members.

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<sup>14</sup> Incorporated in 2006, the WWCA is a Hawaii nonprofit corporation whose stated purpose is "care and representation of tenants (sic), farmers & landowners on this association and its areas; our Waiahole, Waikane community". The current organization descends from a community organization formed in the 1970s. According to the current WWCA President, just over half of HHFDC's lessees are members in good standing.

<sup>15</sup> Due to changes in the Board's composition, the subcommittee was disbanded and reconstituted with new members at the Board's June 10, 2021 regular meeting. The subcommittee was dissolved at the Board's January 13, 2022 regular meeting.



4. On December 29, 2021, the Department of the Attorney General entered into an Agreement for Special Deputy Attorney General Services (the SDAG Contract) with the Honolulu law firm now known as Lung Rose Voss & Wagnild (Lung Rose) to provide advice and legal services relating to the Waiahole lease rent renegotiations.
  5. Under the SDAG Contract, Lung Rose engaged Medusky & Co., Inc. to value (using a measured approach supported by market data) selected, representative properties for the purpose of establishing annual lease rents.
- I. The Board held preliminary discussions on the subject matter at its regular meetings on February 10, 2022, May 12, 2022, and June 9, 2022. Staff conducted outreach to the Waiahole Valley lessees to inform them of the June 9, 2022 meeting and the June 23, 2022 special meeting, encouraging attendance at the meetings and the submittal of testimony.

### III. DISCUSSION

#### A. The State's Historical Investment and Net Operating Losses

The acquisition of, and subsequent infrastructure improvements to, Waiahole Valley were undertaken at considerable costs to the State. Furthermore, administration of the ground leases, management of the lands, and the operation and maintenance of the WWS have long been a collective cash drain on DURF.

1. DURF is primarily used to fund the development of new affordable housing units by providing interim and permanent loans to developers, and also financing regional infrastructure projects in conjunction with the counties, private landowners, and developers.
2. The ongoing required capital investment and net operating losses related to HHFDC's Waiahole Valley lands have diverted monies that would have otherwise been used for new affordable housing projects throughout the state.

#### 3. Marks Acquisition and Subdivision Development Costs

The State's historical investment in Waiahole Valley (including the Marks Acquisition, the subsequent infrastructure improvements, and later capital expenditures) totals approximately \$17.33 million in nominal terms. Not included in this total is \$1.20 million of WWS construction-in-progress funded by DURF.

- a. Due to a funding shortfall, the WWS was not constructed according to its original design and, as a result, suffers related, inherent deficiencies. The system also suffered significant damage during the March 2021 floods.
- b. Currently, HHFDC is making improvements to the WWS to extend its useful life until approximately 2032. Concurrently, plans are progressing on an upgrade to the WWS to Honolulu Board of Water Supply (BWS) standards to allow for possible dedication.
  - i. The upgrade to BWS standards is anticipated to cost up to \$20 million and will need to be funded by DURF, as the



Legislature has not been inclined to provide Capital Improvement Project funds for the WWS.

- ii. While an entity such as BWS can amortize and recoup capital expenditures through water-service charges due to its large scale, HHFDC is unable to feasibly do the same as the WWS has only approximately 120 service connections.

4. Net Operating Losses

HHFDC's land and infrastructure management activities in Waiahole Valley generate an annual operating loss of approximately \$1.1 million on a pro forma basis. Note that the pro forma assumes that HHFDC will adopt the proposed Chapter 15-319, Hawaii Administrative Rules, "Water Service to Consumers," which in part raises water-service charges. See **Exhibit H**.

B. Waiahole Valley Rent Renegotiation Policy

It is recommended that HHFDC adopt the following policy to guide the Waiahole Valley rent negotiations over the next year.

1. To the extent possible, HHFDC will treat all lessees equally. To the extent that it is neither practicable nor advantageous to HHFDC to treat all lessees equally, they will be treated equitably.<sup>16</sup>
2. The overall goal of the negotiations is to significantly reduce or eliminate HHFDC's ongoing losses on its Waiahole Valley operations, while also meeting HHFDC's community objectives and social goals.
3. In accordance with the leases, HHFDC will only negotiate the new base rent and new percentage rent (agricultural and commercial lots only). No other lease terms will be open to negotiation.
4. HHFDC will only negotiate directly with lessees or their duly appointed representatives. Lessee representatives must be appointed in writing. If a lessee is a tenant by the entirety, a joint tenant, or a tenant in common, then all individual parties must sign the written appointment of representative.

C. Base rents for HHFDC's Waiahole Valley ground leases would have to increase by a factor of nine (9) to cover its operating costs.<sup>17</sup> This would mean an average monthly rent of \$1,073 for residential lots and \$992 for agricultural lots.

1. While such rents are supported by market data and likely achievable through arbitration (albeit with significant arbitration-panel, legal, and expert-witness costs), the State's public purpose of the Marks Acquisition, which was "to preserve the rural, agricultural nature of the valley" needs to be taken into consideration.
2. If the Board adopts the policy recommended in Section III.B, then staff suggests that HHFDC's measurable objective for the rent renegotiations

<sup>16</sup> According to Merriam-Webster, *equality* is defined as "the quality or state of being equal," while *equity* is defined as "fairness or justice in the way people are treated."

<sup>17</sup> No consideration is given to recovery of HHFDC's ongoing capital investments and the related costs of capital.



EXHIBIT A

1. Most of the lands were purchased in 1977 from Elizabeth Loy McCandless Marks by the Hawaii Housing Authority (the HHA, a predecessor to HHFDC) under threat of condemnation (the Marks Acquisition).	
a.	The public purpose of the Marks Acquisition was to preserve the rural, agricultural character of the valley.
	b. The remainder of the lands are ceded lands and were acquired in 1993 from the Department of Land and Natural Resources (DLNR) pursuant to Act 330, Session Laws of Hawaii 1993 (Act 330).
2. After the Marks Acquisition, HHA contemplated moderate-scale development of Waiahole Valley to recoup the investment made by the Dwelling Unit Revolving Fund (DURF). Met with community resistance, HHA shifted to a limited development plan and, pursuant to HRS Chapter 359G (similar to the current Chapter 201H), applied for and received exemptions from City and County of Honolulu requirements relating to planning, zoning, construction standards for subdivisions, development, and improvement of land and the construction of units thereon.	
a.	Subdivision improvements included improvements to roads, stream apertures, drainage systems, and utilities in addition to the construction of the Waiahole Water System (the WWS) to provide potable water service. Notably, Council Resolution 86-148, which authorized the subdivision's development exemptions under HRS Chapter 359G, requires that the State of Hawaii maintain and operate the WWS.
	b. All subdivision lots have vehicular access and potable water service (the latter provided by either the WWS or the City and County of Honolulu Board of Water Supply). Nearly all lots have electricity and landline telecommunications service. Many lots also have stream access, auwai access, and/or piped non-potable water service provided by the McCandless System <sup>7</sup> . There is no public sanitary sewer service on Oahu's windward side north of Ahumahu, and so sewage disposal in Waiahole is via cesspool or septic system.
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1. HHFDC is the lessor pursuant to 93 long-term ground leases for residential (57), agricultural (34), and commercial (2) lots located within the Waiahole subdivision. <sup>8</sup> The leases commenced on June 30, 1998 <sup>9</sup> , have fixed monthly base rents through June 29, 2023, and have initial	
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The 39 agricultural lots range in size from 1.56 acres to 57.50 acres in size, with an average size of 8.03 acres. The lots vary considerably in shape, topography, and soil composition, among other characteristics.

2. Current Lease Rents

Current annual base rent for the leased agricultural lots is \$100 per acre, with additional annual base rent of approximately \$500 if there is a residential use on the lot.<sup>13</sup> Furthermore, on a calendar year basis, lessees pay percentage rent equal to 0.9% of gross agricultural income derived from the lot. See page 4 of the sample lease attached as **Exhibit D** for additional detail.

The current average monthly base rent for the leased agricultural lots is \$110. Percentage rent collected in recent fiscal is summarized in **Table 1**.

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EXHIBIT A

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a. The WWC plan was largely a critique of the SMS/HHFDC plan.

b. At the meeting, the Board formed the Waiahole Community Strategic Plan Subcommittee.<sup>15</sup>

3. In November 2019, HHFDC contracted with Townscape, Inc. to perform additional strategic planning work. The Covid-19 pandemic made this work particularly challenging due to the restrictions on gathering, and the contract has ended.

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1. On October 5, 2020, staff attended a virtual community meeting hosted by the WWC and gave a presentation regarding lease rent renegotiations, among other topics.

2. In March 2021, the WWC sent a letter to Townscape, Inc. indicating that it was being advised by the Honolulu law firm of Deeley King Pang & Van Etten regarding the lease rent renegotiation process. See **Exhibit G**.

3. On April 29, 2021, HHFDC held a virtual community meeting regarding lease rent renegotiations. The purpose was to present to the lessees a general overview of the process and HHFDC's best estimate on a timeline. Known attendance for the meeting was 34 persons in addition to eight HHFDC staff members.

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2. The overall goal of the negotiations is to significantly reduce or eliminate HHFDC's ongoing losses on its Waiahole Valley operations, while also meeting HHFDC's community objectives and social goals.
3. In accordance with the leases, HHFDC will only negotiate the new base rent and new percentage rent (agricultural and commercial lots only). No other lease terms will be open to negotiation.
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1. While such rents are supported by market data and likely achievable through arbitration (albeit with significant arbitration-panel, legal, and expert-witness costs), the State's public purpose of the Marks Acquisition, which was "to preserve the rural, agricultural nature of the valley" needs to be taken into consideration.
2. If the Board adopts the policy recommended in Section III.B, then staff suggests that HHFDC's measurable objective for the rent renegotiations

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<sup>17</sup> No consideration is given to recovery of HHFDC's ongoing capital investments and the related costs of capital.



might not be to cover 100% of its Waiahole Valley operating costs. Rather, to align with community objectives and social goals and in furtherance of the public purpose of the Marks Acquisition, staff recommends that the Board authorize the Executive Director or her designee to negotiate fair and reasonable lease rents that may be lower than the levels necessary to cover HHFDC's full operating costs for Waiahole Valley.

- D. A summary of upcoming events relating to the Waiahole Valley lease rent renegotiations is presented in **Table 2**.

**Table 2: Upcoming Lease Rent Renegotiation Events**

<u>Event</u>	<u>Date</u>
Community Meeting	June 27, 2022
Lease Rent Negotiations Commence	June 30, 2022
Written Lease Rent Offers Delivered to Lessees	Week of July 3, 2022
New Lease Rents Take Effect	June 30, 2023

#### IV. RECOMMENDATION

Staff's recommendation is that the Board:

- A. Approve the following actions relating to upcoming lease rent renegotiations for the Waiahole Valley Agricultural Park and Residential Lots Subdivision located in Waiahole, Koolauoko, Oahu, TMK Nos.: (1) 4-8 (various):
1. The adoption of the rent renegotiation policy described herein; and
  2. The adoption of the rent renegotiation strategy discussed when the Board convened in executive session at its special meeting on June 23, 2022; and
- B. Authorize the Executive Director or her designee to undertake all tasks necessary to effectuate the purposes of this For Action, including but not limited to the negotiation of Waiahole Valley lease rents and the legal documentation thereof, and any actions relating thereto; provided that final agreement and documentation of lease rents for the two commercial lots will be subject to Board approval.

Attachments: Exhibit A – Project Location Map  
 Exhibit B – Subdivision Map  
 Exhibit C – Sample Residential Lot Lease  
 Exhibit D – Sample Agricultural Lot Lease  
 Exhibit E – Hawaii Revised Statutes Section 519-2  
 Exhibit F – Hawaii Administrative Rules Chapter 17-105  
 Exhibit G – WWCA Letter to Townscape, Inc. dated March 11, 2021  
 Exhibit H – Pro Forma Net Operating Loss

Prepared by: Chris Woodard, Chief Planner



**Approved by The Board of Directors at its meeting  
 on JUNE 23, 2022**

**PLANNING, EVALUATION & COMPLIANCE BRANCH**

**Please take necessary action.**

For Action – June 23, 2022



**EXECUTIVE DIRECTOR**

Page 9 of 9

**EXHIBIT A**

PROJECT LOCATION MAP

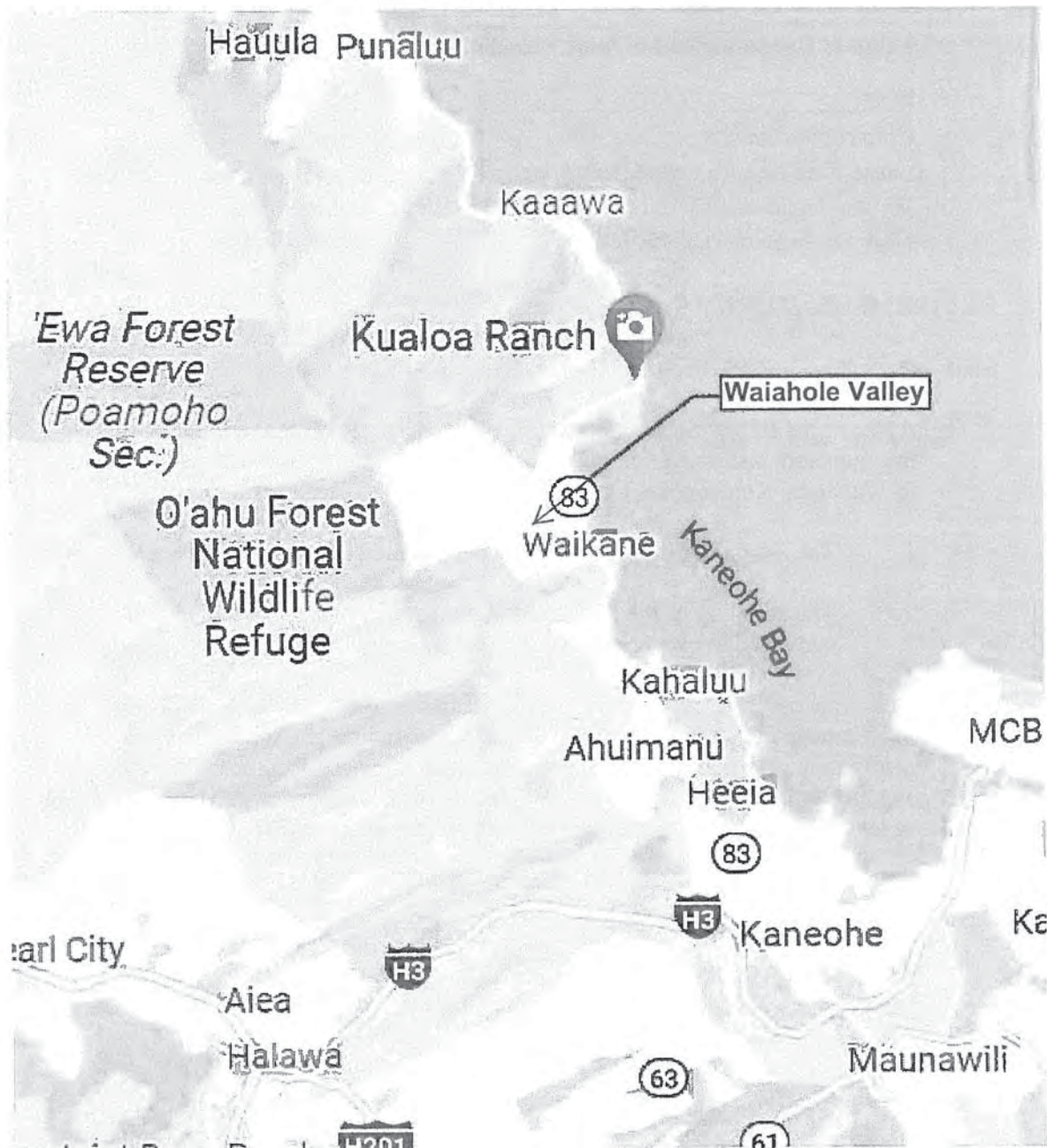
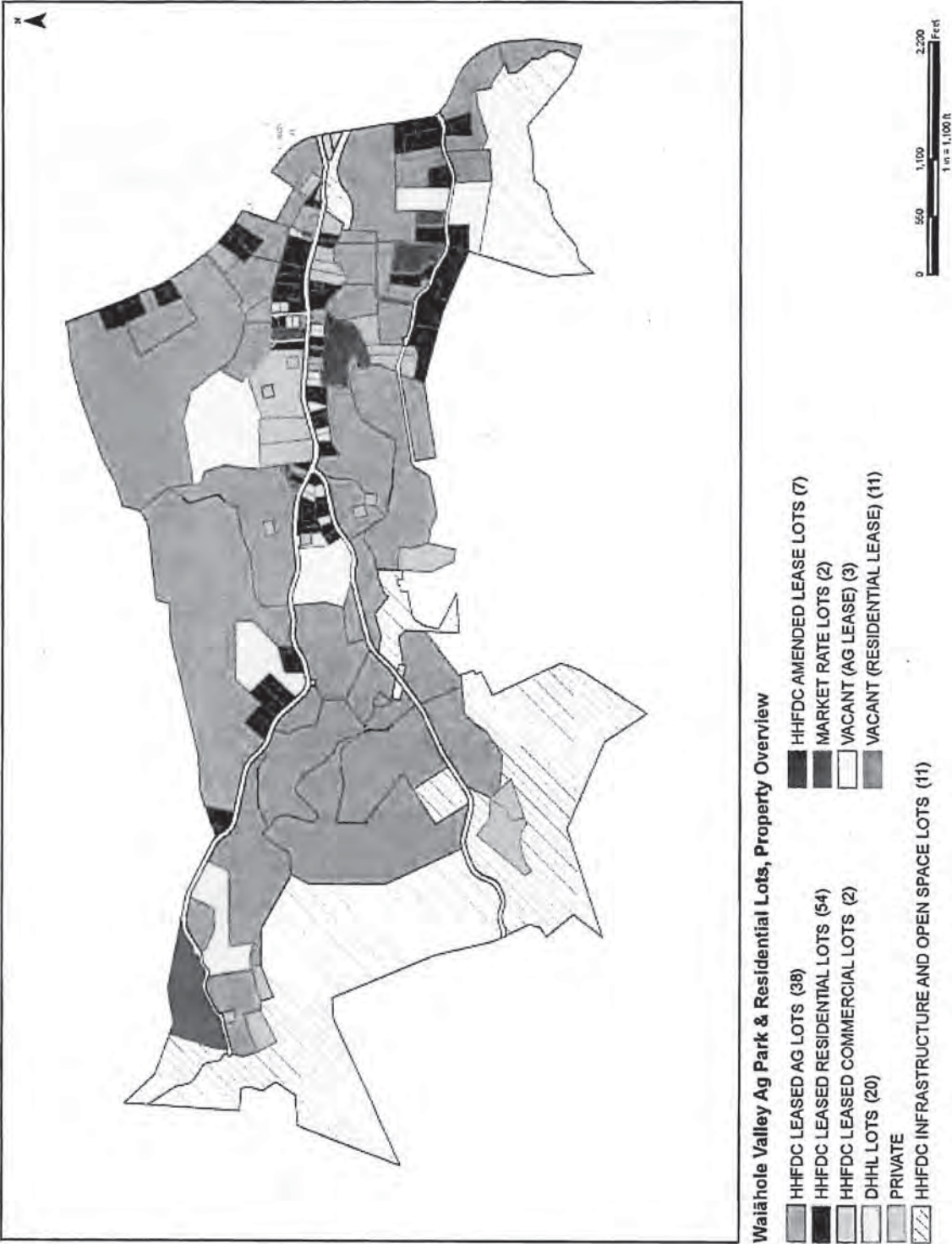


EXHIBIT A  
EXHIBIT A



SUBDIVISION MAP



I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances.

[Signature]  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii

R-743

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JUN 12 1998 08:02 AM

Doc No(s) 98-084615

/s/ CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES  
CONVEYANCE TAX: \$11.50

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Housing Finance and Development Corporation  
677 Queen Street - 3rd Floor  
Honolulu, Hawaii 96813  
Attention: Roy S. Oshiro, Exe

Lot # 63 (Res)

sc

PROPERTY DESCRIPTION

Leles, Kathleen

T NO.

T NO.  
CERTIFICATE OF

TITLE NO:

Land Court ( ) Regular (X) Double ( )

STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE  
HOUSING FINANCE AND DEVELOPMENT CORPORATION  
WAIAHOLE VALLEY AGRICULTURAL PARK  
AND RESIDENTIAL LOTS SUBDIVISION AND HOMESTEAD ROAD LAND

RESIDENTIAL LOT GROUND LEASE

THIS INDENTURE made this 1st day of June 1998, by and between

HOUSING FINANCE AND DEVELOPMENT CORPORATION  
a public body and a body corporate and politic of the State of Hawaii  
677 Queen Street - 3rd Floor  
Honolulu, Hawaii 96813

hereinafter called "Lessor", and

RESLEASE.DOC

EXHIBIT C

EXHIBIT A

Nov. 28 1998

Kathleen Kanuni Kelepine Lelen, wife of William Henry Lelen  
Tracy Lee Kuhealani Hoapili, wife of Sean Leialoha Hoapili  
Inola Gaye Kahiwalani Lelen, unmarried  
all of whose residence and post office address is 48-253 A Waiahole Valley Road,  
Kaneohe, Hawaii 96744.

as (check applicable box)

☐ tenants by the entirety

☐ tenants in common

☒ as joint tenants with full rights of survivorship ☐ as tenant in severalty

hereinafter called "Lessee".



**WITNESSETH:**

That Lessor, in consideration of the rent hereinafter reserved and the covenants herein contained and on the part of Lessee to be observed and performed, does hereby demise and lease unto Lessee and Lessee does hereby accept and rent: All that certain land described in Exhibit "A" attached hereto and incorporated herein by reference and made a part of this Lease, "AS IS" and without any express or implied warranties of habitability or fitness for any particular purpose and subject to all risks incidental to its use.

**SUBJECT** to all easements shown on the map (if any) hereto attached or above referred to, and reserving unto Lessor within said easements rights-of-way and the right to grant to any public utility or governmental authority such rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and similar public services and utilities, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines.

**SUBJECT FURTHER** to the following: 1) the Declaration of Restrictive Covenants for Waiahole Valley Agricultural Park and Residential Lots And Homestead Road Lands, dated September 15, 1995 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-124918 and/or in the Office of the Registrar of the Land Court of the State of Hawaii as Document No. 2262857 and noted on Certificate of Title Nos. 380.204, 380.205 and 195.898, incorporated by reference; 2) the First Supplemental Declaration of Restrictive Covenants of Waiahole Valley Agricultural Park and Residential Lots Subdivision and Homestead Road Lands, dated January 22, 1996, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-012417 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2287002, incorporated by reference and made part of this Lease, collectively referred to as the "Master DCC&Rs"; and 3) the Memorandum of Declaration of Covenants, Conditions and Restrictions of Waiahole Valley Agricultural Park and Residential Lots Subdivision and Homestead Road Lands, which will be recorded with the lease, attached hereto as Exhibit "B" and incorporated by reference and made part of this Lease.

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

(1) All minerals as hereinafter defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in general construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. Provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph just compensation shall be paid to the Lessee for any of Lessee's improvements taken during the term of this Lease; (2) All archaeological and historic sites and remains found on the demised premises shall belong to Lessor under the laws of the State of Hawaii. Lessee shall preserve and protect and shall not disturb any archaeological and historic sites and remains on the demised premises; and (3) Pursuant to Section 171-36(a) (8), Hawaii Revised Statutes, mineral and metallic rights and surface and ground water shall be reserved to the State.

**TO HAVE AND TO HOLD** the demised premises together with the rights, easements, privileges and appurtenances thereunto belonging and appertaining, unto the Lessor for a term:

Commencing on:	June 30, 1998
Ending on:	June 29, 2053

unless sooner terminated as hereinafter provided, the Lessor reserving certain rights and interests and the Lessee yielding and paying to the Lessor at the principal office of Lessor, an annual lease rent in the amount computed and payable on the dates specified below, without notice or demand by the Lessor.

Amended Waiahole Residential Lot Lease

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**EXHIBIT C**

**EXHIBIT A**



#### Schedule of Rents

A	B	C	D	E	F
Lease Period	Lease Years	Lease Rent Each Year for up to 7,500 Square Feet	Additional Lease Rent Each Year for Each Square Foot Over 7,500 Square Feet	Annual Lease Rent	Monthly Lease Rent (E/12)
1	1-15	\$500.00	\$0.035	\$679.17	\$56.60
2	16-25	\$600.00	\$0.035	\$719.17	\$59.93
3	26-40	*	*	*	*
4	41-55	*	*	*	*

\* means to be determined in the manner described below

The annual lease rent shall be paid in equal monthly installments in advance on or before the first working day of each month.

One year prior to the expiration of Lease Periods 2 and 3, respectively, Lessor and Lessee shall begin renegotiation of the new annual lease rent and new additional lease rent to be paid for Lease Periods 3 and 4, respectively. If ninety days prior to the expiration of Lease Periods 2 and 3, respectively, Lessor and Lessee are unable to agree upon a new annual lease rent and new additional lease rent, if applicable, then the annual lease rent payable during Lease Period 3 or Lease Period 4, as the case may be, shall be determined in accordance with HRS Section 519-2.

Whenever the fixing of rent is under arbitration, Lessee, pending the determination thereof, shall continue to pay the same rent which Lessee had been paying during the last preceding Lease Period and shall promptly pay the deficiency, if any, plus simple annual interest at the legal rate upon the conclusion of the arbitration proceedings.

If the lease rent payable for any period or time is less than a full calendar year or other period of time, as the case may be, the lease rent for such period of time shall be prorated.

AND LESSOR hereby covenants with Lessee that upon payment of the rent as aforesaid and upon observance and performance of the covenants by Lessee hereinafter contained, Lessee shall peaceably hold and enjoy said premises for the term hereby demised without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through or under it except as herein expressly provided.

AND LESSEE hereby covenants with Lessor as follows:

1. **PAYMENT OF RENT.** Lessee will pay or cause to be paid said rent in lawful money of the United States of America at the times and in the manner aforesaid, without any deduction and without any notice or demand, at the office of Lessor or Lessor's duly designated agent.

2. **TAXES AND ASSESSMENTS.** Lessee shall pay or cause to be paid at least ten days before the same become delinquent all real property taxes and assessments of every description to which said premises or any part thereof or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable, whether assessed to or payable by Lessor or Lessee, except that such taxes shall be prorated between Lessor and Lessee as of the dates of commencement and expiration respectively of said term; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments together with interest as shall become due and payable during said term.

EXHIBIT C

EXHIBIT A



3. **PAYMENT OF RATES AND OTHER CHARGES.** Lessee will pay before the same become delinquent all charges, duties, rates and other outgoings of every description to which said premises or any part thereof or any improvement thereon, or Lessor or Lessee in respect thereof, may during said term be assessed or become liable for electricity, gas, refuse collection, telephone, sewage disposal, water or any other utilities or services, whether made by governmental authority or public or community service company and whether assessed to or payable by Lessor or Lessee.

4. **IMPROVEMENTS REQUIRED BY LAW.** Lessee will at Lessee's own expense during the whole of said term make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and other areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the demised premises or any part thereof.

5. **OBSERVANCE OF LAWS.** Lessee will at all times during said term keep said premises in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to said premises or any improvement thereon or use thereof, and affecting said premises, and will indemnify Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of said laws, ordinances, rules and regulations or of this covenant.

6. **REPAIRS TO IMPROVEMENTS.** Lessee will, at Lessee's own expense, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.

7. **INSPECTION.** Lessee will permit Lessor and Lessor's agents at all reasonable times during said term to enter the demised premises and examine the state of repair and condition thereof, and will repair and make good all defects required by the provisions of this Lease to be repaired by Lessee, within 90 days after the giving of notice by Lessor or Lessor's agents.

Lessor, the County, or any agents or representatives thereof shall have the right to enter and cross any portion of the demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, Lessor or the County shall not interfere unreasonably with Lessee's use and enjoyment of the demised premises, and shall not cause injury or damage to the Lessee's interest.

8. **RESIDENTIAL USE.** Lessee will use and allow the use of said premises primarily for residential purposes and will not at any time during said term, erect, place, maintain or allow on said premises more than one single family dwelling (exclusive of outbuildings) nor allow the use of any building or structure on said premises as a tenement house, rooming house or apartment house. Lessee must use such single-family dwelling only as Lessee's principal dwelling. For purposes of determining whether Lessee is in compliance with this requirement, Lessee can only have one principal dwelling.

Lessee may engage in diversified agricultural activities on the demised premises to the extent permitted by State of Hawaii or City and County of Honolulu laws, ordinances and regulations.

Lessee agrees that Lessee will be in default of this Lease and this Lease shall be terminated in accordance with the terms hereof if Lessee does not strictly comply with the foregoing use provisions.

The raising of any animals in connection with a feedlot operation is absolutely prohibited. The raising of animals shall be permitted or allowed subject to the following:

- (1) Lessee shall observe all applicable Federal, State of Hawaii or City and County of Honolulu laws, ordinances, codes or regulations;
- (2) Lessee shall be fully responsible for such animals; and



- (3) Such animals shall not present a threat or threaten the diversified agricultural activities that are being conducted in the lands covered by and described in the Declaration attached hereto as Exhibit "B" and incorporated by reference.

If there is any conflict between the terms of the Declaration and this Lease, the terms of the Declaration shall control.

9. **BOND.** Lessee will before commencing construction of any improvement on the demised premises deposit with Lessor a bond or certificate thereof naming Lessor as an obligee, in a penal sum not less than 100% of the cost of such construction and with a responsible corporate surety (or with Lessor's written approval, a responsible material house) authorized to do business in Hawaii, guaranteeing the completion of such construction free and clear of all mechanics' and materialmen's liens. In the case of an owner-builder, Lessee may request Lessor's consent to waive all or a part of the bond required hereby provided that Lessee shall furnish to Lessor adequate assurance that Lessee can complete the improvements lien free.

10. **SETBACK LINES.** Lessee will observe any setback lines affecting the demised premises, and will not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the demised premises and the set back line along such boundary.

11. **INSURANCE.** Lessee will at Lessee's own expense at all times during said term keep all buildings now or hereafter erected on the demised land insured against loss or damage by fire with extended coverage in a responsible insurance company authorized to do business in Hawaii, in an amount as near as practicable to the replacement cost thereof, in the joint names of Lessor, Lessee and mortgagee (if any) as their interests may appear, payable in case of loss to the mortgagee (if any) or in the absence of any mortgage to Lessor and Lessee as their interests may appear, and will pay all premiums thereon when due and from time to time on request therefor deposit with Lessor a true copy or certificate of such current insurance policy, and any money derived therefrom in case of loss shall be held in trust in Hawaii and be immediately available to and used as soon as reasonably possible by Lessee for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the plan and elevation of the buildings so destroyed or damaged or such modified plan as shall be previously approved in writing by Lessor; provided, however, that in case the main dwelling on said premises shall be destroyed by any casualty during the last ten years of the term hereof, Lessee may at his option cancel this Lease by giving written notice thereof to Lessor within 30 days after such casualty on condition that before such cancellation becomes effective Lessee shall remove all remains of the damaged buildings and pay to Lessor all rent then accrued hereunder and taxes for the full current year and in case said dwelling shall be destroyed by any casualty at any time during said term, if such restoration thereof shall be prevented by law, Lessee may at his option cancel this Lease by giving written notice thereof to Lessor at any time thereafter on condition that Lessee shall before such cancellation becomes effective remove all remains of the damaged buildings and pay to Lessor all rent then accrued hereunder and taxes for the full current year, and upon either such cancellation all insurance proceeds shall be payable to and be the property of Lessee and mortgagee (if any) as their interests may appear; provided, further, that during such period as the Department of Housing and Urban Development or Veterans Administration shall own this Lease all provisions of this Lease requiring insurance and restoration of buildings which are substantially destroyed shall be inoperative, but such administration shall promptly remove all remains of any damaged buildings not restored in accordance with said provisions.

Additionally, Lessee will, at Lessee's own expense at all times during the term of this Lease, obtain reasonable liability insurance from any insurance company or companies which is/are licensed and authorized to engage in the business of insurance in Hawaii naming Lessee as the named insured and Lessor as an additional insured and insuring both against and from any and all claims, demands or suits for property damage, personal injury or death arising out of, relating to or proximately caused by the use, maintenance, operation and control by Lessee of the demised premises. A current policy or certificate of such insurance shall be submitted to Lessor. By endorsement or otherwise, the insurance policy must provide that the insurance company cannot cancel or amend the insurance policy without giving Lessor at least 30 days prior written notice.

#### EXHIBIT C

#### EXHIBIT A



12. **COST OF LITIGATION.** In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred and imposed on the Lessor that are awarded to Lessor by the court. Furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this Lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges unless Lessee is the prevailing party in any such litigation, proceeding or controversy.

13. **INDEMNITY.** Lessee will indemnify and hold Lessor harmless against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of said premises by Lessee or any other person claiming by, through or under Lessee, or any accident or fire on said premises, or any nuisance made or suffered thereon, or any failure by Lessee to keep said premises in a safe condition, and will reimburse Lessor for all of Lessor's costs and expenses including reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture fixtures, equipment, machinery and other property whatsoever on said premises at the sole risk of Lessee and hold Lessor harmless for any loss or damage thereto by any cause whatsoever. Provided, however, that this indemnity provision shall not apply to or cover the negligence of the Lessor or Lessor's successors.

14. **CONSTRUCTION OF IMPROVEMENTS.** Lessee shall not at any time construct, place, locate, maintain and install on said premises any new house, building, structure or improvement without the prior review of Lessor and upon such site location conditions as Lessor may impose. Provided, however, that upon application to Lessor and subject to Lessor's approval, Lessee may construct a permanent foundation upon which a house, building or other structure is to be placed or constructed upon the express condition that the foundation shall be demolished and removed in the event that a new lessee does not accept such permanent foundation. It is understood by the parties that in the event of Lessee's default or the sale or transfer of the demised premises, Lessee shall be solely liable for removal of any and all improvements constructed on the premises.

15. **WASTE AND UNLAWFUL USE.** Lessee will not make or suffer any strip or waste or unlawful, improper or offensive use of the demised premises or use the demised premises for or in connection with the cultivation, manufacture, sale, storage or keeping for sale or barter of any plants or plant products, which the cultivation of which is prohibited by any County, State, or Federal laws, narcotics or alcoholic beverages or liquors.

16. **LIENS.** Lessee will indemnify and hold Lessor harmless against all liens, charges and encumbrances and all expenses in connection therewith including attorneys' fees, with respect to said premises or any improvements thereon, initiated and built by the Lessee, which may result from any act or neglect of Lessee.

17. **SURRENDER.** At the end of said term or other sooner termination of this Lease, Lessee will peaceably deliver up to Lessor possession of the demised land and shall, within 90 days after such termination, remove all improvements from the demised premises which Lessee has installed, erected, constructed, or otherwise placed on the demised premises or which were installed, erected, constructed or otherwise placed on the demised premises by a prior occupant of the demised premises.

18. **EXTENSION.** After 50 years from the date the first lease is issued by Lessor to a lessee in the Project of which the demised premises is a part, the lease term may be extended for a term of 20 years (or such other period of time that the parties shall then agree upon) subject to the following conditions:

(1) 51% of all of the then lessees of lots in the Project affirmatively vote to extend the leases therein. Only one vote may be cast with respect to any lot in the Project.

(2) The extended lease term shall be uniform for all leases in the Project. All of the terms and conditions of this Lease shall remain in full force and effect, except that (i) there shall be no



further extension of the lease term and (ii) the lease rents and lease rent periods during the extended term shall be based upon the fair rental value of the demised premises. If an agreement as to the fair rental value of the demised premises is not reached, then the fair rental value shall be determined by arbitration in accordance with the rules of the American Arbitration Association.

(3) The lessees shall be responsible for lessees' costs and expenses incurred by the lessees. Lessee shall be responsible for Lessee's prorata share of such costs and expenses.

(4) Subject to the completion of such negotiations, the lease term of this Lease will be extended provided that Lessee shall not then be in default in any respect hereunder.

19. **CONDEMNATION.** In case at any time or times during the term hereof the demised premises or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the demised land so taken or condemned shall at once cease and determine upon acquisition by such authority of title thereto or right to possession thereof, and Lessee shall not by reason of such taking or condemnation be entitled to any claim against Lessor or others for compensation or indemnity for leasehold interest, and all compensation and damages for or on account of any land shall be payable to and be the sole property of Lessor, and all compensation and damages for or on account of (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the value of Lessee's improvements shall be payable to and be the sole property of Lessee; provided, however, that in case only part of the demised premises shall be so taken or condemned, including for street widening, the rent thereafter payable for the remainder of said term shall be reduced pro rata in the proportion that the area so taken bears to the area hereby demised, and if the remaining premises shall thereby become unsuitable for the agricultural uses for which the land was demised, Lessee shall have the option to surrender this Lease within 60 days thereafter and be relieved of further performance hereunder. Lessee may remove any of the improvements constructed, erected, installed or placed on the land so taken by the authority having the power of eminent domain. Provided, further, that whenever required so to do Lessee shall peaceably deliver up to Lessor possession of such portion or portions of the demised premises as may hereafter be required, taken or condemned for any street widening.

## 20. **ASSIGNMENT.**

A. **Assignment.** Lessee may assign this Lease and the assignee shall have the same rights and obligations hereunder, including those set forth above in paragraph 8, as the original Lessee subject to the following conditions:

(1) **Notice and Certifications.** Lessee shall notify Lessor of any proposed assignment of this Lease. Lessee and the proposed assignee shall (i) provide Lessor with full information about the proposed assignment and (ii) sign and deliver to Lessor all documents which Lessor shall require to assure full compliance with this Lease and the Declaration, including a certification that the proposed assignee will comply with the provisions set forth above in paragraph 8.

(2) **Lessee's Limited Equity.** Lessee understands and unconditionally agrees that Lessee's equity in this Lease and/or the improvements and crops on the demised premises shall not exceed the "Lessee's Equity", which is defined as the fair market value of Lessee's improvements and crops on the demised premises.

If Lessee shall sell or assign this Lease for a consideration (whether in cash or in kind) in excess of Lessee's Equity, the excess shall belong to and be paid in cash immediately to Lessor. Lessee and Lessee's assignee shall be jointly and severally liable for the payment of such excess consideration to Lessor.

(3) **Successors in Interest.** Every successor or assignee must meet the eligibility requirements to be a lessee under this Lease and shall pay and perform all of the obligations under this Lease, including those set forth above in paragraph 8.



(4) **Sale and Assignment; Lessor's First Option.** If Lessee wishes to sell, assign or otherwise transfer title to the demised premises or this Lease for any reason and for a consideration, Lessor shall have the first option to purchase the same free and clear of all encumbrances, which Lessee has permitted to attach to the Lease, and outstanding mortgages, for a price which shall not exceed the Lessee's Equity. In all events, Lessee shall not be entitled to any compensation whatsoever for the leasehold value of the demised premises or this Lease.

If Lessor exercises this first option, the demised premises shall be free and clear of all mortgage liens and encumbrances placed on the demised premises or this Lease by Lessee, including Lessee's predecessors in interest.

(5) **Permitted Transfers.** The following transfers shall be permitted provided that there is no consideration for the transfer, the transferee uses the demised premises as the transferee's principal residence and the Lessee notifies Lessor and obtains Lessor's written consent prior to such making any such transfer:

(a) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(b) A transfer to the spouse or children of the Lessee;

(c) A transfer whereby Lessees are married and one Lessee conveys his/her leasehold right, title and interest to the other as a result of a decree of dissolution of marriage, legal separation agreement, or from a property settlement agreement; or

(d) A transfer to an inter vivos trust in which Lessee is and remains the primary beneficiary and continues to use the demised premises and which does not relate to a transfer of rights of occupancy in the demised premises.

In all events, Lessee, including Lessee's successors or assigns, cannot rent or sublet the whole or any portion of the demised premises under any circumstances.

If the demised premises described in Exhibit "A" attached hereto and incorporated by reference is comprised of more than one subdivided lot, all of the subdivided lots shall be considered one (1) lot for purposes of this Lease, the Master DCC&Rs, and the Memorandum of Declaration of Covenants, Conditions and Restrictions. A subdivided lot that is a portion of the demised premises shall not be separately or individually transferable and shall not be sold, transferred or conveyed in any manner, whether by sublease, concession, license or otherwise, separate from all of the subdivided lots comprising the demised premises so as to separate the benefits and burdens of such subdivided lot in any way under this Lease, the Master DCC&Rs, and the Memorandum of Declaration of Covenants, Conditions and Restrictions. Any attempted sale, transfer or conveyance of a subdivided lot comprising a portion of a demised premises shall be deemed to constitute a conveyance of all of the entire demised premises.

**B. Mortgage.** Except as provided herein, Lessee shall not mortgage, hypothecate or pledge all or any portion of the demised premises or this Lease without first notifying Lessor and obtaining Lessor's written consent. Any such mortgage, hypothecation or pledge without such written approval shall be null and void.

Upon due notice to and with the written consent of Lessor, Lessee may mortgage this Lease or any interest therein or create a security interest in the demised premises under the following conditions:

(1) **Mortgage Loan Amount.** The aggregate amount of all mortgages that Lessee can place on this Lease shall not exceed 80% of Lessee's Equity or such lesser amount which a prudent institutional mortgage lender will lend to Lessee.



(2) **Purposes.** The purpose of the mortgage shall be limited to:

(a) New construction or repair, replacement or improvement of Lessee's principal residence on the demised premises;

(b) Diversified agricultural activities on the demised premises.

(3) **Mortgage Lender.** The mortgage loan is made by a recognized mortgage lending institution.

If the mortgage or security interest is held by a recognized financial lending institution, as mortgagee, such consent may extend to initiating foreclosure on the improvements and leasehold thereby secured. Such mortgagee or secured party may remove the existing improvement secured by the mortgage or security agreement or sell the improvement to another person subject to all of the terms of this Lease, including the use restrictions set forth above in paragraph 8. The interest of the mortgagee or secured party shall be freely assignable provided that the mortgagee, secured party or any other creditor shall not for any reason sell, transfer or assign this Lease for any greater consideration than the Lessee's Equity. The terms "mortgagee" or "secured party" shall include any institutional or governmental mortgage insurer or guarantor of the mortgage or security agreement, including the Department of Housing and Urban Development, United States or State of Hawaii Department of Agriculture, Veterans Administration, Farmers Home Administration, Small Business Administration or other Federal or State of Hawaii governmental agency or department and their respective successors and assigns, or any recognized financial lending institution authorized to do business in the State of Hawaii or elsewhere in the United States. The consent to a mortgage or security agreement held by a non-governmental secured party shall not confer any greater rights or powers in such secured party than those which any of the aforementioned governmental agencies or departments would have.

21. **DEFEASANCE.** This demise is upon this condition, that if Lessee shall fail to pay said rent or any part thereof within 60 days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall fail to observe or perform faithfully any of the other covenants or agreements herein contained and on the part of Lessee to be observed and performed and such default shall continue for 60 days after written notice thereof given to Lessee or mailed to Lessee's last known address, or if Lessee then owning this lease shall become bankrupt and fail to perform any of the covenants of Lessee hereunder or shall abandon said premises, Lessor may at once re-enter said premises or any part thereof in the name of the whole, and upon or without such entry, at Lessor's option terminate this Lease, without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract, and in case of such termination all buildings and improvements on the demised land shall become and remain the property of Lessor. If this Lease is recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, such termination may but need not necessarily be made effective by recording or filing in such place an affidavit thereof by Lessor or a judgment thereof by a court of competent jurisdiction.

22. **PROTECTION OF MORTGAGEE.** During the existence of any mortgage of this Lease, Lessor will not terminate this Lease because of any default by Lessee hereunder or other cause whatsoever if, within a period of 60 days after Lessor has mailed written notice of intention to terminate this lease for such cause to the mortgagee at its last known address and also, if such mortgage is insured by the Department of Housing and Urban Development or Department of Agriculture - Farmers Home Administration or guaranteed by the Veterans Administration, to such Department or Administration, the mortgagee or such Department or Administration shall either cure such default or other cause or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the covenants of this Lease capable of performance by it until such time as this Lease shall be sold upon foreclosure pursuant to such mortgage, and in case of such undertaking Lessor will not terminate this Lease within such further time as may be required by the mortgagee or such Administration to complete foreclosure of such mortgage or other remedy thereunder provided (a) that such remedy is pursued promptly and completed with due diligence, and (b) that Lessor is paid all rent and other charges accruing hereunder as the same become due, and upon foreclosure sale of this Lease the time for



performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance with due diligence. Ownership by or for the same person of both the fee and leasehold estates in said premises shall not effect the merger thereof without the prior written consent of any mortgagee to such merger.

**23. EXTENSION OF TIME.** That notwithstanding any provision contained herein to the contrary, wherever applicable, the Lessor may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein. Any extension of time shall not be effective unless it is in writing and signed by Lessor.

**24. ACCEPTANCE OF RENT NOT A WAIVER.** That the acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this Lease, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

**25. BOUNDARY FENCES.** If there are any livestock on the demised premises, the Lessee shall be solely responsible for securing such livestock for the health, safety and welfare of all persons and property. If required by Lessor or any governmental agency or department or any court order or any public safety official, the Lessee shall keep such livestock penned or corralled within a stockproof fenced area within the demised premises, provided that if required by any law, the Lessee shall install stockproof fences along the entire outside perimeter of the land encompassed under this Lease where such fencing does not exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain in good order and condition throughout the term of this Lease the fences so constructed and those now existing on the demised premises. The Lessee shall, wholly at Lessee's own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided herein. The cost of installing and maintaining such boundary fences shall be in accordance with Part II of Chapter 664, Hawaii Revised Statutes, which provides generally for the sharing of such costs by adjacent land owners or lessee for the purpose of confining animals of each adjacent owner or lessee unless the adjacent land is owned and not leased by the government.

**26. PROTECTION OF FOREST, WATERSHED AREAS, ETC.** Lessee shall protect forests, watershed areas, game management areas, wildlife sanctuaries, reservation of rights-of-way and access to other public lands and prevent nuisances and waste in connection with Lessee's possession, occupancy and use of the demised premises. Lessee shall take all reasonable precautions to prevent forest fires thereon, and in the event such fires shall occur, Lessee shall use all reasonable means at Lessee's command or under Lessee's control to have such fires speedily extinguished.

**27. HAZARDOUS MATERIALS.** Except for Hazardous Material lawfully permitted on the demised premises in connection with the direct participation of diversified agricultural activities on the demised premises, Lessee shall not cause or permit any Hazardous Material, as hereinafter defined, to be brought upon, kept, or used in or about the demised premises by Lessee, its agents, employees, contractors, or invitees, or any persons holding under Lessee. Any Hazardous Material lawfully permitted on the demised premises in connection with the direct participation in diversified agricultural activities on the demised premises, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all federal, state, and local guidelines, laws or regulations applicable to the Hazardous Material. Lessee shall not discharge, leak, or emit or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by Lessor, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located in the demised premises or elsewhere, or (b) the condition, use, or enjoyment of any buildings or any other real or personal property.



If Lessee breaches the obligations stated in this paragraph 27, entitled Hazardous Material, or if the presence of Hazardous Material on the demised premises caused or permitted by Lessee results in contamination of the demised premises or other premises, or if contamination of said demised premises or other premises by Hazardous Material otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom, then Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of, damages for the loss or restriction on use of, and damages arising from any adverse impact on marketing of said demised premises or other premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the lease term as a result of such contamination. This indemnification of Lessor by Lessee includes all reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under said demised premises or other premises. Without limiting the foregoing, if the presence of any Hazardous Material on said demised premises or other premises caused or permitted by Lessee results in any contamination of said demised premises or other premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the demised premises or other premises to the condition existing prior to the introduction of any such Hazardous Material to the demised premises or other premises; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any adverse effect on the demised premises or other premises. Lessee's representations, warranties and covenants contained in this paragraph shall survive the term of this Lease. However, Lessor will indemnify and hold Lessee harmless for any damages suffered by Lessee resulting from hazardous materials exposure caused by Lessor.

As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Hawaii or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (vi) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. §6991 et seq. or (vii) any similar state or local laws, ordinances or regulations now or hereafter adopted, published and/or promulgated pursuant thereto.

28. **COVENANT AGAINST DISCRIMINATION.** The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin or physical handicap.

29. **INFRASTRUCTURE IMPROVEMENTS.** Notwithstanding any provision to the contrary, Lessor shall be responsible to pay for the repair and maintenance of the existing paved roads, water tanks and main waterlines, catch basins and bridge and stream lining below the bridge, which Lessor caused to be constructed in the Waiahole Valley Agricultural Park and Residential Lots Subdivision until such time that any of such improvements are dedicated to a governmental agency or department. Provided that if any improvements to the same are required as part of any improvement district, Lessee shall be responsible for the payment of the improvement district assessment allocated to the demised premises.

30. **MISCELLANEOUS.** The term "Lessor" and "Lessee" herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and their and each of their respective successors, executors, administrators and assigns, according to the context hereof.



**31. LESSEE'S WAIVER OF RIGHT TO PURCHASE FEE SIMPLE INTEREST IN THE DEMISED PREMISES.** Lessor acquired the land which comprises the Project, including the demised premises, and caused certain capital improvements to be made to such land in furtherance of the public policies set forth in Hawaii Revised Statutes Sec. 166-1 and the public purpose of providing housing opportunities. Recognizing the contributions of the State of Hawaii to carry out such public policies and purpose in order to establish the Project, Lessee, for Lessee and Lessee's successors and assigns, hereby relinquishes, renounces and waives any right to purchase the fee simple interest in the demised premises which Lessee, including any successor and assign, now has or may hereafter have or claim under any law, including the provisions of Chapter 516 Hawaii Revised Statutes (or the corresponding section of any future or similar law), granting to a lessee holding a long term lease on residential, commercial or agricultural property the right to purchase the fee simple interest in such property.

Notwithstanding the foregoing, if any law or court of competent jurisdiction shall determine that the waiver set forth above in this paragraph 31 shall not be enforceable and shall allow the Lessee, or the Lessee's successors or assigns, to purchase the fee simple interest in the real property constituting the demised premises, the purchase price shall be not less than the sum of the following:

(a) \$24,763 x 7.00% x number of years from the date of this Lease to the date of closing of the sale of the fee simple interest in the demised premises; plus

(b) The fair market value of the fee simple interest unencumbered by this Lease; plus

(c) All of Lessor's attorneys' fees and costs, including appraisal and other consultant fees arising out of the lease-to-fee simple conversion.

**32. EXCEPTIONS TO LEASEHOLD TITLE AND RIGHT OF QUIET ENJOYMENT.** Lessor is not making any express or implied representation or warranty to Lessee with respect to Lessee's leasehold right, title or interest in the demised premises and right to quiet enjoyment of the demised premises arising out of or in connection with the following exceptions:

(a) Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land of which the demised premises is a part or by making inquiry of persons in possession thereof.

(b) Any easements, claim of easement or encumbrances, whether claimed by prescription, adverse possession or otherwise, which are not shown by the public records.

(c) Any discrepancies, conflicts in boundary lines, shortage on area, encroachments or any other facts which a complete and correct boundary and improvement survey or archeological study would disclose, including without limitation trails, rights of way, historic property or sites and burial sites, and which are not shown by the public records.

(d) Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

(e) Claims arising out of native Hawaiian rights customarily or traditionally exercised for subsistence, cultural, religious, access or gathering purposes as provided by law, including without limitation the Constitution of the State of Hawaii, Section 1-1 or 7-1 Hawaii Revised Statutes or other statutory or case law of a similar nature.

**33. AGREEMENT ABOUT PAYMENTS FOR "MASTER" OR "BLANKET" LIABILITY INSURANCE.** If the liability insurance, which is required pursuant to Section 11 above, shall be available through a "master" or "blanket" policy and if Lessee requests in writing to be covered by such "master" or "blanket" policy, Lessee agrees as follows:



(a) Lessee shall pay to Lessor a prorata share, as determined by Lessor, of the annual premium for such liability insurance upon the issuance of this Lease to Lessee.

(b) Lessee shall pay to Lessor an additional sum on or before the first day of each and every month equal to 1/12th of Lessee's prorata share, as determined by Lessor, of the estimated annual premium for liability insurance. Lessee shall not be entitled to any interest on account of any funds which Lessee shall pay to Lessor as liability insurance premiums.

(c) Lessor shall not have any obligation, responsibility or liability to pay all or any part of the premiums for such "master" or "blanket" liability insurance policy. If any lessee of an agricultural lot or residential lot in the Waiahole Agricultural Park and Residential Lots Subdivision shall fail, refuse or neglect to pay such lessee's prorata share of the annual liability insurance premium, such lessee's prorata share shall be prorated among all lessees. Lessor may increase or decrease the estimated sum which Lessee has agreed to pay for liability insurance.

(d) Lessor shall not have any obligation, responsibility or liability to find any new or replacement "master" or "blanket" liability insurance policy if any then existing "master" or "blanket" liability insurance shall be terminated, canceled or not renewed. If any "master" or "blanket" liability insurance policy shall be terminated, canceled or not renewed, Lessee shall be responsible for providing Lessee's own liability insurance coverage pursuant to the requirements under this Lease.

(e) Lessor shall not have any duty, responsibility or liability for damages or any other relief to a lessee or any third party with respect to the amount, coverage or policy limits of any "master" or "blanket" liability insurance policy. Lessee may obtain any additional, excess or umbrella liability insurance for Lessee's benefit and protection.

(f) Lessor is not and shall not be deemed to be an insurer, co-insurer or indemnitor with respect to any claim, liability, damages of any kind or nature, including any damages. Lessor shall not be liable to Lessee or any third party if the coverage or policy limits of such "master" or "blanket" liability insurance policy shall not cover in whole or in part any particular loss or claim, including the defense of any claim.

(g) If Lessee shall fail, refuse or neglect to pay Lessee's prorata share of the estimated annual premium for liability insurance or any additional assessments for liability insurance premiums, including any additional assessments to pay the premiums of other lessees who shall have failed, refused or neglected to pay all or part of their prorata share of premiums for liability insurance, Lessee shall be in default under this Lease. Any amount which Lessee shall fail, refuse or neglect to pay shall bear interest at the simple annual rate of 12% until fully paid. The interest collected shall be applied to reduce the premium for such "master" or "blanket" liability insurance policy.

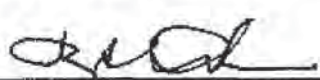
Waiahole Agricultural Park and Residential Lots Subdivision  
Residential Lot Ground Lease

APPROVED AS TO FORM:

  
John Wong, Esq.  
Deputy Attorney General

LESSOR:

HOUSING FINANCE AND DEVELOPMENT  
CORPORATION

  
By: ROY S. OSHIRO  
Its: Executive Director

STATE OF HAWAII )

CITY AND COUNTY OF HONOLULU ) ss.

On this 12<sup>th</sup> day of June, 1998, before me appeared ROY S. OSHIRO, to me personally known, who, being by me duly sworn, did say that he is the Executive Director of HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii; that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors; and said ROY S. OSHIRO acknowledged said instrument to be the free act and deed of said corporation.

  
Notary Public, State of Hawaii

My commission expires

9-29-2001

Waialae Agricultural Park and Residential Lots Subdivision  
Residential Lot Ground Lease

LESSEE:

Kathleen Kananui Kelepine Lelo  
Kathleen Kananui Kelepine Lelo  
Tracy Lee Kahualani Hoapili  
Tracy Lee Kahualani Hoapili

Inola Gaye Kahiwalani Lelo  
Inola Gaye Kahiwalani Lelo

STATE OF HAWAII

)  
) ss.

CITY AND COUNTY OF HONOLULU

On this 13th day of February, 19 98, before me  
personally appeared Kathleen Kananui Kelepine Lelo, Tracy Lee Kahualani Hoapili, and Inola Gaye Kahiwalani Lelo, to me known to be the persons described in and who executed the foregoing instrument and  
acknowledged that they executed the same as their free act and deed.

Alaine Adriano - Obedon L.S.  
Notary Public, State of Hawaii

My commission expires

2/8/2000

EXHIBIT C

EXHIBIT A



EXHIBIT "A"

The following lot(s) as shown in File Plan No. 2052 recorded in the Bureau of Conveyances of the State of Hawaii situated on the westerly side of Kamehameha Highway between Land Court Application 70 and Land Court Application 1341 at Waihole, Koolauloko, Oahu, Hawaii:

Lot No.	Area (more or less)
47	12,619 square feet

**SUBJECT TO** all easements, rights of way, rights of ingress and egress, covenants, conditions, restrictions and reservations recorded in the Bureau of Conveyances and/or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of record.

I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances.

W. M. Young

Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii

R-566

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JUN 04 1998 10:45 AM

Doc No(s) 98-080647

/s/ CARL T. WATANABE  
ACTING

REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$14.30

LAND COURT SYSTEM

Return by Mail ( ) Pickup ( ) To:

Housing Finance and Development Corporation  
677 Queen Street - 3rd Floor  
Honolulu, Hawaii 96813  
Attention: Roy S. Oshiro, Executive Director

AGRICULTURAL LOT GROUND LEASE

PROPERTY DESCRIPTION

DOCUMENT NO.

DOCUMENT NO.  
TRANSFER CERTIFICATE OF  
TITLE NO:

Land Court ( ) Regular (x) Double ( )

STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE  
HOUSING FINANCE AND DEVELOPMENT CORPORATION

WAIHAOLE VALLEY AGRICULTURAL PARK  
AND RESIDENTIAL LOTS SUBDIVISION AND HOMESTEAD ROAD LAND

AGRICULTURAL LOT GROUND LEASE

THIS INDENTURE made this 1st day of June 1998, by and between

HOUSING FINANCE AND DEVELOPMENT CORPORATION  
a public body and a body corporate and politic of the State of Hawaii  
677 Queen Street - 3rd Floor  
Honolulu, Hawaii 96813

hereinafter called "Lessor", and

AGLEASE.DOC

EXHIBIT D

EXHIBIT A



Valentine Texeira and Mildred Blanche Texeira, husband and wife; and Valdred Jo-Anne Souza, wife of John Souza, III, all of whose residence and post office address is 45-246 Popoki Place, Kaneohe, Hawaii 96744,

as (check applicable box)

☐ tenants by the entirety

☐ tenants in common

☒ as joint tenants with full rights of survivorship ☐ as tenant in severalty

hereinafter called "Lessee".

The demised premises are a part of an agricultural park for which State of Hawaii land and funds were used to meet the goals and objectives stated in Hawaii Revised Statutes ("HRS") Sec. 166-1. At least one of the person(s) who is the Lessee must be a "farmer" as that term is defined in the Master DCC&Rs identified and incorporated into the Memorandum of Declaration and Covenants, Conditions and Restrictions set forth in this Lease. In this Lease, the person who qualifies as the "farmer" is: Valentine Texeira

-2-

Amended Waialae Agricultural Lease

EXHIBIT D

EXHIBIT A

**WITNESSETH:**

That Lessor, in consideration of the rent hereinafter reserved and the covenants herein contained and on the part of Lessee to be observed and performed, does hereby demise and lease unto Lessee and Lessee does hereby accept and rent: All that certain land described in Exhibit "A" attached hereto and incorporated herein by reference and made a part of this Lease, "AS IS" and without any express or implied warranties of habitability or fitness for any particular purpose and subject to all risks incidental to its use.

**SUBJECT** to all easements shown on the map (if any) hereto attached or above referred to, and reserving unto Lessor within said easements rights-of-way and the right to grant to any public utility or governmental authority such rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and similar public services and utilities, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines.

**SUBJECT FURTHER** to the following: 1) the Declaration of Restrictive Covenants for Waiahole Valley Agricultural Park and Residential Lots And Homestead Road Lands, dated September 15, 1995 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-124908 and/or in the Office of the Registrar of the Land Court of the State of Hawaii as Document No. 2262857 and noted on Certificate of Title Nos. 380,204, 380,205 and 195,898, incorporated by reference; 2) the First Supplemental Declaration of Restrictive Covenants of Waiahole Valley Agricultural Park and Residential Lots Subdivision and Homestead Road Lands, dated January 22, 1996, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-012417 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2287002, incorporated by reference and made part of this Lease, collectively referred to as the "Master DCC&Rs"; and 3) the Memorandum of Declaration of Covenants, Conditions and Restrictions of Waiahole Valley Agricultural Park and Residential Lots Subdivision and Homestead Road Lands, which will be recorded with the lease, attached hereto as Exhibit "B" and incorporated by reference and made part of this Lease.

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

(1) All minerals as hereinafter defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in general construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. Provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph just compensation shall be paid to the Lessee for any of Lessee's improvements taken during the term of this Lease; (2) All archaeological and historic sites and remains found on the demised premises shall belong to Lessor under the laws of the State of Hawaii. Lessee shall preserve and protect and shall not disturb any archaeological and historic sites and remains on the demised premises; and (3) Pursuant to Section 171-36(a) (8), Hawaii Revised Statutes, mineral and metallic rights and surface and ground water shall be reserved to the State.

**TO HAVE AND TO HOLD** the demised premises together with the rights, easements, privileges and appurtenances thereunto belonging and appertaining, unto the Lessee for a term:

Commencing on:	June 30, 1998
Ending on:	June 29, 2053

unless sooner terminated as hereinafter provided, the Lessor reserving certain rights and interests and the Lessee yielding and paying to the Lessor at the principal office of Lessor, an annual lease rent in the amount computed and payable on the dates specified below, without notice or demand by the Lessor.

Amended Waiahole Agricultural Lot Lease

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**EXHIBIT D**

**EXHIBIT A**



### ANNUAL LEASE RENT

Lease Period	Lease Years	Annual Base Lease Rent Formula	Base Lease Rent Amount	Annual Percentage Lease Rent (of Lessee's gross agricultural income derived from the demised premises for the preceding calendar year ending on December 31) **
1	1 - 2	\$100 per acre (or portion thereof)  (Provided that if there is any residential dwelling, including employee's quarters, on the demised premises, the annual base lease rent for the first 7,500 square feet shall be \$500.00)	Annually: <u>\$892.80</u>  Monthly: <u>\$74.40</u>	0%
2	3 - 25	\$100 per acres (or portion thereof)  (Provided that if there is any residential dwelling, including employee's quarters, on the demised premises, the annual base lease rent for the first 7,500 square feet shall be \$500.00)	Annually: <u>\$892.80</u>  Monthly: <u>\$74.40</u>	9/10th of 1%
3	26 - 40	*	*	*
4	41 - 55	*	*	*

\* To be negotiated.

\*\* Lessee's signed State of Hawaii and Federal tax returns shall be submitted with such payment and the Lessee shall inform the Lessor of any governmental audits of Lessee's tax returns.

### LEASE RENT PAYMENTS

The Annual Base Lease Rent shall be paid in equal monthly installments in advance on the first working day of each month. The Annual Percentage Lease Rent shall be paid in arrears no later than April 15 for the previous calendar year. If the lease rent payable for any period or time is less than a full calendar year or other period of time, as the case may be, the lease rent for such period of time shall be prorated.

#### C. Renegotiation of Annual Base Lease Rent and Annual Percentage Lease Rent.

One year prior to the expiration of respective Lease Periods 2 and 3, Lessor and Lessee shall begin renegotiations regarding the new annual lease rent for respective Lease Periods 3 and 4. In determining the annual lease rent for respective Lease Periods 3 and 4, the following factors may be considered:

(1) The fair rental value of the demised premises based on the use of the demised premises for residential and agricultural uses exclusive of crops thereon and improvements that Lessee has installed, erected, constructed, or otherwise placed on the demised premises or crops and improvements that were installed, erected, constructed or otherwise placed on the demised premises by a prior occupant of the demised premises.



- (2) The historical productivity and profitability of Lessee's farming operations.
- (3) Other factors may also be considered.

The Annual Base Lease Rent and Annual Percentage Lease Rent established by renegotiation for Lease Periods 3 and 4, respectively, shall not be less than the rental amount established for Lease Periods 2 and 3, respectively.

In the event Lessor and Lessee are unable to agree on the fair rental value of the demised premises for Lease Periods 3 and/or 4, respectively, sixty (60) days prior to the expiration of Lease Periods 2 and/or 3, respectively, Lessor and Lessee shall submit the issue of the fair rental value of the demised premises to mediation in accordance with applicable rules of mediation of the American Arbitration Association.

If Lessor and Lessee are not able to determine the issue of the fair rental value of the demised premises by mediation, either Lessor or Lessee may give to the other written notice of a desire to have the issue of the fair rental value of the demised premises settled by arbitration in accordance with the applicable rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

In all cases of mediation or arbitration, Lessor and Lessee shall each pay the expense of their own attorneys', appraiser's and witness fees. All other expenses of such mediation and arbitration shall be divided equally between Lessor and Lessee.

If and whenever the fixing of such rental value is under mediation or arbitration, Lessee, pending the determination thereof, shall continue to pay the same lease rent which Lessee had been paying during the immediately preceding lease rent period and shall pay the deficiency, if any, within thirty (30) days of the successful conclusion of the mediation or arbitration proceedings, as the case may be.

AND LESSOR hereby covenants with Lessee that upon payment of the rent as aforesaid and upon observance and performance of the covenants by Lessee hereinafter contained, Lessee shall peaceably hold and enjoy said premises for the term hereby demised without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through or under it except as herein expressly provided.

AND LESSEE hereby covenants with Lessor as follows:

1. **PAYMENT OF RENT.** Lessee will pay or cause to be paid said rent in lawful money of the United States of America at the times and in the manner aforesaid, without any deduction and without any notice or demand, at the office of Lessor or Lessor's duly designated agent.
2. **TAXES AND ASSESSMENTS.** Lessee shall pay or cause to be paid at least ten days before the same become delinquent all real property taxes and assessments of every description to which said premises or any part thereof or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable, whether assessed to or payable by Lessor or Lessee, except that such taxes shall be prorated between Lessor and Lessee as of the dates of commencement and expiration respectively of said term; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments together with interest as shall become due and payable during said term.
3. **PAYMENT OF RATES AND OTHER CHARGES.** Lessee will pay before the same become delinquent all charges, duties, rates and other outgoings of every description to which said premises or any part thereof or any improvement thereon, or Lessor or Lessee in respect thereof, may during said term be assessed or become liable for electricity, gas, refuse collection, telephone, sewage disposal, water or any other utilities or services, whether made by governmental authority or public or community service company and whether assessed to or payable by Lessor or Lessee.



4. **IMPROVEMENTS REQUIRED BY LAW.** Lessee will at Lessee's own expense during the whole of said term make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and other areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the demised premises or any part thereof.

5. **OBSERVANCE OF LAWS.** Lessee will at all times during said term keep said premises in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to said premises or any improvement thereon or use thereof, and affecting said premises, and will indemnify Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of said laws, ordinances, rules and regulations or of this covenant.

6. **REPAIRS TO IMPROVEMENTS.** Lessee will, at Lessee's own expense, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.

7. **INSPECTION.** Lessee will permit Lessor and Lessor's agents at all reasonable times during said term to enter the demised premises and examine the state of repair and condition thereof, and will repair and make good all defects required by the provisions of this Lease to be repaired by Lessee, within 90 days after the giving of notice by Lessor or Lessor's agents.

Lessor, the County, or any agents or representatives thereof shall have the right to enter and cross any portion of the demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, Lessor or the County shall not interfere unreasonably with Lessee's use and enjoyment of the demised premises, and shall not cause injury or damage to the Lessee's interest.

8. **DIVERSIFIED AGRICULTURAL USE.** Lessee understands and agrees that the requirements of this paragraph shall be strictly observed.

(a) Beginning no later than two (2) years from the date of this Lease and for the then remaining term of this Lease, Lessee, including Lessee's permitted successors and assigns, must be a "farmer" and personally use and operate the demised premises for diversified agricultural purposes.

The demised premises must remain in continuous cultivation except for the normal fallow period as required by standard agriculture practices. If Lessee is prevented from maintaining the demised premises in continuous cultivation because of the occurrence of an "act of God", such as a hurricane, drought or other catastrophe, which is beyond Lessee's control, Lessee may request Lessor to grant Lessee a reasonable extension which shall not exceed 6 months to comply with such requirement.

(b) During the term of this Lease, Lessee may use a contiguous area of up to 7,500 square feet for residential purposes as an accessory use to the primary diversified agricultural use of the demised premises subject to the following conditions:

(1) Lessee may place, maintain or allow on the demised premises only one single-family dwelling (exclusive of outbuildings) within such residential area;

(2) Lessee must use such single-family dwelling only as Lessee's principal dwelling. For purposes of determining whether Lessee is in compliance with this requirement, Lessee can only have one principal dwelling; and

(3) The remaining area of the demised premises must be used for diversified agricultural purposes, which may include employee quarters and accessory structures, in accordance with the Lease, the Master DCC&Rs, and the Memorandum of Declaration of Covenants, Conditions and Restrictions.

Lessee agrees that Lessee will be in default of this Lease and this Lease shall be terminated in accordance with the terms hereof if Lessee does not strictly comply with the above conditions.



(c) The raising of any animals in connection with a feedlot operation is absolutely prohibited. The raising of animals shall be permitted or allowed subject to the following:

(1) Lessee shall observe all applicable Federal, State of Hawaii or City and County of Honolulu laws, ordinances, codes or regulations.

(2) Lessee shall be fully responsible for such animals; and

(3) Such animals shall not present a threat or threaten the diversified agricultural activities that are being conducted in the lands covered by and described in the Declaration attached hereto as Exhibit "B" and incorporated by reference.

(d) If there is any conflict between the terms of the Declaration and this Lease, the terms of the Declaration shall control.

9. **BOND.** Lessee will before commencing construction of any improvement on the demised premises deposit with Lessor a bond or certificate thereof naming Lessor as an obligee, in a penal sum not less than 100% of the cost of such construction and with a responsible corporate surety (or with Lessor's written approval, a responsible material house) authorized to do business in Hawaii, guaranteeing the completion of such construction free and clear of all mechanics' and materialmen's liens. In the case of an owner-builder, Lessee may request Lessor's consent to waive all or a part of the bond required hereby provided that Lessee shall furnish to Lessor adequate assurance that Lessee can complete the improvements lien free.

10. **SETBACK LINES.** Lessee will observe any setback lines affecting the demised premises, and will not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the demised premises and the set back line along such boundary.

11. **INSURANCE.** Lessee will at Lessee's own expense at all times during said term keep all buildings now or hereafter erected on the demised land insured against loss or damage by fire with extended coverage in a responsible insurance company authorized to do business in Hawaii, in an amount as near as practicable to the replacement cost thereof, in the joint names of Lessor, Lessee and mortgagee (if any) as their interests may appear, payable in case of loss to the mortgagee (if any) or in the absence of any mortgage to Lessor and Lessee as their interests may appear, and will pay all premiums thereon when due and from time to time on request therefor deposit with Lessor a true copy or certificate of such current insurance policy, and any money derived therefrom in case of loss shall be held in trust in Hawaii and be immediately available to and used as soon as reasonably possible by Lessee for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the plan and elevation of the buildings so destroyed or damaged or such modified plan as shall be previously approved in writing by Lessor; provided, however, that in case the main dwelling on said premises shall be destroyed by any casualty during the last ten years of the term hereof, Lessee may at his option cancel this Lease by giving written notice thereof to Lessor within 30 days after such casualty on condition that before such cancellation becomes effective Lessee shall remove all remains of the damaged buildings and pay to Lessor all rent then accrued hereunder and taxes for the full current year and in case said

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dwelling shall be destroyed by any casualty at any time during said term, if such restoration thereof shall be prevented by law, Lessee may at his option cancel this Lease by giving written notice thereof to Lessor at any time thereafter on condition that Lessee shall before such cancellation becomes effective remove all remains of the damaged buildings and pay to Lessor all rent then accrued hereunder and taxes for the full current year, and upon either such cancellation all insurance proceeds shall be payable to and be the property of Lessee and mortgagee (if any) as their interests may appear; provided, further, that during such period as the Department of Housing and Urban Development or Veterans Administration shall own this Lease all provisions of this Lease requiring insurance and restoration of buildings which are substantially destroyed shall be inoperative, but such administration shall promptly remove all remains of any damaged buildings not restored in accordance with said provisions.

Additionally, Lessee will, at Lessee's own expense at all times during the term of this Lease, obtain reasonable liability insurance from any insurance company or companies which is licensed and authorized to engage in the business of insurance in Hawaii naming Lessee as the named insured and Lessor as an additional insured and insuring both against and from any and all claims, demands or suits for property damage, personal injury or death arising out of, relating to or proximately caused by the use, maintenance, operation and control by Lessee of the demised premises. A current policy or certificate of such insurance shall be submitted to Lessor. By endorsement or otherwise, the insurance policy must provide that the insurance company cannot cancel or amend the insurance policy without giving Lessor at least 30 days prior written notice.

12. **COST OF LITIGATION.** In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred and imposed on the Lessor that are awarded to Lessor by the court. Furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this Lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges unless Lessee is the prevailing party in any such litigation, proceeding or controversy.

13. **INDEMNITY.** Lessee will indemnify and hold Lessor harmless against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of said premises by Lessee or any other person claiming by, through or under Lessee, or any accident or fire on said premises, or any nuisance made or suffered thereon, or any failure by Lessee to keep said premises in a safe condition, and will reimburse Lessor for all of Lessor's costs and expenses including reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture fixtures, equipment, machinery and other property whatsoever on said premises at the sole risk of Lessee and hold Lessor harmless for any loss or damage thereto by any cause whatsoever. Provided, however, that this indemnity provision shall not apply to or cover the negligence of the Lessor or Lessor's successors.

14. **CONSTRUCTION OF IMPROVEMENTS.** Lessee shall not at any time construct, place, locate, maintain and install on said premises any new house, building, structure or improvement without the prior review of Lessor and upon such site location conditions as Lessor may impose. Provided, however, that upon application to Lessor and subject to Lessor's approval, Lessee may construct a permanent foundation upon which a house, building or other structure is to be placed or constructed upon the express condition that the foundation shall be demolished and removed in the event that a new lessee does not accept such permanent foundation. It is understood by the parties that in the event of Lessee's default or the sale or transfer of the demised premises, Lessee shall be solely liable for removal of any and all improvements constructed on the premises.

15. **WASTE AND UNLAWFUL USE.** Lessee will not make or suffer any strip or waste or unlawful, improper or offensive use of the demised premises or use the demised premises for or in connection with the cultivation, manufacture, sale, storage or keeping for sale or barter of any plants or plant products, which the cultivation of which is prohibited by any County, State, or Federal laws, narcotics or alcoholic beverages or



and obligations hereunder, including those set forth above in paragraph 8, as the original Lessee subject to the following conditions:

(1) **Notice and Certifications.** Lessee shall notify Lessor of any proposed assignment of this Lease. Lessee and the proposed assignee shall (i) provide Lessor with full information about the proposed assignment and (ii) sign and deliver to Lessor all documents which Lessor shall require to assure full compliance with this Lease and the Declaration, including a certification that the proposed assignee meets the qualifications of a "farmer" who is eligible to be a lessee under this Lease.

(2) **Lessee's Limited Equity.** Lessee understands and unconditionally agrees that Lessee's equity in this Lease and/or the improvements and crops on the demised premises shall not exceed the "Lessee's Equity", which is defined as the fair market value of Lessee's improvements and crops on the demised premises.

If Lessee shall sell or assign this Lease for a consideration (whether in cash or in kind) in excess of Lessee's Equity, the excess shall belong to and be paid in cash immediately to Lessor. Lessee and Lessee's assignee shall be jointly and severally liable for the payment of such excess consideration to Lessor.

(3) **Successors in Interest.** Every successor or assignee must meet the eligibility requirements to be a lessee under this Lease and shall pay and perform all of the obligations under this Lease, including those set forth above in paragraph 8. If a successor or assignee shall not meet the eligibility requirements or shall not pay and perform all of the obligations under this Lease, including those set forth above in paragraph 8, this Lease shall be canceled and such successor or assignee shall not be entitled to any consideration or compensation whatsoever upon such cancellation. Provided, if the successor or assignee shall succeed to Lessee's interest as the result of the death of Lessee and if such successor or assignee shall not meet the eligibility requirements to be a lessee of this Lease, such successor or assignee shall have one year to assign the Lease to a person who shall meet the eligibility requirements of being a "farmer" herein subject to the provisions of this paragraph 20; and,

(4) **Sale and Assignment; Lessor's First Option.** If Lessee wishes to sell, assign or otherwise transfer title to the demised premises or this Lease for any reason and for a consideration, Lessor shall have the first option to purchase the same free and clear of all encumbrances which Lessee shall permitted to attach to the Lease, and outstanding mortgages, for a price which shall not exceed the Lessee's Equity. In all events, Lessee shall not be entitled to any compensation whatsoever for the leasehold value of the demised premises or this Lease.

If Lessor exercises this first option, the demised premises shall be free and clear of all mortgage liens and encumbrances placed on the demised premises or this Lease by Lessee, including Lessee's predecessors in interest; and,

(5) **Sale, Assignment or Transfer of Corporate Stock or Other Interest in Business Organization.** If Lessee shall be a corporation, partnership, cooperative or other business organization, any transfer, sale, pledge or other disposition of the corporate stock, voting rights or other interest in such business organization shall be deemed a sale, assignment or transfer of this Lease and therefore prohibited without the express written consent of Lessor. At all times during the term of this Lease, and any extension thereof, Lessee agrees that the person, including such person's permitted successors and assigns, named above as the "farmer" must qualify as a "farmer" as that term is defined in this Lease, Master DCC&Rs, and in the Memorandum of Declaration of Covenants, Conditions and Restrictions, in order for Lessee to hold this Lease and that such person must own at least 75% or more of the stock, voting interest or other interest of the Lessee at the time of execution of this Lease and during the term thereof. Lessee shall inform Lessor of any changes in the composition of ownership of Lessee and obtain Lessor's consent with respect to any of their successors. If Lessee shall breach the terms of this covenant, this Lease shall be terminated and Lessee shall have 30 consecutive calendar days to vacate the demised premises.

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In all events, Lessee, including Lessee's successors or assigns, cannot rent or sublet the whole or any portion of the demised premises under any circumstances.

If the demised premises described in Exhibit "A" attached hereto and incorporated by reference is comprised of more than one subdivided lot, all of the subdivided lots shall be considered one (1) lot for purposes of this Lease, the Master DCC&Rs, and the Memorandum of Declaration of Covenants, Conditions and Restrictions. A subdivided lot that is a portion of the demised premises shall not be separately or individually transferable and shall not be sold, transferred or conveyed in any manner, whether by sublease, concession, license or otherwise, separate from all of the subdivided lots comprising the demised premises so as to separate the benefits and burdens of such subdivided lot in any way under this Lease, the Master DCC&Rs, and the Memorandum of Declaration of Covenants, Conditions and Restrictions. Any attempted sale, transfer or conveyance of a subdivided lot comprising a portion of a demised premises shall be deemed to constitute a conveyance of all of the entire demised premises; and

(6) **Permitted Transfers.** The following transfers shall be permitted provided that there is no consideration for the transfer and the Lessee notifies Lessor and obtains Lessor's written consent prior to such making any such transfer:

- (a) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- (b) A transfer to the spouse or children of the Lessee;
- (c) A transfer whereby Lessees are married and one Lessee conveys his/her leasehold right, title and interest to the other as a result of a decree of dissolution of marriage, legal separation or incident to a property settlement agreement; or
- (d) A transfer to an inter vivos trust in which Lessee is and remains the primary beneficiary and continues to use the demised premises and which does not relate to a transfer of rights of occupancy in the demised premises.

**B. Mortgage.** Except as provided herein, Lessee shall not mortgage, hypothecate or pledge all or any portion of the demised premises or this Lease without first notifying Lessor and obtaining Lessor's written consent. Any such mortgage, hypothecation or pledge without such written approval shall be null and void.

Upon due notice to and with the written consent of Lessor, Lessee may mortgage this Lease or any interest therein or create a security interest in the demised premises under the following conditions:

(1) **Mortgage Loan Amount.** The aggregate amount of all mortgages that Lessee can place on this Lease shall not exceed 80% of Lessee's Equity or such lesser amount which a prudent institutional mortgage lender will lend to Lessee.

(2) **Purposes.** The purpose of the mortgage shall be limited to:

- (a) New construction or repair, replacement or improvement of Lessee's principal residence on the demised premises;
- (b) New construction or repair, replacement or improvement of one employee's quarters on the demised premises;
- (c) Diversified agricultural activities on the demised premises.

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23. **EXTENSION OF TIME.** That notwithstanding any provision contained herein to the contrary, wherever applicable, the Lessor may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein. Any extension of time shall not be effective unless it is in writing and signed by Lessor.

24. **ACCEPTANCE OF RENT NOT A WAIVER.** That the acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this Lease, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

25. **BOUNDARY FENCES.** If there are any livestock on the demised premises, the Lessee shall be solely responsible for securing such livestock for the health, safety and welfare of all persons and property. If required by Lessor or any governmental agency or department or any court order or any public safety official, the Lessee shall keep such livestock penned or corralled within a stockproof fenced area within the demised premises, provided that if required by any law, the Lessee shall install stockproof fences along the entire outside perimeter of the land encompassed under this Lease where such fencing does not exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain in good order and condition throughout the term of this Lease the fences so constructed and those now existing on the demised premises. The Lessee shall, wholly at Lessee's own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided herein. The cost of installing and maintaining such boundary fences shall be in accordance with Part II of Chapter 664, Hawaii Revised Statutes, which provides generally for the sharing of such costs by adjacent land owners or lessee for the purpose of confining animals of each adjacent owner or lessee unless the adjacent land is owned and not leased by the government.

26. **PROTECTION OF FOREST, WATERSHED AREAS, ETC.** Lessee shall protect forests, watershed areas, game management areas, wildlife sanctuaries, reservation of rights-of-way and access to other public lands and prevent nuisances and waste in connection with Lessee's possession, occupancy and use of the demised premises. Lessee shall take all reasonable precautions to prevent forest fires thereon, and in the event such fires shall occur, Lessee shall use all reasonable means at Lessee's command or under Lessee's control, to have such fires speedily extinguished.

27. **HAZARDOUS MATERIALS.** Except for Hazardous Material lawfully permitted on the demised premises in connection with the direct participation of diversified agricultural activities on the demised premises, Lessee shall not cause or permit any Hazardous Material, as hereinafter defined, to be brought upon, kept, or used in or about the demised premises by Lessee, its agents, employees, contractors, or invitees, or any persons holding under Lessee. Any Hazardous Material lawfully permitted on the demised premises in connection with the direct participation in diversified agricultural activities on the demised premises, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all federal, state, and local guidelines, laws or regulations applicable to the Hazardous Material. Lessee shall not discharge, leak, or emit or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by Lessor, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located in the demised premises or elsewhere, or (b) the condition, use, or enjoyment of any buildings or any other real or personal property.

If Lessee breaches the obligations stated in this paragraph 27, entitled Hazardous Material, or if the presence of Hazardous Material on the demised premises caused or permitted by Lessee results in contamination of the demised premises or other premises, or if contamination of said demised premises or other premises by Hazardous Material otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom, then Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments,



damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of, damages for the loss or restriction on use of, and damages arising from any adverse impact on marketing of said demised premises or other premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the lease term as a result of such contamination. This indemnification of Lessor by Lessee includes all reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under said demised premises or other premises. Without limiting the foregoing, if the presence of any Hazardous Material on said demised premises or other premises caused or permitted by Lessee results in any contamination of said demised premises or other premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the demised premises or other premises to the condition existing prior to the introduction of any such Hazardous Material to the demised premises or other premises; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any adverse effect on the demised premises or other premises. Lessee's representations, warranties and covenants contained in this paragraph shall survive the term of this Lease. However, Lessor will indemnify and hold Lessee harmless for any damages suffered by Lessee resulting from hazardous materials exposure caused by Lessor.

As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Hawaii or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (vi) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. §6991 et seq. or (vii) any similar state or local laws, ordinances or regulations now or hereafter adopted, published and/or promulgated pursuant thereto.

28. **COVENANT AGAINST DISCRIMINATION.** The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin or physical handicap.

29. **MAINTENANCE OF EXISTING INFRASTRUCTURE IMPROVEMENTS.** Notwithstanding any provision to the contrary, Lessor shall be responsible to pay for the repair and maintenance of the existing paved roads, water tanks and main waterlines, catch basins and bridge and stream lining below the bridge, which Lessor caused to be constructed in the Waiahole Valley Agricultural Park and Residential Lots Subdivision until such time that any of such improvements are dedicated to a governmental agency or department. Provided that if any improvements to the same are required as part of any improvement district, Lessee shall be responsible for the payment of the improvement district assessment allocated to the demised premises.

30. **MISCELLANEOUS.** The term "Lessor" and "Lessee" herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and their and each of their respective successors, executors, administrators and assigns, according to the context hereof.

31. **LESSEE'S WAIVER OF RIGHT TO PURCHASE FEE SIMPLE INTEREST IN THE DEMISED PREMISES (if applicable).** Lessor acquired the land which comprises the Project, including the demised premises, and caused certain capital improvements to be made to such land in furtherance of the public policies set forth in Hawaii Revised Statutes Sec. 166-1 and the public purpose of providing housing opportunities. Recognizing the contributions of the State of Hawaii to carry out such public policies and purpose in order to establish the Project, Lessee, for Lessee and Lessee's successors and assigns, hereby relinquishes, renounces and waives any right to purchase the fee simple interest in the demised premises which Lessee,



including any successor and assign, now has or may hereafter have or claim under any law to purchase the fee simple interest in such property.

Notwithstanding the foregoing, if any law or court of competent jurisdiction shall determine that the waiver set forth above in this paragraph 31 shall not be enforceable and shall allow the Lessee, or the Lessee's successors or assigns, to purchase the fee simple interest in the real property constituting the demised premises, the purchase price shall be not less than the sum of the following:

(a) An amount of the total general improvement costs (roads, drainage and electrical improvements) and water system improvements which the Lessee expended to develop the Project and which should be charged to the premises by good accounting practice as determined by the Lessor whose books shall be prima facie evidence of the correctness of such costs x 7.00% x number of years from the date of this Lease to the date of closing of the sale of the fee simple interest in the demised premises; plus

(b) The fair market value of the fee simple interest unencumbered by this Lease; plus

(c) All of Lessor's attorneys' fees and costs, including appraisal and other consultant fees arising out of the lease-to-fee simple conversion.

### 32. EXCEPTIONS TO LEASEHOLD TITLE AND RIGHT OF QUIET

**ENJOYMENT.** Lessor is not making any express or implied representation or warranty to Lessee with respect to Lessee's leasehold right, title or interest in the demised premises and right to quiet enjoyment of the demised premises arising out of or in connection with the following exceptions:

(a) Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land of which the demised premises is a part or by making inquiry of persons in possession thereof.

(b) Any easements, claim of easement or encumbrances, whether claimed by prescription, adverse possession or otherwise, which are not shown by the public records.

(c) Any discrepancies, conflicts in boundary lines, shortage on area, encroachments or any other facts which a complete and correct boundary and improvement survey or archeological study would disclose, including without limitation trails, rights of way, historic property or sites and burial sites, and which are not shown by the public records.

(d) Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

(e) Claims arising out of native Hawaiian rights customarily or traditionally exercised for subsistence, cultural, religious, access or gathering purposes as provided by law, including without limitation the Constitution of the State of Hawaii, Section 1-1 or 7-1 Hawaii Revised Statutes or other statutory or case law of a similar nature.

### 33. AGREEMENT ABOUT PAYMENTS FOR "MASTER" OR "BLANKET"

**LIABILITY INSURANCE.** If the liability insurance, which is required pursuant to Section 11 above, shall be available through a "master" or "blanket" policy and if Lessee requests in writing to be covered by such "master" or "blanket" policy, Lessee agrees as follows:

(a) Lessee shall pay to Lessor a prorata share, as determined by Lessor, of the annual premium for such liability insurance upon the issuance of this Lease to Lessee.

(b) Lessee shall pay to Lessor an additional sum on or before the first day of each and every

month equal to 1/12th of Lessee's prorata share, as determined by Lessor, of the estimated annual premium for liability insurance. Lessee shall not be entitled to any interest on account of any funds which Lessee shall pay to Lessor as liability insurance premiums.

(c) Lessor shall not have any obligation, responsibility or liability to pay all or any part of the premiums for such "master" or "blanket" liability insurance policy. If any lessee of an agricultural lot or residential lot in the Walahole Agricultural Park and Residential Lots Subdivision shall fail, refuse or neglect to pay such lessee's prorata share of the annual liability insurance premium, such lessee's prorata share shall be prorated among all lessees. Lessor may increase or decrease the estimated sum which Lessee has agreed to pay for liability insurance.

(d) Lessor shall not have any obligation, responsibility or liability to find any new or replacement "master" or "blanket" liability insurance policy if any then existing "master" or "blanket" liability insurance shall be terminated, canceled or not renewed. If any "master" or "blanket" liability insurance policy shall be terminated, canceled or not renewed, Lessee shall be responsible for providing Lessee's own liability insurance coverage pursuant to the requirements under this Lease.

(e) Lessor shall not have any duty, responsibility or liability for damages or any other relief to a lessee or any third party with respect to the amount, coverage or policy limits of any "master" or "blanket" liability insurance policy. Lessee may obtain any additional, excess or umbrella liability insurance for Lessee's benefit and protection.

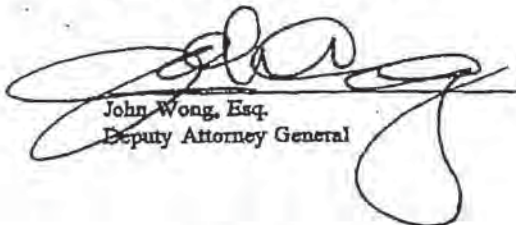
(f) Lessor is not and shall not be deemed to be an insurer, co-insurer or indemnitor with respect to any claim, liability, damages of any kind or nature, including any damages. Lessor shall not be liable to Lessee or any third party if the coverage or policy limits of such "master" or "blanket" liability insurance policy shall not cover in whole or in part any particular loss or claim, including the defense of any claim.

(g) If Lessee shall fail, refuse or neglect to pay Lessee's prorata share of the estimated annual premium for liability insurance or any additional assessments for liability insurance premiums, including any additional assessments to pay the premiums of other lessees who shall have failed, refused or neglected to pay all or part of their prorata share of premiums for liability insurance, Lessee shall be in default under this Lease. Any amount which Lessee shall fail, refuse or neglect to pay shall bear interest at the simple annual rate of 12% until fully paid. The interest collected shall be applied to reduce the premium for such "master" or "blanket" liability insurance policy.



Waialeale Agricultural Park and Residential Lot Subdivision  
Agricultural Lot Ground Lease

APPROVED AS TO FORM:

  
John Wong, Esq.  
Deputy Attorney General

LESSOR:

HOUSING FINANCE AND DEVELOPMENT  
CORPORATION

  
By: ROY S. OSHIRO  
Its: Executive Director

STATE OF HAWAII )

CITY AND COUNTY OF HONOLULU ) ss.  
)

On this \_\_\_\_\_ day of JUN 01 1998, 1998, before me appeared ROY S. OSHIRO, to me personally known, who, being by me duly sworn, did say that he is the Executive Director of HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii; that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors; and said ROY S. OSHIRO acknowledged said instrument to be the free act and deed of said corporation.

L.S.:

  
Notary Public, State of Hawaii

My commission expires

5.18.2001

EXHIBIT D

EXHIBIT A

**[§519-1] Lease renegotiations; calculation of rent; definition.** (a) Whenever any agreement or document for the lease of private lands provides for the renegotiation of the rental amount or other recompense during the term of the lease and such renegotiated rental amount or other recompense is based, according to the terms of the lease, in whole or in part upon the fair market value of the land, or the value of the land as determined by its highest and best use, or words of similar import, such value, for the purposes of determining the amount of rental or other recompense, shall be calculated upon the use to which the land is restricted by the lease document.

(b) The term "lease", "lease agreement", or "document" as used in this section, means a conveyance leasing privately-owned land by a fee simple owner as lessor, or by a lessee as sublessor, to any person, for a term exceeding five years, in consideration of a return of rent or other recompense. [L 1969, c 267, §1]

**§519-2 Residential leases of real property.** (a) All leases as defined by section 516-1, of residential lots, as defined by section 516-1, existing on June 2, 1975, or entered into thereafter, which provide for reopening of the contract for renegotiation of lease rent terms shall in the case of leases after June 2, 1975, provide the following, or in case of leases existing on June 2, 1975, shall be construed in conformity with the following:

(1) Such renegotiations shall not be scheduled more frequently than once every fifteen years, provided the first of such reopenings shall not be scheduled prior to the fifteenth year following the initial date of the lease; and

(2) Upon renegotiation, the lease rent payable shall not exceed the amount derived by multiplying the "owner's basis" by four per cent. For purposes of this section, "owner's basis" means the current fair market value of the lot, excluding onsite improvements, valued as if the fee title were unencumbered; less the lessee's share, if any, of the current replacement cost of providing existing offsite improvements attributable to the land, which replacement cost shall include an overhead and profit not exceeding twenty per cent of the current replacement cost of the existing offsite improvements, or less the original lot development credit to the lessee, whichever is greater. For purposes of this section, "offsite improvements" means all physical improvements such as, but not limited to, roads, sewer lines, sewage treatment plants, and underground utility cables, constructed or placed in a subdivision or development off the land intended for occupancy, which improvements are to be used in common by occupants of all lands adjoining such improvements or by occupants of all lands for whose benefit the improvements have been constructed or placed; and "onsite improvements" means all physical improvements placed on a residential lot intended for occupancy which improvements are for the

**EXHIBIT E**

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benefit of occupants of that lot, including but not limited to, dwelling units, garages, service buildings, stairs, walkways, driveways, walls, trees, shrubs, landscaping, and pools.

(b) In the event the parties to a lease are unable to achieve an agreement under any reopening provision, the Hawaii housing finance and development corporation or its designee shall arbitrate, and its findings shall be binding and conclusive on both parties. Arbitration proceedings under this subsection will be subject to the following requirements:

(1) An advance deposit, which amount shall be determined by the corporation, equal to projected expenses and fees of the corporation or its designee for arbitration proceedings shall be required and shall be paid equally by lessees and lessors. All additional expenses and fees incurred by the corporation or its designee while acting as the arbitrator shall be borne equally by lessees and lessors. These additional expenses and fees shall be subject to monthly billings or other arrangements which may be specified by contract. If more than one lessee is involved in an arbitration proceeding, all lessees shall share equally in one-half of the arbitration costs. The same division of costs shall apply if more than one lessor is involved in a proceeding.

(2) Failure on the part of lessees to comply with the provisions set forth in this subsection, including failure to make advance deposits or payments, shall result in forfeiture of any rights or remedies under this chapter for arbitration, and the lessees' sole rights and remedies shall be as provided in the lease document.

(3) If lessors fail to comply with the provisions of this subsection, including failure to make advance deposits or payments, then arbitration proceedings under this chapter will cease and the lease rent shall be set at the most recent fixed lease rent. Upon compliance with the provisions of this chapter, the arbitration may proceed, with the determination of the new lease rent effective only from the date of compliance by the lessor.

(4) Except as provided in paragraphs (b)(2) and (b)(3) above, all new lease rents shall be effective as of the date of reopening.

For the purpose of this subsection, "arbitration proceedings" means the actual arbitration conducted by the corporation or its designee pursuant to a contract executed by and among the lessees, lessor, and the arbitrator detailing among other things, the following: description of properties involved, time of performance, compensation, method of payment, settlement and other procedures, and termination.

(c) Any covenant or provision of a lease in violation of this section, shall not be enforceable in any court in this State.

(d) For the purpose of this section renegotiation shall not include negotiation for the determination of lease rental under section 516-66 arising out of an extension under section

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516-65. [L 1975, c 185, §2(2); am L 1976, c 242, §5; am L 1979, c 105, §49; am L 1984, c 191, §1; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

**§519-3 Leases of real property by a cooperative housing corporation.** (a) All leases, including subleases executed by a cooperative housing corporation as lessee, and all leases, including subleases acquired by a cooperative housing corporation by assignment, whether executed prior to or after June 12, 1982, which directly or by incorporation provide for reopening of the contract for renegotiation of lease rent terms, shall provide or be construed in conformity with the following:

(1) Such renegotiations shall not be scheduled more frequently than once every ten years; provided that the first of such reopenings shall not be scheduled prior to the fifteenth year following the initial date of the lease; and

(2) Upon renegotiation, the lease rent payable by a cooperative housing corporation as lessee, sublessee, or assignee shall not exceed the amount derived by multiplying the "owner's basis" by the original percentage rate.

(b) In the event the parties to a lease are unable to achieve an agreement under any reopening provision, the Hawaii housing finance and development corporation or its designee shall arbitrate, and its findings shall be binding and conclusive on both parties. Arbitration proceedings under this subsection will be subject to the following requirements:

(1) An advance deposit, which amount shall be determined by the corporation, equal to projected expenses and fees of the corporation or its designee for arbitration proceedings shall be required and shall be paid equally by lessees and lessors. All additional expenses and fees incurred by the corporation or its designee while acting as the arbitrator shall be borne equally by lessees and lessors. These additional expenses and fees shall be subject to monthly billings or other arrangements which may be specified by contract. If more than one lessee is involved in an arbitration proceeding, all lessees shall share equally in one-half of the arbitration costs. The same division of costs shall apply if more than one lessor is involved in a proceeding.

(2) Failure on the part of lessees to comply with the provisions of this subsection, including failure to make advance deposits or payments, shall result in forfeiture of any rights or remedies under this chapter for arbitration, and the lessees' sole rights and remedies shall be as provided in the lease document.

(3) If lessors fail to comply with the provisions set forth in this subsection, including failure to make advance deposits or payments, then arbitration proceedings under this chapter will cease and lease rent shall be set at the most recent fixed lease rent. Upon compliance with the

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provisions set forth in this chapter, the arbitration may proceed, with the determination of the new lease rent effective only from the date of compliance by the lessor.

(4) Except as set forth in paragraphs (b)(2) and (b)(3) above, all new lease rents shall be effective as of the date of reopening.

For the purpose of this subsection, "arbitration proceedings" means the actual arbitration conducted by the corporation or its designee pursuant to a contract executed by and among the lessees, lessor, and the arbitrator detailing among other things, the following: description of properties involved, time of performance, compensation, method of payment, settlement and other procedures, and termination.

(c) Any covenant or provision of a lease in violation of this section shall not be enforceable in any court in this State.

(d) For purposes of this section:

"Cooperative housing corporation" means a corporation:

(1) Having only one class of stock outstanding;

(2) Each of the stockholders of which is entitled, solely by reason of the shareholder's ownership of stock in the corporation, to occupy for dwelling purposes the dwelling unit in a building owned or leased by the corporation and situated on land leased by the corporation;

(3) No stockholder of which is entitled, either conditionally or unconditionally, to receive any distribution not out of earnings and profits of the corporation, except in a complete or partial liquidation of the corporation; and

(4) Eighty per cent or more of the gross income for the taxable year in which the taxes and interest described in title 26 United States Code section 216(a) are paid or incurred is derived from tenant stockholders.

"Offsite improvements" means all physical improvements, including but not limited to roads, sewer lines, sewage treatment plants, and underground utility cables, constructed or placed in a subdivision or development off the land intended for occupancy, which improvements are to be used in common by occupants of all lands adjoining the improvements or by occupants of all lands for whose benefit the improvements have been constructed or placed.

"Onsite improvements" means all physical improvements placed on a residential lot intended for occupancy, which improvements are for the benefit of occupants of that lot,

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including but not limited to dwelling units, garages, service buildings, stairs, walkways, driveways, walls, trees, shrubs, landscaping, and pools.

"Original percentage rate" means the percentage derived by dividing the annual lease rent established for the first fixed rent period under the lease by the fair market value of the land as of the first day of the first fixed rent period.

"Owner's basis" means the value of the lessor's leased fee interest in the property that would apply if the interest were normally traded on an open market. The fair market value of the owner's basis shall be established to provide the lessor with just compensation for the lessor's interests in the lot and shall take into consideration every interest and equity of the lessee in establishing that market value. The value may be determined by any method that is normally used by qualified appraisers in establishing the fair market value of a lessor's leased fee interest in land. [L 1982, c 220, §1; am L 1983, c 166, §2; am L 1984, c 47, §1 and c 191, §2; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2018, c 18, §41]

**[\$519-4] Exemption for sustainable affordable developments.** Notwithstanding any other law to the contrary, no lessee under a sustainable affordable lease as defined in section 516-1 and qualified under section 516-202 may exercise the rights granted to a lessee under section 519-2. [L 2005, c 197, §4]

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DEPARTMENT OF HUMAN SERVICES

Repeal of Chapter 15-177 and  
Adoption of Chapter 17-2015  
Hawaii Administrative Rules

October 21, 2004

1. Chapter 15-177 of Title 15, Hawaii  
Administrative Rules, is repealed.

2. Chapter 2015 of Title 17, Hawaii  
Administrative Rules, entitled "Real Property Lease  
Rent Renegotiations" is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT  
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF  
HAWAII

CHAPTER 177

REAL PROPERTY LEASE RENT RENEGOTIATIONS

Repealed

§§15-177-1 to 15-177-15 Repealed. [R NOV 15 2004 ]

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HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF  
HAWAII

CHAPTER 2015

REAL PROPERTY LEASE RENT RENEGOTIATIONS

Subchapter 1 General Provisions

- \$17-2015-1 Purpose and applicability
- \$17-2015-2 Definitions

Subchapter 2 Lease Rent Renegotiations

- \$17-2015-11 Qualifying requirements for arbitration  
of renegotiation of lease rent
- \$17-2015-12 Request for arbitration
- \$17-2015-13 Review of application and determination  
of eligibility
- \$17-2015-14 Selection and designation of an  
arbitrator and execution of contract
- \$17-2015-15 Arbitration proceedings

Historical note: Chapter 2015 of Title 17,  
Hawaii Administrative Rules, is based substantially  
upon Chapter 381 of Title 6, Hawaii Administrative  
Rules, [Eff 9/25/90; R 10/25/99], and Chapter 177 of  
Title 15, Hawaii Administrative Rules [Eff 10/25/99;  
R NOV 15 2004 ]

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§17-2015-

## SUBCHAPTER 1

### GENERAL PROVISIONS

§17-2015-1 Purpose and applicability. This chapter implements chapter 519, HRS, and applies to all residential leasehold lots and leases of real property by cooperative housing corporations as defined in chapter 519, HRS. [Eff **NOV 15 2004** ]  
(Auth: HRS §§91-2; 201G-4) (Imp: HRS §§519-2, 519-3)

§17-2015-2 Definitions. Unless otherwise clear from the context or unless further defined in this chapter, the definition of "Lease," and "Lot," in section 516-1, and definitions in chapter 519, HRS, shall apply to this chapter. In addition, as used in this chapter:

"Advance deposit" means an amount determined by the corporation, which shall be paid in advance and is to be applied to expenses and fees of the corporation or its designee for arbitration proceedings.

"AAA" means the American Arbitration Association, a private, public service, not-for profit organization offering dispute settlement services in a variety of industries and businesses.

"Corporation" means the housing and community development corporation of Hawaii created under chapter 201G, Hawaii Revised Statutes.

"Executive Director" means the executive director of the corporation or the executive director's designated representative.

"Group of lessees" means more than one lessee having leasehold interests in separate residential lots within the same development tract or cooperative housing corporation.

"Group of lessors" means more than one lessor having fee ownership interest of residential lots in the same development tract or fee ownership interest in the land leased to a cooperative housing corporation.

"Party" means a lessee or group of lessees or a



lessor or a group of lessors.

"Per diem rate" means the daily rate which may be paid to an arbitrator for professional services in conducting arbitration proceedings for renegotiation of lease rent cases. The arbitration proceedings include services such as, but are not limited to, prehearing conferences, hearings, study of the positions and presentations of the parties, providing meeting facilities, field inspections of real property site(s), typing, reproduction, and preparation of award. Not included as part of the per diem rate are costs associated with neighbor island travel (air and ground transportation and lodging where appropriate) plus costs of travel locally by automobile to points in excess of thirty minutes from an arbitrator's office. Engagement in the performance of any tasks of the arbitration proceedings process for a period of more than six hours in a single day qualifies for the full per diem rate and performance of those tasks in a single day totaling less than two hours qualifies for one-fourth of the per diem rate, two hours of more but less than four hours qualifies for one-half of the per diem rate, and four hours or more qualifies for three-fourths of the per diem rate.

"Renegotiations" means deliberations between a lessee and lessor for determining a new lease rent at the time the lease is reopened as provided in chapter 519. [Eff NOV 15 2004 ] (Auth: HRS §201G-4) (Imp: HRS §§519-1, 519-2, 519-3)

## SUBCHAPTER 2

### LEASE RENT RENEGOTIATIONS

§17-2015-11 Qualifying requirements for arbitration of renegotiation of lease rent. All leases for residential leasehold lots and all leases, including subleases executed or acquired by assignment by cooperative housing corporations shall be eligible and considered qualified for arbitration if the

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criteria outlined in sections 519-2 or 519-3, HRS, are met. [Eff **NOV 15 2004**] (Auth: HRS §201G-4) (Imp: HRS §§519-2, 519-3)

§17-2015-12 Request for arbitration. (a) When a lessee or group of lessees and a lessor or group of lessors cannot agree on a renegotiated lease rent and the lease meets the requirements for arbitration under chapter 519, HRS, either party may request the corporation to arbitrate the renegotiations of lease rent. The request for arbitration shall include the following:

- (1) Description of the property including its location and tax map key number;
- (2) Name, address, and business and home telephone numbers, as appropriate, of each party;
- (3) Name, address, and business and home telephone numbers, as appropriate, of the representative (if any) for each party;
- (4) Signature sheet with the signatures of the party initiating the request;
- (5) Copies of all current lease documents applicable to the requested action, and if applicable, copies of any assignment of lease; and
- (6) Negotiation documents and a narrative statement on the current status of renegotiations including the last offers of the parties, if available.

(b) The party initiating the request for arbitration shall submit its portion of the advance deposit with the filing of the request for arbitration. The responding party shall pay its share of the advance deposit upon notification from the corporation that the lease meets the criteria for arbitration as outlined in sections 519-2 or 519-3, HRS. The advance deposit shall be in the form of a cashier's or certified check or money order in the following amounts:



- (1) \$1,200 per party participating in the arbitration proceedings for residential lots; or
- (2) \$1,200 per cooperative housing corporation and lessor participating in the arbitration proceedings.

(c) If the request for arbitration does not meet the criteria for arbitration, the initiating party shall be entitled to a refund of the advance deposit and the responding party will not be required to pay its portion of the advance deposit.

(d) If the request for arbitration meets the criteria for arbitration as outlined in sections 519-2 or 519-3, HRS, and if the parties have paid the advance deposit and the dispute is settled or withdrawn from arbitration before the contract for arbitration is executed among the parties and the arbitrator, or the contract is executed, but before arbitration proceedings commence, the full amount of each party's advance deposit shall be refunded.

(e) If the parties settle or withdraw their dispute from arbitration after the contract has been executed, but before the arbitration proceedings commence, the arbitrator shall be compensated with one-fourth of the per diem rate, the cost of which shall be shared equally by the parties. The payment shall be deducted from the advance deposits made by the parties. The balance of the deposits is to be refunded to the parties in equal amounts.

(f) If the parties settle or withdraw their dispute from arbitration any time after the arbitration proceedings commence and before the award is rendered, the arbitrator shall refund all of the unexpended portion of the advance deposit to the parties in equal amounts.

(g) Fees to cover the arbitration proceedings shall be set by the corporation at a per diem rate which shall be reviewed in conjunction with updating the master list of arbitrators to determine whether any adjustment in the rate amount is warranted.

(h) All projected expenses and fees of the arbitration proceedings shall be borne equally by each

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of the parties as prescribed in chapter 519, HRS, and this chapter.

(i) Failure by either party to pay their respective share of the advance deposit and costs of arbitration proceedings, as may be required, shall result in sanctions as set forth in chapter 519, HRS. [Eff **NOV 15 2004**] (Auth: HRS §201G-4) (Imp: HRS §§519-2, 519-3)

§17-2015-13 Review of application and determination of eligibility. (a) Not later than fifteen working days after receiving a request for arbitration, the administrator shall review the case to determine whether the lease for residential or cooperative housing corporation property satisfies the criteria outlined in sections 519-2 or 519-3, HRS, and this chapter, and the corporation shall notify each party of the corporation's determination.

(b) If the corporation finds that the lease does not meet the criteria for arbitration, the corporation shall take no further action.

(c) If the corporation determines that the lease does meet the criteria for arbitration, the corporation shall proceed to designate an arbitrator. [Eff **NOV 15 2004**] (Auth: HRS §201G-4) (Imp: HRS §§519-2, 519-3)

§17-2015-14 Selection and designation of an arbitrator and execution of contract. (a) The corporation may appoint an arbitrator from the corporation's staff or may appoint a designee from the private sector to arbitrate the renegotiation of lease rent terms.

(b) The corporation shall establish a master list of all persons responding to solicitations for qualification statements who meet the requirements for an arbitrator, as set forth in subsection (c) to arbitrate renegotiation of lease rent cases. Additionally, the corporation shall update its master

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list of qualified arbitrators each year or at any other time deemed necessary by the corporation.

(c) The requirements for a person to act as an arbitrator to arbitrate renegotiation of lease rent cases shall be as follows:

- (1) A real estate appraiser who is certified by the State of Hawaii, with a minimum of three years of experience; and
- (2) At least one of the following:
  - (A) Successful completion of training in arbitration rules and procedures (conducted or sanctioned by the American Arbitration Association;
  - (B) Admission to the panel of the American Arbitration Association; or
  - (C) Performance as an arbitrator in rendering a decision in at least three real property arbitration cases; or
- (3) A person mutually selected by both parties.

(d) If the corporation decides to designate an arbitrator from the private sector, the corporation shall furnish each party with an identical list of up to seven qualified arbitrators from the corporation's master list of qualified arbitrators, and each party shall have the right to peremptorily cross off one name. Each party shall then rank the remaining names on the list in the order of preference and shall return the list to the corporation within ten days from the date of the referral for further consideration. The corporation shall assume that each party concurs in the selection of any named arbitrator remaining on their respective lists.

(e) The corporation shall review both lists to determine if there is a mutual choice by preference of the proposed arbitrators remaining on the lists. If there is a named arbitrator of mutual choice, that arbitrator shall be selected and appointed by the administrator.

(f) If for some reason, the preferred, mutual choice arbitrator is unable to accept the appointment, the corporation shall select and appoint the next mutually ranked arbitrator by preference. If there

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is no other mutually ranked choice by preference, the corporation shall make a selection and appointment from the remaining names on the list provided to the parties, and if for any reason an appointment cannot be made from those arbitrators remaining on the list provided to the parties, the corporation may appoint an arbitrator without the referral of an additional list of arbitrators to either party.

(g) Within ten calendar days after the selection and appointment of an arbitrator by the administrator, the corporation shall:

- (1) Notify each party and arbitrator; and
- (2) Request a written disclosure statement from the selected arbitrator.

(h) If, after review of the arbitrator's disclosure statement, the parties have no objections to the selection based on the disclosure statement, the corporation shall prepare and forward the arbitration services contract to each party and the arbitrator for execution. [Eff **NOV 15 2004** ]  
(Auth: HRS §201G-4) (Imp: HRS §§519-2, 519-3)

§17-2015-15 Arbitration proceedings. (a) The arbitrator shall pursue the arbitration of the renegotiations in accordance with the arbitration services contract and chapter 658A, HRS.

(b) The arbitrator shall render an award, a copy of which the arbitrator shall send to each party and the corporation. The award shall be completed not later than thirty days from the date of the last hearing.

(c) The corporation shall not participate in the arbitration proceedings where it has designated an arbitrator from the private sector to arbitrate the case, provided the corporation shall monitor the proceedings and may act as a resource in the arbitration. [Eff **NOV 15 2004** ] (Auth: HRS §201G-4) (Imp: HRS §§519-2, 519-3; chapter 648)

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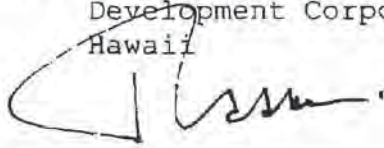


DEPARTMENT OF HUMAN SERVICES

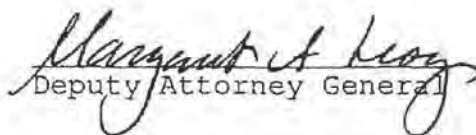
The repeal of chapter 15-177 and the adoption of chapter 17-2015, Hawaii Administrative Rules, on the Summary Page dated October 21, 2004, was adopted on October 21, 2004, following public hearings held on September 14, 2004, after public notice was given in the Honolulu Star-Bulletin, The Garden Isle, The Maui Times, West Hawaii Today, and Hawaii Herald-Tribune newspapers on August 12, 2004.


The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
CHARLES A. STED, Chairperson  
Housing and Community  
Development Corporation of  
Hawaii

  
THEODORE E. LIU  
Director of Business,  
Economic Development and  
Tourism

APPROVED AS TO FORM:

  
Margaret A. Hoag  
Deputy Attorney General

  
LINDA LINGLE  
Governor  
State of Hawaii  
Date: NOV 3 2004

04 NOV 4 10:38

Filed

LIEUTENANT GOVERNOR  
OFFICE

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## **Waiāhole-Waikāne Community Association**

March 11 ,2021

Bruce Tsuchida  
Principal Planner  
TOWNSCAPE, INC.  
900 Fort Street Mall, Suite 1160  
Honolulu, HI 96813

Aloha Bruce,

Mahalo for your email of Monday, March 8, informing us of the November 7, 2021 expiration date pertaining to the Townscape-HHFDC contract as well as HHFDC's request for Townscape to forge ahead with the lease rent re-negotiation process. We are sorry to hear that the contract cannot be renewed but understand the HHFDC's position given the revenue/tax shortfalls that the State of Hawaii is experiencing as a result of the pandemic.

The WWCA has made progress regarding the understanding of the lease rent re-negotiation process after discussions with Deeley King Pang & Van Etten (the "Law Firm"). We have shared and discussed these findings with members of the Waiāhole-Waikāne community over a series of Zoom calls. At this point in time, we believe that the next steps regarding the lease rent re-negotiation process is for community members to work towards regaining compliance (if they are currently out of compliance) and to think about how best they want to approach the process in 2022 (alone/individually or as part of a small hui or as part of a larger, community-wide hui). We continue to guide them in this process and address their many questions based, in part, on the counsel of the Law Firm.

At this point we believe it best for the community if Townscape could instead help us regarding issues related to our struggling farmers. Specifically, we would appreciate the opportunity to work with Townscape regarding (in no particular order) how best to set up a Farmers Co-Op/Hui; how best to build a Waiāhole-Waikāne brand; how best to organize/permit a

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Page 2- Continue

farmers market; how best to transform fallow fields into producing agricultural farms, and how best to secure funding for farm or residential improvements.

Clearly we cannot address all of these topics that are outlined here and in our Community Strategic Plan. Therefore we would ask you first for guidance in selecting the ones that offer the greatest chance of success for completion given the Nov, 2021 timeframe and then focus on those topics.

We are currently in the process of asking our farmers to prioritize the list. Please let us know your thoughts on the above suggestions at your earliest convenience. We look forward to working with you and Lillie in the months ahead as the pandemic continues to abate and Covid-19 restrictions are lifted.

Mahalo Ke Akua,

*Laurence Uyemura*

Laurence Uyemura,

WWCA President

**Waiāhole-Waikāne Community Association**

**WAIĀHOLE & WAIKĀNE Community Association, P.O. Box 6566, Kaneohe/Hawaii 96744 / (808)239-7128**

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**Waiahole Valley Agricultural Park and Residential Lots Subdivision**  
**Pro Forma Net Operating Loss**

Revised 6/15/22

	FY 2020A	FY 2021A	Pro Forma
Average monthly residential lot base rent			\$ 119
Average monthly agricultural lot base rent			\$ 110
Base rent, existing leases	\$ 144,528	\$ 121,191	\$ 124,089 (1)
Annual percentage lease rent	812	5,143	7,941 (2)
Lots 48 and 49 rent	included above	included above	21,600 (3)
Water service income	15,599	19,240	116,723 (4)
Other income	815	73,542	37,178 (5)
Total revenues	\$ 161,754	\$ 219,115	\$ 307,531
WWS operating and maintenance	\$ 286,718	\$ 812,685	\$ 286,718 (6)
Electricity service	35,320	42,319	38,820 (7)
Other contracted expenses	163,738	150,980	157,359 (7)
Personnel	not estimated	not estimated	819,320 (8)
Administrative	not estimated	not estimated	124,079 (8)
Total operating expenses	not applicable	not applicable	\$ 1,426,296
Net operating income (loss)	not applicable	not applicable	\$ (1,118,764)

**Notes**

- 1) Based on in-place lease rents.
- 2) Average of annual collections from FY 2020 through FY 2022 YTD.
- 3) Assumes that the new lease to be issued through a Request for Proposals will generate revenue equal to the recently expired Right of Entry.
- 4) Based on the new rate structure in proposed Hawaii Administrative Rules Chapter 319.
- 5) Average of annual collections from FY 2019 through FY 2021.
- 6) Based on FY 2020 expenses. Extraordinary expenses were incurred in FY 2021 due to Waiahole Water System damage sustained as a result of the March 2021 floods.
- 7) Average of annual expenses from FY 2019 through FY 2021.
- 8) Based on recent historical and estimated staff time allocations.

EXHIBIT H

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**SUMMARY OF TENTATIVE AGREEMENT REGARDING LEASE RENT  
RENEGOTIATIONS WITH 10 AGRICULTURAL-LOT LESSEES IDENTIFYING AS  
MAHIAI O WAIAHOLE**

Lessee and Lot No.	Lot Size (acres)	No. of Dwellings	Monthly Rent			Multiple of Current Rent
			Current Base Rent	Initial Base Rent Offer	Negotiated Base Rent	
Clark (Lot 6)	4.032	1	\$ 73.83	\$ 488.00	\$ 201.83	2.73
Miller (Lot 53)	5.558	1	86.55	572.00	227.26	2.63
Prudencio (Lot 58)	5.780	1	60.09	397.00	230.96	3.84
Reppuns; Hoe (Lot 78)	28.311	4	276.16	1,823.00	1,010.37	3.66
Jacobsen (Lot 81)	8.928	2	114.63	757.00	418.06	3.65
Ota (Lot 85)	3.779	1	71.72	474.00	197.61	2.76
Ignacio (Lot 111)	12.483	1	144.26	953.00	342.68	2.38
Bishop; Tom (Lot 127)	16.110	-	134.17	886.00	268.50	2.00
A. Reppun (Lot 128)	3.500	-	28.15	185.79	58.33	2.07
Kamalani (Lot 134)	2.543	1	61.43	405.44	177.01	2.88
<b>Total/Average</b>	<b>91.024</b>	<b>12</b>	<b>\$ 1,050.99</b>	<b>\$ 6,941.23</b>	<b>\$ 3,132.63</b>	<b>2.98</b>