

**HAWAII PUBLIC HOUSING AUTHORITY  
NOTICE OF  
BOARD OF DIRECTORS MEETING  
1002 North School Street, Building A  
Honolulu, Hawaii 96817  
Thursday, April 4, 2024  
9:00 a.m.**

**AGENDA**

**THIS MEETING WILL BE HELD VIA ZOOM (INTERACTIVE AUDIO-VISUAL CONFERENCE TECHNOLOGY) OR TELECONFERENCE CALL (AUDIO-ONLY COMMUNICATION) AND AT 1002 NORTH SCHOOL STREET, BUILDING A, HONOLULU, HI 96817**

**Viewing/Participating in the Meeting:**

**Zoom:** The public may participate in the Board meeting as it happens via Zoom (a free video conferencing service to hold virtual meetings online) by clicking on this link: <https://zoom.us/j/81665510246?pwd=NHlyWkVKYkw1Y3puRlFOZzFmYTNXUT09>  
When prompted, enter the Meeting ID: 816 6551 0246 and the Password: x71pPw

Alternatively, the public may also participate via telephone by calling: 1-669-900-6833. When prompted, callers should enter the Meeting ID: 816 6551 0246 and the Password: 771231. We request that meeting participants change the display on their device to show their first and last name to expedite rollcall. Please keep in mind that many devices will display your cellphone number if not changed.

If the Hawaii Public Housing Authority (HPHA) loses internet or Zoom connection during the meeting where audiovisual communication cannot be maintained with all participating Board members and quorum is lost, the meeting will automatically be recessed for 30 minutes to restore audiovisual communication. **Audio-Only Communication:** If the attempt to restore audiovisual communication is unsuccessful, all Board members, staff, the public may continue to participate in the Board meeting via teleconference call by calling 1-862-799-9759, whereby audio-only communication will be established for all participants and the meeting will continue. When prompted, callers outside of the United States should enter the Access Code: 8232649.

**Physical Meeting Location:**

The public may also attend the meeting at 1002 North School Street, Building A, Honolulu, HI 96817, which will be connected via Zoom to the remote meeting. At this time, no Board members are scheduled to be physically present at this location.

## **Providing/Submitting Testimony – Written, Oral, Audiovisual:**

Interested persons can submit written testimony in advance of each meeting that will be distributed to the Board members prior to the meeting. Submit written testimony via email to [rochelle.k.kepaa@hawaii.gov](mailto:rochelle.k.kepaa@hawaii.gov) or via postal mail to the Hawaii Public Housing Authority at P.O. Box 17907, Honolulu, HI 96817. We request written testimony be submitted no later than 48 hours prior to the scheduled meeting to ensure that the testimony may be distributed to the Board prior to the meeting. Late written testimony will be distributed to the Board at the meeting and retained as part of the record and distributed to the Board members as soon as practicable, but we cannot ensure they will receive it with sufficient time for review prior to decision-making on the agenda item in question.

The Board will also consider public testimony given at the meeting on any item relevant to this agenda. Pursuant to Section 92-3, Hawaii Revised Statutes, and Section 17-2000-18, Hawaii Administrative Rules, the Board may limit public testimony to three minutes per agenda item.

Individuals may submit oral testimony during the meeting by sending an email request to [rochelle.k.kepaa@hawaii.gov](mailto:rochelle.k.kepaa@hawaii.gov) no later than Tuesday, April 2, 2024, or by using the “Raise Hand” feature in Zoom, or by simply announcing/identifying themselves and the item they want to testify about during the public testimony portion of the meeting. Individuals may also provide audiovisual oral testimony by using the “Raise Hand” feature in Zoom, clicking the “Unmute” icon to talk, and clicking the “Start Video” icon to turn camera on.

**Executive Session:** If or when the Board of Directors enter executive session, all non-Board members will be moved to the virtual waiting room by the HPHA. Individuals are welcome to wait in the virtual waiting room and will be readmitted to the meeting at the end of the executive session.

### **I. CALL TO ORDER/ESTABLISHING QUORUM**

### **II. PUBLIC TESTIMONY**

Public testimony on any item relevant to this agenda may be taken at this time, or a testifier may wait to testify at the time the agenda item is called for discussion. Pursuant to Section 92-3, Hawaii Revised Statutes, and Section 17-2000-18, Hawaii Administrative Rules, the Board may limit public testimony to three minutes per agenda item.

### **III. APPROVAL OF MINUTES**

Regular Meeting Minutes, March 21, 2024

#### IV. DISCUSSION AND/OR DECISION MAKING

- A. To: **(1)** Approve the Disposition and Development Agreement, Ground Lease, Memorandum of Ground Lease, Purchase Option and Right of First Refusal, Subdevelopment Fee Agreement, Asset Management Fee Agreement, HPHA Property Management Fee Agreement and Performance and Completion Guaranty for the School Street Redevelopment Project Phase 1A located at 1002 North School Street, Honolulu, Hawai'i 96817, Tax Map Key No. (1) 1-6-009-003; **(2)** Authorize the Executive Director to Make Minimal or Ministerial Changes to the School Street Redevelopment Phase 1A Documents in Consultation with HPHA's Attorneys and Consultants and to Execute the Documents When Finalized; and **(3)** Authorize the Executive Director to Execute Other Related Documents Such as Title Affidavits and Estoppel Certificates in Consultation with HPHA's Attorneys and Consultants.

(The Board may go into Executive Session pursuant to Hawaii Revised Statutes section 92-4 and 92-5(a)(4) to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as related to this agenda item and to consider personnel matters and matters affecting privacy.)

\* \* \*

The Disposition and Development Agreement, Ground Lease, Memorandum of Ground Lease, Purchase Option and Right of First Refusal, Subdevelopment Fee Agreement, Asset Management Fee Agreement, HPHA Property Management Fee Agreement, and Performance and Completion Guaranty for the School Street Redevelopment Project Phase 1A may be viewed on or about April 4, 2024, on the HPHA's website at [https://files.hawaii.gov/hpha/boardpackets/Public2024/032124\\_School\\_Street\\_Redevelopment\\_Phase\\_1A\\_Attachments.pdf](https://files.hawaii.gov/hpha/boardpackets/Public2024/032124_School_Street_Redevelopment_Phase_1A_Attachments.pdf).

- B. To **(1)** Adopt Proposed Changes to the Hawaii Public Housing Authority's (HPHA) Administrative Plan, Chapters 4 and 11 to Align Them With the Proposed Amendments to Chapter 17-2031, Hawaii Administrative Rules (HAR), Which:
- (a) Eliminate the Local Preference Priority Tiers and Categories, but Retain the Local Preference for Persons Who Experienced or are Experiencing Homelessness; and
  - (b) Allow for the Admission of Families with Special Preferences, Without Consideration of the Waiting List Status and Provided There is Adequate Voucher Assistance Available. Families Qualifying for a Special Preference Include:
    - (i) Federal Public Housing Families That Are Involuntarily Displaced for Reasons Such As (1) Public Housing Modernization Activities; or (2) an Emergency Where the

- Conditions of a Dwelling Unit, Building, or Project Pose an Immediate, Verifiable Threat to the Lives, Health, or Safety of the Family, and There Are No Public Housing Dwelling Units Available That Suit Their Needs;
- (ii) Federal Public Housing Families That Are Approved for a Transfer as a Reasonable Accommodation to a Dwelling Unit with Special Accessibility Features, but the Authority Does Not Have an Appropriate Dwelling Unit Within Its Inventory That Meets the Family's Needs, and the Family Has Waited Over One Year;
- (iii) Federal Public Housing Families That Include a Member Who Is a Victim of Domestic Violence, Dating Violence, Sexual Assault, Stalking, Reprisal, or a Hate Crime and Who Cannot Be Transferred Safely to Another Public Housing Dwelling Unit; and
- (iv) A Family That Was Previously Issued a Special Purpose Voucher and Experienced a Loss of Rental Assistance Because of Insufficient Funding or the Eligible Member of the Family Exceeded the Maximum Allowable Age for the Applicable Special Purpose Voucher; and

**(2)** Authorize the Executive Director to Take All Actions Necessary to Implement the Proposed Amendments, Including Distributing Information to the Resident Advisory Board and Residents Participating in the Housing Choice Voucher Program

C. To **(1)** Adopt Proposed Changes to the Hawaii Public Housing Authority's Chapter 17-2031, Hawaii Administrative Rules, Entitled "Section 8 – Housing Choice Voucher and Project Based Voucher Program," as follows:

- (b) Amend Section 17-2031-25 to:
  - (i) Eliminate the Local Preference Tiers and Several Preference Categories; and
  - (ii) Retain a Local Preference for Applicants Who Experienced Homelessness at Any Time Within the Last Twelve Months Preceding Their Application Date;
- (c) Adopt Section 17-2031-30.1 to Allow for the Admission of Families with Special Preferences, Without Consideration of the Waiting List Status and Provided There is Adequate Voucher Assistance Available. Families Qualifying for a Special Preference Include:
  - (i) Federal Public Housing Families That Are Involuntarily Displaced for Reasons Such As (1) Public Housing Modernization Activities; or (2) an Emergency Where the Conditions of a Dwelling Unit, Building, or Project Pose an Immediate, Verifiable Threat to the Lives, Health, or Safety of the Family, and There Are No Public Housing Dwelling Units Available That Suit Their Needs;
  - (ii) Federal Public Housing Families That Are Approved for a Transfer as a Reasonable Accommodation to a Dwelling

- Unit with Special Accessibility Features, but the Authority Does Not Have an Appropriate Dwelling Unit Within Its Inventory That Meets the Family’s Needs, and the Family Has Waited Over One Year;
- (iii) Federal Public Housing Families That Include a Member Who Is a Victim of Domestic Violence, Dating Violence, Sexual Assault, Stalking, Reprisal, or a Hate Crime and Who Cannot Be Transferred Safely to Another Public Housing Dwelling Unit; and
  - (iv) A Family That Was Previously Issued a Special Purpose Voucher and Experienced a Loss of Rental Assistance Because of Insufficient Funding or the Eligible Member of the Family Exceeded the Maximum Allowable Age for the Applicable Special Purpose Voucher;
- (d) Amend Section 17-2031-32 to Establish That the Authority May Perform Reexaminations of a Participant’s Income and Eligibility Biennially;
  - (e) Amend Section 17-2031-3 to Make Technical, Non-Substantive Changes; and
  - (f) Update Exhibit C to Include the Most Recent Income Limits for Admission to the Program Made Effective by HUD on May 15, 2023; and
- (2)** Authorize the Executive Director to Conduct a Public Hearing and Undertake All Other Actions Necessary Under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 18-02 to Implement the Revision of Chapter 17-2031, Hawaii Administrative Rules, Entitled “Section 8 – Housing Choice Voucher and Project Based Voucher Program,” Including Making Non-Substantive Revisions to Formatting as May Be Required.

\* \* \*

The proposed amendments to the Hawaii Public Housing Authority’s (HPHA) Chapter 17-2031, Hawaii Administrative Rules, entitled “Section 8 – Housing Choice Voucher and Project Based Voucher Program,” may be viewed on the internet on or about April 4, 2024, on the HPHA’s website at [https://files.hawaii.gov/hpha/adminrules/proposed/17-2031\\_Biennial\\_Reexams\\_Preferences\\_D8\\_NA\\_Ramseyer.pdf](https://files.hawaii.gov/hpha/adminrules/proposed/17-2031_Biennial_Reexams_Preferences_D8_NA_Ramseyer.pdf). Alternatively, the proposed amendments may be viewed from 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, at the HPHA’s Main Administrative Office located at 1002 North School Street, Building E, Honolulu, Hawaii 96187. Interested persons may request a copy of the rules be mailed to them by calling (808) 832-4690 or by emailing a request to [hpha@hawaii.gov](mailto:hpha@hawaii.gov).

## V. REPORTS

A. Executive Director's Report:

Monthly reports are included in the Board packet. Meeting updates will include the following:

- Update on Redevelopment Projects, including School Street Elderly Housing Redevelopment, Ka Lei Momi, and Kuhio Park Terrace/Kuhio Homes Redevelopment
- Update on 2024 Legislative Session Activities
- Section 8 Subsidy Programs Lease-up Rates

The Board may go into Executive Session pursuant to Hawaii Revised Statutes sections 92-4 and 92-5(a)(4) to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

The Board agenda and packet materials for this meeting are available for inspection on the HPHA's website: <https://hpha.hawaii.gov/meeting-packets> and are available for in person review at the Board's office located at 1002 North School Street, Building E, Honolulu, HI 96817.

If you need an auxiliary aid/service or other accommodation due to a disability, contact Ms. Kanoë Kepaa by telephone at (808) 832-4694 or by email at [rochelle.k.kepaa@hawaii.gov](mailto:rochelle.k.kepaa@hawaii.gov) as soon as possible, preferably by close of business three days prior to the meeting date. Requests should be made as early as possible to have a greater likelihood of being fulfilled. If a response is received after Tuesday, April 2, 2024, we will try to obtain the auxiliary aid/service or accommodation, but we cannot guarantee that the request will be fulfilled. Upon request, this notice is available in alternate/accessible formats.

HAWAII PUBLIC HOUSING AUTHORITY  
MINUTES OF THE REGULAR MEETING  
HELD AT 1002 NORTH SCHOOL STREET, BUILDING A  
HONOLULU, HAWAII 96817  
ON THURSDAY, MARCH 21, 2024  
IN THE CITY AND COUNTY OF HONOLULU, STATE OF HAWAII

The Board of Directors of the Hawaii Public Housing Authority held their Regular Board Meeting at 1002 North School Street, on Thursday, March 21, 2024. The Board meeting was conducted by video conference via Zoom.

The public was able to participate in the meeting via Zoom or telephone by calling in. The meeting was also open to the public for in person participation at 1002 N. School Street, Building A, Honolulu, HI 96817. No Board members were physically present at this location. It was announced that if the HPHA lost internet or Zoom connection during the meeting, the meeting would be recessed and reconvened pursuant to instructions in the posted agenda.

Chairperson Hall stated that the Board would accept public testimony on any item relevant to the agenda during the public testimony portion of the meeting and at the time the agenda item is called for discussion.

At approximately 9:07 a.m., Chairperson Hall called the meeting to order, held a roll call, and declared a quorum present. Those present were as follows and no one else was with them at their location:

PRESENT  
(Via Zoom)

Director Robert Hall, Chairperson  
Director George De Mello, Vice Chairperson  
Director Leilani Pulmano, Secretary  
Director Scott Glenn  
Director Roy Katsuda  
Director Betty Lou Larson  
Director Christyl Nagao  
Director Susan Kunz  
Designee Joseph Campos II

Deputy Attorney General Linda Chow  
Deputy Attorney General, Klemen Urbanc  
Deputy Attorney General Chase Suzumoto

EXCUSED:

Director Todd Taniguchi

STAFF PRESENT:  
(Via Zoom)

Hakim Ouansafi, Executive Director  
Bennett Liu, Chief Financial Officer  
Rick Sogawa, Contracts and Procurement Officer  
Ryan Akamine, Chief Compliance Officer

Benjamin Park, Chief Planner  
Becky Choi, State Housing Development Administrator  
Gary Nakatsu, Section 8 Acting Branch Chief  
Keng Chang, DPSA  
Dallis Ontiveros, Housing Information Office  
Angela Nabua, Secretary  
Kanoë Kepaa, Secretary

OTHERS PRESENT: Chico Figueiredo, Office of the Governor  
(via Zoom/teleconference): Bob Fard, Retirement Housing Foundation  
Scott Jepsen, EJP Consulting Group  
Tami Whitney  
Arielle Blacklow  
Christy Iriguchi, KMH, LLP  
Peter Hanashiro, KMH, LLP

### **Public Testimony**

Individuals were allowed to submit written testimony no later than 48 hours prior to the scheduled meeting, which would be distributed to the Board members. The public was instructed to submit written testimony via email to [rochelle.k.kepaa@hawaii.gov](mailto:rochelle.k.kepaa@hawaii.gov) or by U.S. mail to P.O. Box 17907, Honolulu, HI 96817. The public was also allowed to participate via Zoom or teleconference by using the “Raise Hand” feature in Zoom, or by simply announcing/identifying themselves and the item they want to testify about during the public testimony portion of the meeting. Individuals were also allowed to provide audiovisual oral testimony by using the “Raise Hand” feature in Zoom, clicking the “Unmute” icon to talk, and clicking the “Start Video” icon to turn the camera on.

Chairperson Hall stated that the Board would accept public testimony on any item relevant to the agenda at this time or at the time the agenda item is called for discussion. Pursuant to section 92-3, Hawaii Revised Statutes, and section 17-2000-18, Hawaii Administrative Rules, the Board may limit public testimony to three minutes per agenda item.

There was no written public testimony submitted or given.

### **Approval of Minutes**

**Director Campos moved,**

**To Approve the Regular Meeting Minutes of February 15, 2024**

Chairperson Hall stated that the Board would accept public testimony on this item. No public testimony was given.



**The minutes were approved as presented.**

### **Discussion and Decision Making**

**Director Katsuda moved,**

**To (1) Reappoint Ms. Chunmay Chang to the Hawaii Public Housing Authority's (HPHA) Federal Eviction Board as a Board Member, for a Four-Year Term Retroactive as of December 1, 2023, and Ending November 30, 2027, and (2) Reappoint Ms. Joanna Chu to the Hawaii Public Housing Authority's (HPHA) Federal Eviction Board as a Board Member, for a Four-Year Term Retroactive as of May 1, 2023, and Ending April 30, 2027**

Chairperson Hall stated that the Board would accept public testimony on this item. No public testimony was given.

Executive Director Ouansafi reported that the Oahu and Neighbor Island Eviction Boards are composed of members of the community and are responsible for affording our tenants a full and fair due process hearing during lease termination proceedings. A list of the current eviction board members by county and term appointments are included in the board packet.

The Eviction Boards are made up of volunteers from the community, in both the public and private sector with work experiences in law, real estate, accounting and education, and other relevant professions. Eviction hearings are conducted on a weekly basis or as required, and the board members commit to 1 to 4 hours per hearing scheduled date.

Prior to hearing an eviction case, the board members receive training on their roles and responsibilities to provide a fair and impartial hearing for the tenants. They are also trained on the roles and responsibilities of the tenant and the HPHA and its managing agents.

Ms. Chunmay Chang retired as a sole practitioner in the area of family law in 2013. Since then, she has been a member of the Oahu Eviction Board A and currently serves as the Chairperson of this Board. Ms. Chang also serves as a mediator with the Mediation Center of the Pacific and brings valuable skills and experience to assist in the resolution of the eviction cases. Ms. Chang has expressed her willingness to continue to serve another term as a board member.

Ms. Joanna Chu retired from the HPHA with over 20 years of experience and with 11 years as a Public Housing Supervisor in the federal low-income housing program. Ms. Chu has the experience and knowledge of the federal program requirements and its applicable laws, rules and procedures. She has expressed her willingness to serve on the eviction boards as a board member to ensure tenants are compliant with the Rental Agreement and other program requirements.

As with all Eviction Board members, the HPHA will ensure that there are no conflicts of interest with cases being heard or considered by both Ms. Chunmay Chang and Ms. Joanna Chu.

Executive Director Ouansafi made a recommendation to the Board to approve the two nominees.

Director Larson asked how long Ms. Joanna Chu served on the Eviction Board and if her association with residents caused any problems with conflict of interest.

Executive Director Ouansafi stated that if there was a conflict of interest, Ms. Chu would be excused and that would be the same for all board members. He continued to say that Ms. Chu knows the rules, her responsibilities, the laws, and the tenant's rights. HPHA would also do its due diligence.

Chairperson Hall shared his sincere appreciation for these volunteers who are willing to serve on the Eviction Board.

**The motion was unanimously approved.**

**Director Campos moved,**

**To (1) Accept the Revised and Reissued Financial Statements of the Hawaii Public Housing Authority for Fiscal Year July 1, 2022 through June 30, 2023; (2) Accept the Single Audit Reports for Fiscal Year July 1, 2022, through June 30, 2023, Conducted by KMH, LLP; and (3) Authorize the Executive Director to Submit the Audit Reports to the Federal Audit Clearinghouse, the U.S. Department of Housing and Urban Development, and Other Interested Parties As Required**

Chairperson Hall stated that the Board would accept public testimony on this item. No public testimony was given.

Executive Director Ouansafi reported that the financial and single audit of the HPHA's financial statements and program activities for the fiscal year ending June 30, 2023, was performed by the independent auditor, KMH, LLP (KMH). KMH was procured and contracted by the State Office of the Auditor to perform the audit and report on its findings. Peter Hanashiro and Christy Iriguchi from KMH, LLP are here to briefly go over the report and answer any questions.

Ms. Iriguchi recapped the scope of work which included two components; the financial audit and single audit. The financial audit of the financial statements was issued on December 13, 2023, which was approved during the December Board of Directors meeting. However, as previously mentioned KMH must reissue these financial

statements with dual dating of our auditor's report due to the recalling and reissuance of the Employee's Retirement System (ERS) audited financial statements. The ERS audited financial statements are from the pension plan for all the employees of HPHA.

Ms. Iriguchi stated that ERS reissued the financial statements on March 20, 2024. She continued to say, that as auditors they rely on those audited financial statements and additional work done by the State Auditor. Upon receiving the reissued financial statements, KMH reissued the audited financial statements dated December 13, 2023, and anything related to the pension plan. That includes footnote 7 and any of the balances in the financial statements are dated for March 21, 2024, due to the recall and reissuance of the ERS audited financial statements.

Mr. Hanashiro provided additional context regarding the recall and reissuance. He reported that about two weeks ago, KMH was informed by the State Auditor's Office that the ERS audited report was going to be recalled and reissued. This was an unfortunate situation where the audit firm for ERS which was Eide Bailly, LLP for various reasons had to recall and reissue the report. The report was dated as of June 30, 2022. The uniqueness of the date is that it is allowed as a measurement date for the June 30, 2023, pension information. The ERS is a unique pension system that covers county and state departments. DAGS used that audit report to do their allocations for various state departments pension information. Then Accuity, LLP, an audit firm, relied on the information that Eide Bailly, LLP prepared for ERS and because it was reissued, they had to reissue their entire state ACFR (Annual Comprehensive Financial Report) which was issued back in January 2024. Although there were no changes to the pension liabilities or disclosures, KMH had to go through an evaluation process and determined that they had to dual date their financial statements that were previously issued for the pension information only. He assured the Board that this had nothing to do with the HPHA or its staff but solely due to the ERS matter.

Ms. Iriguchi continued to report that they were here to report the forementioned issue, the results of the single audit or audit of the federal programs, and to present the SAS-114 communication letter which was discussed at the December 2023 Board of Directors meeting. This is a standard letter to the Board, to communicate any significant matters related to the audit. There were no changes to the items previously presented and the formal letter will be issued in early April.

Ms. Iriguchi presented an overview of the single audit. In the report it states that the financial statements and all material facts were presented fairly and in accordance with generally accepted accounting principles (GAAP). She referred to three areas in the report where the dual dating would be found (page 9, page 111, and page 117). Finally, there were no findings of internal control over financial reporting identified or material noncompliance and there were no findings on internal control over major programs or material noncompliance. The two major programs that were audited this year were Section 8 contract administration and the public housing capital fund.

Ms. Iriguchi and Mr. Hanashiro thanked all the employees and management team at HPHA.

Executive Director Ouansafi thanked Mr. Hanashiro and Ms. Iriguchi for their professionalism and hard work.

**The motion was unanimously approved.**

**Director Pulmano moved,**

**To (1) Approve the Hawaii Public Housing Authority’s Annual Public Housing Agency (PHA) Plan for Fiscal Year 2025; and (2) Authorize the Executive Director to Take the Required Actions Needed to Submit the Approved Annual PHA Plan for Fiscal Year 2025 to the U.S. Department of Housing and Urban Development**

Chairperson Hall stated that the Board would accept public testimony on this item. No public testimony was given.

Executive Director Ouansafi explained that all public housing agencies (PHA) administering federal public housing and/or Section 8 Housing Choice Vouchers (HCV) are required to submit an Annual PHA Plan and/or a Five-Year PHA Plan to (HUD) to be eligible to receive administrative, operating, Capital Fund Program, and Section 8 HCV Assistance funds. This requirement was established under section 5A of the United States Housing Act of 1937 by the Quality Housing and Work Responsibility Act of 1998 and later amended by the Housing and Economic Recovery Act of 2008.

A PHA Plan serves as a comprehensive guide to a PHA’s mission, policies, programs, operations, and the strategies it will use to meet local housing needs and other goals. This PHA Plan does not apply to or govern the State public housing programs, or any other State-assisted programs administered, operated, or managed by the HPHA.

The public hearing was held in-person and online on March 4, 2024. Meetings with the Resident Advisory Board (RAB) were also held on February 13, 2024, and March 12, 2024, to discuss the final drafts of both PHA Plans.

We considered all testimony received prior to and at the public hearing and the recommendations of the RAB, as required by 24 C.F.R. section 903.19. After a thorough review of the comments received during the public hearing process and the RAB’s recommendations, one additional change was made to the Annual PHA Plan for FY 2025:

Upon the recommendation of its development consultant during the public hearing process, the HPHA is including generalized language that would allow it to apply for the Section 18 demolition and/or disposition of any public housing property during the fiscal year without having to amend the Annual PHA Plan. (p. 32, pp. 40-41)

Subsequent addendums or annual PHA Plans would include more detailed information on any Section 18 demolition or disposition projects as the information becomes available.

This change was discussed at the public hearing and with the Resident Advisory Board. The HPHA will continue discussions with the RAB regarding the implementation of all changes, proposals, and initiatives included in the Annual PHA Plan for FY 2025 and the Five-Year PHA Plan for FYs 2025 to 2029 following their approval by the Board of Directors and HUD.

Executive Director Ouansafi made a recommendation to the Board to approve the change and Annual PHA Plans.

Chairperson Hall asked if there might be other ways to notify the public about these hearings, so we are not just checking the box, but instead getting healthy input.

Executive Director Ouansafi explained that in past experiences, most issues that have been addressed with the RAB or public multiple times before it is brought before the Board there is usually very little turnout. New or controversial issues tend to have more public participation.

**The motion was unanimously approved.**

#### **For Information:**

##### **Status on Legislative Bills and Report on Testimony by the Executive Director for the 2024 Legislative Session**

Executive Director Ouansafi reported that the legislative session has started and that legislative measures that the Hawaii Public Housing Authority is tracking and has submitted testimony on were listed in the packet.

Executive Director Ouansafi also reported that he testified on the Senate version of the budget. The House version included everything HPHA asked for except for the (4) four positions.

In HPHA's testimony to the Senate Ways and Means Committee, we requested that they consider GM5 which includes funding \$22 million for HPHA Ka Lei Momi proposal that the Governor submitted on behalf of (5) five projects, and we also asked that they also provide us with the (4) four positions we requested. Those are development positions. HPHA's budget should be coming from the Ways and Means Committee next week.

There is a lot of effort and funding going toward Maui. HPHA has submitted comments on other county and state projects, and other resolutions as well. HPHA will continue to keep the Board updated.

Director Larson asked if there was a budget for the renovation of existing units.

Executive Director Ouansafi reported that there was \$10 million in the Governor's budget for renovations but was not sure what would happen once it reached the Senate.

Director Larson asked how many units HPHA would be able to repair.

Executive Director Ouansafi reported that it would depend on the extent of repairs needed and whether the funds would be distributed in cash or bonds.

Chairperson Hall asked if there were any controversial bills involving housing still moving through the Senate.

Executive Director Ouansafi reported that the bills HPHA had concerns with have died.

Director Larson had a question about the following bill:

*HB 2328, HD2, RELATING TO AFFORDABLE HOUSING: Appropriates funds to the Hawaii Public Housing Authority to acquire and renovate parcels and buildings located between Bethel Street, Pauahi Street, Fort Street, and Chaplain Lane in Honolulu, Oahu, for affordable housing purposes. Requires units to be affordable to households having an income that does not exceed a percentage of the area median income. Effective 7/1/3000. (HD2)*

Executive Director Ouansafi reported that the bill was introduced by Speaker Saiki to provide HPHA with funds to purchase the property in downtown. HPHA submitted testimony that we would like to do our due diligence before purchasing the property. However, the funds have since been given to Hawaii Housing Finance & Development Corporation (HHFDC).

### **Executive Director's Report**

Executive Director Ouansafi reported on the development projects taking place.

#### **Kuhio Park Terrace Low-Rises and Kuhio Homes Redevelopment:**

On February 14, 2024, the public comment period ended for the Notice of Intent to Request Release of Funds (NOIRROF)/Finding of No Significant Impact (FONSI), which was published in the Star Advertiser in January. No comments were received from the public.

On February 20, 2024, the Governor's Office submitted the signed Request for Release of Funds to HUD, starting its 15-day review period.

The initial set of building permit third-party review comments were received from Palekana this month. The design team is working on updating the drawings in response to the comments.

Executive Director Ouansafi reported that HPHA is on target to break ground at the end of 2024 and will provide 309 units. He added that earlier this week, HPHA started 1:1 relocation conversations with the tenants who will be moving on or about September 2024.

### **School Street Elderly Housing Redevelopment:**

Financial closing calls have started with HHFDC, Highridge Costa (HCDC), the project lenders and investors. Financial closing is planned for late April 2024.

Building M was relocated to the makai side of Building E. Exterior improvements are nearing completion. The process of relocating furniture and staff back into Building M started on February 29<sup>th</sup>.

### **Ka Lei Momi:**

The Kauai County Council declared their support for the approval of the project's 201H application through County Council Resolution 2024-07. The resolution was approved with six council members in support and one excused.

On February 12<sup>th</sup>, the Planning Director for the County of Kauai approved the 201H application and project entitlements pursuant to the Governor's emergency proclamation relating to affordable housing.

On February 16<sup>th</sup>, HCDC submitted its consolidated financing applications to HHFDC for Kapaa and the first proposed tower of Mayor Wright Homes that will be located on the corner of Vineyard Boulevard and Pua Lane.

Executive Director Ouansafi reported that HPHA has been doing well in recruiting for their vacancies. It was at 97 and now it's in the high 60s. HPHA is continuing its recruitment efforts.

Executive Director Ouansafi understands the vacancies have an impact on the overall operations of HPHA and expressed his gratitude for all the employee's hard work and willingness to serve.

Executive Director Ouansafi reported that HPHA had 26 units move out and 18 units move in.

Executive Director Ouansafi reported that Section 8 expended a total of \$4,987,708 in housing assistance payments (HAP) to private landlords on behalf of 3,518 voucher holders; including 491 VASH families assisted with \$444,520 housing assistance payments.

There was a total of 237 inspections completed from 1/1/2024 – 1/25/2024 and a total of 89 rent comparable requests received and approved.

The Rent Supplement Program (RSP) actual January 2024 payments were \$82,943 (196 payment of \$86,217 to 211 Families. New lease ups were paid \$408.61 for the initial HAPS for January Families).

Director Larson congratulated Executive Director Ouansafi on the low number of failed inspections and inquired what HPHA is doing differently to achieve these lower numbers.

Executive Director Ouansafi explained that many of the tenants have been occupants for many years, so they are aware of the process and HPHA is also educating tenants.

Director Larson stated that she appreciates that Highridge Costa is looking at community and not just building housing. Her question was regarding access, how can HPHA promote selection into the project. For example, food stamps are considered income. All projects have a minimum income, shouldn't food stamps be considered as part of the minimum income. Also, credit checks and criminal checks. Director Larson would like to know how that is going to be coordinated and can the Board have a discussion and possibly create policies to address these issues, so it's not an after the fact question but more purposeful.

Executive Director Ouansafi reported that HPHA started this conversation even before Highridge Costa was selected. HPHA explained our mission and the people we wanted to serve to the developers. Executive Director Ouansafi is confident that the management company will embody the spirit of HPHA. The purpose of building is to get people in, especially the people who need it the most. HPHA will make sure and ensure that whatever policies are implemented by the management company it is necessary and is for the betterment of the entire community.

Director Larson asked that as a Board Member at some point she would like to see a written summary, so it doesn't get lost over time.

Executive Director Ouansafi stated that a Best Practices Manual may need to be put together for future projects, but for the next 12,000 units HPHA is in good hands.

Director Kunz asked how many tenants at the Hale Aloha project in Hawaii County are part of the relocation phase.



Becky Choi, Branch Chief for Construction Management explained that the process is to empty out one or two buildings for the first phase, so it's only the number of tenants related to that. Once those buildings are completed then the next phase moves into the completed buildings, so it doesn't increase the vacancy after that because it stays at that number and it just roles into the next relocation. Initially, we had some vacancies that we could consolidate into the first phase of buildings, so the number of tenants is 6.

Director Katsuda asked for the maximum amount of rent supplement a participant can receive.

Executive Director Ouansafi stated the maximum amount is \$500, but we are averaging about \$415.

Chairperson Hall commented that to develop, HPHA needs to bring in stack financing. The various financing and tax programs have multiple requirements, and they all have different target incomes to make things happen. As we go through some of the programs that we set up there's a gap between the very low and even the middle-income people who can go into certain units to meet the financing requirements. Perhaps the Governor's Office or the Legislature can think of a way to create a better subsidy program to help that gap. There's a lot of people on the waitlist that would like to get a unit but are just not making enough money or subsidy. Unfortunately, the program that we have works off subsidy. How can we improve the rent supplement program or create another subsidy program that can help bridge that opportunity.

Director Larson reported that years ago more of the buildings were at 50% AMI. Now because of funding constraints the target is 60%. If there are empty units in town, maybe they're over building for that segment of population, but there's still a great need. Again, it's funding constraints and a competitive process, so it's a hard balance to reach. Another possible solution is income averaging and hopefully HHFDC will consider that. We need to look at fixed rents, not scaled by their income.

Chairperson Hall wanted to clarify that these are just suggestion as we move forward. We are not stopping. We want to build and get people into these homes and flexible subsidies will help keep families in these units.

Executive Director Ouansafi reported that Director Scott Glenn and his team is looking into these concerns. In addition to replacing the one for one project base, HPHA will be adding units for families that fall within that 0-30% AMI. The average AMI for public housing is 15%.

Director Glenn thanked Executive Director Ouansafi and Chairperson Hall. He reported that they are looking into these concerns. His office is part of the HHFDC's QAP (Qualified Allocation Plan) Working Group and bringing some of these matters to the HHFDC's attention.

Director Katsuda moved,

To Adjourn the Meeting

The motion was unanimously approved.

The meeting adjourned at 10:08 a.m.

**MINUTES CERTIFICATION:**

Minutes Prepared by:

|  |               |
|--|---------------|
| <i>R. Kanoë Kepaa</i>                      | 04/04/24      |
| _____<br>Rochelle Kanoë Kepaa<br>Secretary | _____<br>Date |

Approved by the Hawaii Public Housing Authority Board of Directors at their Regular Meeting on April 4, 2024  As Presented  As Amended

|  |               |
|--|---------------|
| <i>Leilani Pulmano</i>                               | Apr 11, 2024  |
| _____<br>Director Leilani Pulmano<br>Board Secretary | _____<br>Date |

**FOR ACTION**

**MOTION:** To: **(1)** Approve the Disposition and Development Agreement, Ground Lease, Memorandum of Ground Lease, Purchase Option and Right of First Refusal, Subdevelopment Fee Agreement, Asset Management Fee Agreement, HPHA Property Management Fee Agreement and Performance and Completion Guaranty for the School Street Redevelopment Project Phase 1A located at 1002 North School Street, Honolulu, Hawai'i 96817, Tax Map Key No. (1) 1-6-009-003; **(2)** Authorize the Executive Director to Make Minimal or Ministerial Changes to the School Street Redevelopment Phase 1A Documents in Consultation with HPHA's Attorneys and Consultants and to Execute the Documents When Finalized; and **(3)** Authorize the Executive Director to Execute Other Related Documents Such as Title Affidavits and Estoppel Certificates in Consultation with HPHA's Attorneys and Consultants.

(The Board may go into Executive Session pursuant to Hawaii Revised Statutes section 92-4 and 92-5(a)(4) to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as related to this agenda item and to consider personnel matters and matters affecting privacy.)

\* \* \*

The Disposition and Development Agreement, Ground Lease, Memorandum of Ground Lease, Purchase Option and Right of First Refusal, Subdevelopment Fee Agreement, Asset Management Fee Agreement, HPHA Property Management Fee Agreement, and Performance and Completion Guaranty for the School Street Redevelopment Project Phase 1A may be viewed on or about April 4, 2024, on the HPHA's website at [https://files.hawaii.gov/hpha/boardpackets/Public2024/032124\\_School Street Redevelopment Phase 1A Attachments.pdf](https://files.hawaii.gov/hpha/boardpackets/Public2024/032124_School_Street_Redevelopment_Phase_1A_Attachments.pdf).

**I. FACTS**

- A. On January 13, 2015, the Authority issued "Request for Qualifications for Master Developer for the Mixed Income, Mixed Use Redevelopment of the Authority's Administrative Offices and the Development of Low-Income Public Housing Units on the Island of Oahu (RFQ OED-2015-05)" (the "RFQ") and Retirement Housing Foundation, a California nonprofit

corporation (“RHF”), submitted certain qualifications and proposals for the development of the Redevelopment Site (as defined below). The RFQ selection committee selected RHF, and the Authority and RHF’s affiliated entity, RHF Foundation, Inc., a California nonprofit corporation (“RHFFI”), entered into that certain Master Development Agreement dated November 15, 2019 (the “Master Development Agreement” or “MDA”).

- B. The Master Development Agreement contemplates the revitalization and redevelopment of a portion of the 12.481 acres owned in fee simple by the Authority located at 1002 North School Street, Honolulu, Hawaii 96817, previously identified by Tax Map Key No. (1) 1-6-009-003 (collectively, the “Redevelopment Site”), to consist of a maximum of eight hundred (800) residential rental units, an approximately thirty thousand (30,000) square foot office facility for the Authority as its central administrative offices, approximately ten thousand (10,000) square feet of commercial/retail space, and related site improvements and amenities.
- C. On November 16, 2023, the Board authorized the HPHA to enter into the Agreement Regarding Transfer and Assignment of Master Development Agreement assigning the MDA from RHF to HCDC Hawaii Development LLC, a Hawaii limited liability company.
- D. RHFFI and HCDC School Street LLC (the “Master Developer”) are parties to that certain Assignment and Assumption of Master Development Agreement and Release dated January 11, 2024, by which RHFFI assigned, and Master Developer accepted and assumed, all of RHFFI’s rights and interests in, to and under the MDA (the “RHF Assignment”).
- E. The Authority and RHFFI are parties to that certain Approval and Consent to Assignment and Assumption of Master Development Agreement and Release dated January 11, 2024, by which the Authority approved and consented to the RHF Assignment (“Consent to Assignment”).
- F. Under the Master Development Agreement, the Master Developer will redevelop the Property in at least three (3) phases (each, a “Development Phase”) with each Development Phase owned and developed pursuant to the terms of a disposition and development agreement and ground lease between the Authority and a Hawaii limited partnership or limited liability company formed by the Master Developer.
- G. The set of documents that are the subject of this For Action governs the first Development Phase (“Phase 1A of the Project”) to be constructed on the Project Site by School Street I, LP, a Hawaii limited partnership affiliated with the Master Developer (“Partnership” or “Developer”).

- H. The Project will consist of two hundred fifty (250) Units, and related amenities and improvements, of which 249<sup>1</sup> shall be subject to the HPHA Affordability Requirement and requirements imposed by the Low-Income Housing Tax Credit (“LIHTC”) program.
- I. The Project was awarded financing by the Hawai’i Housing Finance and Development Corporation (“HHFDC”) as follows:
  - 1. \$ 85,152,621 Tax Exempt Issuance from Hula Mae Multi-Family (HMMF) Bond Program
  - 2. \$ 6,131,601 in Federal LIHTC over a 10-year period and \$ 6,131,601 in State LIHTC over a 5-year period
  - 3. \$ 67,860,277 Rental Housing Revolving Loan Fund (RHRF) loan
- J. To facilitate Closing for the above financing for Phase 1A of the Project the Authority will enter into a Disposition and Development Agreement, Ground Lease, Memorandum of Ground Lease, Purchase Option and Right of First Refusal, Subdevelopment Fee Agreement, Asset Management Fee Agreement, HPHA Property Management Fee Agreement and Performance and Completion Guaranty (“Phase 1A Documents”).

## II. DISCUSSION

- A. Under the MDA the Developer is responsible for obtaining public and private financing for the Project. The Developer has obtained financing commitments for Phase 1A of the Project. To secure the financing and to start construction of Phase 1A of the Project, a team of people from HPHA, the Department of the Attorney General, and HPHA’s consultants and outside counsel (“HPHA Team”) has negotiated the Phase 1A Documents as the basis for Phase 1A of the Project to move forward, receive financing, and start construction. The documents are a Disposition and Development Agreement, Ground Lease, Memorandum of Ground Lease, Purchase Option and Right of First Refusal, Subdevelopment Fee Agreement, Asset Management Fee Agreement, HPHA Property Management Fee Agreement and Performance and Completion Guaranty, all of which are being provided electronically and can be found here: <https://hpha.hawaii.gov/meeting-packets>. Please look under the April 4, 2024 packet link.

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<sup>1</sup> The remaining unit will be a manager’s unit.

B. Disposition and Development Agreement for the School Street Redevelopment Project HPHA School Street Redevelopment Phase 1A (“DDA”)

The DDA provides that upon satisfaction of specified conditions, (i) the Authority will convey a leasehold interest in the Project Site under a ground lease to the Partnership; (ii) the Partnership will own and operate the Project, and will lease the rent-restricted Units in the Project to income-qualified tenants at affordable rents pursuant to the requirements of the DDA, the Ground Lease, and other applicable financing programs; and (iii) subject to the rights of any mortgagee permitted in accordance with the terms of the Ground Lease, the Authority will have a **Purchase Option and Right of First Refusal** to purchase the Project and all interests in the Partnership after the Tax Credit Compliance Period.

The major terms of the DDA have been agreed upon as follows:

1. Phase 1A of the Project will consist of the construction on the Project Site of (i) two hundred fifty (250) Units of which two hundred forty-nine (249) shall be Rent Restricted, and (ii) one (1) will be a resident manager unit. The preliminary unit types, with their associated square footage and bedroom distribution, are described in Exhibit B to the DDA. The rent restricted units will be subject to occupancy and affordability restrictions imposed by regulatory agreements.
2. HPHA will lease the Project Site to the Developer pursuant to an agreed upon **Ground Lease**. A **Memorandum of Ground Lease** will also be filed in the Bureau of Conveyances to memorialize the agreement of the parties to the Ground Lease.
3. Closing will occur upon agreement on a construction financing plan, sustainability plan for meeting energy-efficiency requirements of the State, tax credit allocation, funding commitments, environmental review, and reimbursement of predevelopment costs. Closing documents will include regulatory agreements restricting the affordability of the rent restricted units, loan and financing documents for the construction and permanent financing of the Project, guarantees, and LIHTC and syndication documents.
4. Conditions precedent to HPHA Closing include: no outstanding material defaults; preparation of construction documents; issuance of all licenses, permits, and approvals necessary for construction of the Project; master plan certification; certification of compliance with accessibility laws; obtaining necessary financing commitments and documents and equity investors; approval of a property management plan and property management agreement;

developer guarantees; purchase option and right of first refusal; evidence of selection of third-party contractors, payment of any owing ground lease payments. As part of the financing requirements, the Developer is responsible to provide a completion guaranty for the benefit of HPHA in a form approved by HPHA and the Guarantor (“**Performance and Completion Guaranty**”).

5. Conditions precedent to the Developer Closing includes: no material adverse site conditions; HPHA approval of the construction documents; title insurance; HPHA approval of financing documents; and issuance of a ground lease; government approvals; HPHA’s representations and warranties; recordation of the final map; no litigation; and no HPHA default.
6. For developing the Project, Developer and the Authority shall be entitled to receive a fee equal to \$15,000,000 to be paid one half to the Developer and one half to HPHA on a *pari passu* basis and pursuant to a **Subdevelopment Fee Agreement**.
7. HPHA will also approve a \$7,500 annual asset management fee for the Project to an affiliate of the Developer (“HCDC Asset Management Fee”) with a 3% annual increase. This will be cumulative and will accrue annually.
8. HPHA will also be entitled to a \$7,500 annual asset management fee for the Project with a 3% annual increase pursuant to an agreement with the Developer (“**HPHA Asset Management Fee Agreement**”). This fee will be cumulative and will accrue annually.
9. HPHA will also approve a subordinated Property Management Oversight Fee to the affiliate of the Developer in the amount equal to 2% of the effective gross income (“PM Oversight Fee”) provided that the affiliate of the Developer will pay 50% of the PM Oversight Fee to HPHA (“HPHA PM Fee”) upon receipt of any portion of the PM Oversight Fee pursuant to a **HPHA Property Management Fee Agreement**. Neither the PM Oversight Fee nor the HPHA PM Fee are cumulative and each fee is subject to cash flow and are subordinate to other fees provided for in the cash flow waterfall.

C. Ground Lease and Memorandum of Ground Lease

The purpose of the Ground Lease is to allow the Tenant (Developer) to construct the Improvements or cause the Improvements to be constructed on the Property no later than the Completion Date. Upon completion, the Improvements shall include a total of two hundred fifty (250) housing units (which includes one manager’s unit not subject to income restrictions), which shall be available for rental solely for (a) the period required by the

Tax Credit Requirements to households with incomes at or below sixty percent (60%) of the area median income (the "Tax Credit Units") at initial occupancy and (b) households with incomes at or below sixty percent (60%) of area median income at initial occupancy ("HPHA Affordability Requirement"). Tenant shall take no action to effectuate any material amendments, modifications or any other material alterations to the Plans and Specifications without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed.

The term of the Ground Lease will be 65 years. The base rent will be set by appraisal at fair market rent. The Base Rent will increase annually at the rate of two percent (2.00%), beginning the Lease Year after the Conversion Date and continuing for the remainder of the Term.

Prior to May 1, 2099, such Base Rent shall be due and payable only to the extent of Net Cash Flow available annually for such purposes pursuant to the priority described in Exhibit G attached to the Ground Lease. Any Base Rent for which the Parties have agreed there is not sufficient Net Cash Flow in any given year shall be deferred to the following year and shall be paid from subsequent years' Net Cash Flow (in the same priority) until paid in full and shall bear interest at the Applicable Federal Rate ("AFR"). All accrued and unpaid Base Rent plus interest ("Accrued Base Rent"), but only to the extent that Cash Flow and proceeds are allocated to ground lease payments as provided for in Exhibit G, shall be due and payable in full by the Tenant on the earlier of (a) a sale of the Project and (b) May 2099 and, thereafter, the Base Rent shall be paid currently. In the event of a refinancing of the Project, Accrued Base Rent shall be paid in the priority described in Exhibit G to the DDA.

Tenant shall be responsible for all operating expenses and insurance on the Property. A Memorandum of Ground Lease shall be filed with the Bureau of Conveyances setting forth the terms of the Ground Lease.

D. Purchase Option and Right of First Refusal Agreement

The purpose of the Purchase Option is to provide for the continuation of the Project as low-income housing upon termination of the Partnership by allowing HPHA to purchase the Project at the applicable price determined under the Purchase Agreement and operating the Project in accordance with the Use Restrictions.

The Right of First Refusal provides that if the Partnership elects to market the Property and receives an offer to purchase the Project from a bona fide third-party purchaser that it intends to accept, HPHA shall have a right of first refusal to purchase the Property on the terms and conditions set forth in the Purchase Agreement.



E. Subdevelopment Fee Agreement

Under the Subdeveloper Fee Agreement the Developer will engage HPHA to assist the Developer in performing the following obligations established pursuant to the Development Agreement:

- a) Assisting the Developer in assembling the construction loan financing for the Project;
- b) Assisting the Developer in securing support for certain portions of the Project from the City and County of Honolulu and the State of Hawaii; and
- c) Assisting the Developer in obtaining permits and zoning approvals for the Project, including but not limited to the 201H process, preparing for and attending necessary meetings, preparing and submitting necessary forms and applications and responding to requests for additional information.

In exchange for these services, HPHA will be paid fifty percent (50%) of the Development Fee, less fifty percent (50%) of the GP Funded Portion (which is any portion of the deferred developer fee that the general partner has to fund in accordance with the Limited Partnership Agreement). The Developer is required to pay HPHA the Subdevelopment Fee promptly upon the Owner's payment to Developer of the Development Fee such that for each payment of Development Fee that the Developer receives pursuant to the Development Agreement and Partnership Agreement, HPHA shall receive fifty percent (50%) of such payment, until the Subdevelopment Fee is paid in full.

F. Asset Management Fee Agreement

Under the Asset Management Fee Agreement HPHA will be compensated for providing certain services with respect to, among other things, overseeing and monitoring certain aspects of the management and administration of the Project for the period commencing as of the date of the agreement and continuing throughout the term of the Partnership. These services will include:

- 1) monitoring the General Partner's reporting on the Project in the periodic reports required by lenders and investors to the Project;
- 2) performing an annual review and physical inspection of the Project and to provide a report detailing any issues or concerns about the physical condition of the Project within sixty (60) days of such inspection;

- 3) reviewing the occupancy/rental reports for the Project; and
- 4) reviewing all other information related to the operation and management of the Project available to the Partnership reasonably requested by HPHA with respect to the Project.

HPHA will be paid an annual fee of \$7,500 (“HPHA Fee”). The HPHA Fee will be paid at the same time that the Partnership Management Fee is paid to the General Partner on a *pari passu* basis. The HPHA Fee will increase by three percent (3%) on an annual basis, will be cumulative, and will start to accrue annually concurrent with the permanent loan conversion.

G. HPHA Property Management Fee Agreement

The HPHA will provide certain services with respect to, among other things, overseeing and monitoring certain aspects of the management and administration of the Project for the period commencing as of the date of the agreement and continuing throughout the term of the Ground Lease.

The obligations of HPHA will include:

- 1) Review and approval of the Management Plan in its entirety and any subsequent suggested modifications;
- 2) Approve legal counsel designated for enforcement of leases; to monitor grievance procedures and be made aware of any lease termination efforts and approve all lease forms and necessary changes;
- 3) Monitor maintenance and repair and conditions or limitations established by the Partnership;
- 4) Review and approve any capital expenditure;
- 5) Be informed of any emergency repairs involving manifest danger to persons or property;
- 6) Review and approve proposed annual operating budgets, budgeted withdrawals from replacement reserves, and capital expenditures prior to implementation and review and approve any expected (prior to incurring the cost) annual increases that would exceed the annual Consumer Price Index;
- 7) Review and verify that the Project’s property insurance is in force at all times and that the Project is in compliance with insurance requirements specified in the Partnership Agreement and Ground

Lease;

- 8) Review and comment on the quarterly report on monitoring and oversight of property manager issued by the General Partner in its day-to-day authority over the routine operations of the property;
- 9) Review and approve any Partnership or property manager or management agent media statements;
- 10) Review and comment on annual audit and monitor compliance with governmental orders and licenses;
- 11) Request the removal of the Related Property Manager for material violations of the property management oversight agreement, subject to notice and opportunities to cure and the rights of lenders and investors and applicable government agencies; and
- 12) Recommend the removal of the Unrelated Property Manager for material violations of the property management agreement, subject to notice and opportunity to cure and the rights of lenders and investors and applicable government agencies.

For services to be performed under the HPHA Property Management Fee Agreement, the General Partner shall pay an annual HPHA Property Management Fee to the HPHA in the amount equal to fifty percent (50%) of the General Partner's Property Management Oversight Fee. The HPHA Property Management Fee will be paid in accordance with the priority for Net Cashflow Distributions attached to the Property Management Agreement as Exhibit A and due to the HPHA upon the General Partner's receipt of the GP PM Oversight Fee. The HPHA Property Management Fee will be non-cumulative.

#### H. Performance and Completion Guaranty

Under the Performance and Completion Guaranty, in addition to performance and payment bonds that are otherwise required, Highridge Costa ("Guarantor") will unconditionally guaranty that the Tenant will complete the Improvements in accordance with the Plans and Specifications and that in the event that the sum of the proceeds of the loans are insufficient to pay all costs for the completion of the Improvements, then the Tenant will pay such costs. The Guaranty also ensures that all mechanics and materialmen's liens or claims are paid and that the construction of the Improvements will comply with all applicable existing building, zoning, use, and environmental protection laws and ordinances.

- I. Authorize the Executive Director to Make Minimal or Ministerial Changes to the School Street Redevelopment Phase 1A Documents in consultation with HPHA's attorneys and consultants and to execute the documents when finalized.

Authorize the Executive Director to execute other related documents such as title affidavits<sup>2</sup> and estoppel certificates<sup>3</sup> in consultation with HPHA's attorneys and consultants.

Although the HPHA Team and the Developer have been actively negotiating the terms of the Phase 1A Documents there may be further minimal or ministerial changes to the Phase 1A Documents that are required. Also, additional related documents, such as title affidavits or other estoppel certificates, may be required to be executed on behalf of the HPHA in connection with the construction loan closing. The Executive Director would like the authority to continue to make the necessary changes to the above-described documents as well as to execute related documents to support the construction loan closing. All the changes and execution of related documents would be done in consultation with HPHA's deputy attorneys general, outside counsel, and consultant team.

### III. RECOMMENDATION

That the Board take the following actions:

- 1) Approve the Disposition and Development Agreement, Ground Lease, Memorandum of Ground Lease, Purchase Option and Right of First Refusal, Subdevelopment Fee Agreement, Asset Management Fee Agreement, HPHA Property Management Fee Agreement and Performance and Completion Guaranty for the School Street

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<sup>2</sup> An affidavit of title would likely require an explicit expression by HPHA, as the lessor, that it owns the School Street property and has full authority to lease it as part of the transaction.

<sup>3</sup> The purpose of an estoppel certificate is for HPHA, as the lessor, to verify the basic terms of the Ground Lease, that there are no current defaults under the Ground Lease, that there are no other mortgages or liens on the fee interest, and that there are no violations associated with the Property. An estoppel certificate will be required at permanent loan closing, but one may also be required at the construction loan closing.

Redevelopment Project Phase 1A located at 1002 North School Street, Honolulu, Hawai'i 96817, Tax Map Key No. (1) 1-6-009-003;

- 2) Authorize the Executive Director to make minimal or ministerial changes to the School Street Redevelopment Phase 1A Documents in consultation with HPHA's attorneys and consultants and to execute the documents when finalized; and
- 3) Authorize the Executive Director to execute other related documents such as title affidavits and estoppel certificates.

Reviewed by:

Hakim Ouansafi, Executive Director



Approved by the HPHA Board of Directors  
on the date set forth above

[  ] As Presented [  ] As Amended



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Robert J. Hall  
Chairperson

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**for**

**HPHA SCHOOL STREET REDEVELOPMENT PROJECT  
Phase 1A**

by and among

**HAWAII PUBLIC HOUSING AUTHORITY**

**and**

**SCHOOL STREET I, LP**

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**DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE SCHOOL STREET  
REDEVELOPMENT PROJECT**

**HPHA School Street Redevelopment Phase 1A**

This Disposition and Development Agreement (this “**Agreement**”) is entered into and effective as of \_\_\_\_\_, 2024 (the “**Effective Date**”) by and among HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic, organized under the laws of the State of Hawaii (the “**Authority**”), and SCHOOL STREET I, LP, a Hawaii limited partnership (the “**Partnership**” or “**Developer**”). The Authority and the Developer are collectively referred to herein as the “**Parties**.”

**RECITALS**

A. These Recitals refer to and utilize certain capitalized terms that are defined in Section 1.1 of this Agreement. The Parties intend to refer to those definitions in connection with their use in these Recitals.

B. The Authority is a public housing authority formed pursuant to Chapter 356D of Hawaii Revised Statutes (“**HRS**”). The Authority is the fee simple owner of certain land consisting of 83,451 square feet located at 1002 School Street, Honolulu, Hawaii, 96817, designated as Tax Map Key No. (1) 1-6-009-012, referred to as Lot 2, and more particularly described in the attached Exhibit A (the “**Project Site**”).

C. On January 13, 2015, the Authority issued “Request for Qualifications for Master Developer for the Mixed Income, Mixed Use Redevelopment of the Authority's Administrative Offices and the Development of Low Income Public Housing Units on the Island of Oahu (RFQ OED-2015-05)” (the “**RFQ**”) and Retirement Housing Foundation, a California nonprofit corporation (“**RHF**”), submitted certain qualifications and proposals for the development of the Redevelopment Site (as defined below). The RFQ selection committee selected RHF, and the Authority and RHF’s affiliated entity, RHF Foundation, Inc., a California nonprofit corporation (“**RHFFI**”), entered into that certain Master Development Agreement dated November 15, 2019 (the “**Master Development Agreement**” or “**MDA**”).

D. RHFFI and HCDC School Street LLC (the “**Master Developer**”) are parties to that certain Assignment and Assumption of Master Development and Release dated January 11, 2024, by which RHFFI assigned, and Master Developer accepted and assumed, all of RHFFI’s rights and interests in, to and under the MDA (the “**RHF Assignment**”).

E. The Authority and RHFFI are parties to that certain Approval and Consent to Assignment and Assumption of Master Development Agreement and Release dated January 11, 2024, by which the Authority approved and consent to the RHF Assignment (“**Consent to Assignment**”).

F. The Master Development Agreement contemplates the revitalization and redevelopment of a portion of the 12.481 acres owned in fee simple by the Authority located at 1002 North School Street, Honolulu, Hawaii 96817, previously identified by Tax Map Key No. (1) 1-6-009-003 (collectively, the “**Redevelopment Site**”), to consist of a maximum of eight hundred (800) residential rental units, an approximately thirty thousand (30,000) square foot office facility for the Authority as its central administrative offices, approximately ten thousand (10,000) square feet of commercial/retail space, and related site improvements and amenities.

G. Under the Master Development Agreement, the Master Developer will redevelop the Property in at least three (3) phases (each, a “**Development Phase**”) with each Development Phase owned and developed pursuant to the terms of a disposition and development agreement and ground lease between the Authority and a Hawaii limited partnership or limited liability company formed by the Master Developer.

H. This Agreement governs the first Development Phase (the “**Project**”) to be constructed on the Project Site by the Developer, an affiliate of the Master Developer.

I. The Project will consist of two hundred fifty (250) Units and related amenities and improvements of which 249 shall be subject to the HPHA Affordability Requirement and requirements imposed by the Low Income Housing Tax Credit (“**LIHTC**”) program, as described in the Scope of Development and Site Plan attached hereto as Exhibit B.

J. To facilitate the Project, this Agreement provides that upon satisfaction of specified conditions, (i) the Authority will convey a leasehold interest in the Project Site under a ground lease to the Partnership; (ii) the Partnership will own and operate the Project, and will lease the rent-restricted Units in the Project to income-qualified tenants at affordable rents pursuant to the requirements of this Agreement, the Ground Lease, and other applicable financing programs; and (iii) subject to the rights of any mortgagee permitted in accordance with the terms of the Ground Lease, pursuant to the terms specified in Section 7.4, the Authority will have a Purchase Option and Right of First Refusal to purchase the Project and all interests in the Partnership after the Tax Credit Compliance Period.

K. The Authority and the Developer desire to enter into this Agreement to set forth their respective rights and obligations with respect to the above-described matters.

In consideration of the foregoing recitals and underlying promises, which the Parties agree are good and valuable consideration, the Parties agree as follows:

## ARTICLE I DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below.

- (a) [Reserved].
- (b) “**Affiliate**” means, for Developer, (i) any entity providing services for the Development whose management and operation is controlled by Developer; (ii) any entity providing services for the Development in which an entity described in (i) has a controlling interest; (iii) any entity providing services for the Development a majority of whose voting equity is owned by Developer, or for which Developer serves as the managing member or general partner; or (iv) any entity in which, or with which, Developer, its successors or assigns, is merged or consolidated, under applicable statutory provisions for merger or consolidation, provided the liabilities of the entities participating in such merger or consolidation are assumed by the entity surviving such merger or created by such consolidation.
- (c) “**Agreement**” means this Agreement including all exhibits attached hereto and made a part hereof.
- (d) “**Architect**” means Design Partners, Inc. or any successor approved by the Authority.
- (e) “**Authority**” means the Hawaii Public Housing Authority, a public body corporate and politic, organized under the laws of the State of Hawaii including any successor in interest or assigns by act of the Authority, or by operation of law, or otherwise.
- (f) “**Authority Board**” means the Board of Directors of the Authority.
- (g) [Reserved].
- (h) “**Authority Indemnitees**” is defined in Section 6.12(b).
- (i) “**Certificate of Occupancy**” means the certificate issued by the City authorizing occupancy of the Project.
- (j) “**City**” means the City and County of Honolulu, Hawaii.
- (k) “**Claims**” is defined in Section 2.2(d).

(l) “**Closing**” means the close of escrow for the construction financing and the conveyance of a leasehold interest in the Project Site by the Authority to the Partnership, pursuant to the applicable Ground Lease and Article III herein.

(m) “**Closing Documents**” is defined in Section 3.1(a)(9).

(n) “**Code**” means the Internal Revenue Code of 1986, as amended.

(o) “**Concept Plan**” means the conceptual rendering of the improvements to be constructed as part of the Project attached hereto as Exhibit D, as the Parties may revise from time to time.

(p) “**Construction Documents**” shall include or incorporate as they come into existence for the Project: (a) the construction contract(s) and the general, special, and supplemental conditions to such contract(s) and (b) the plans and specifications (“**Plans and Specifications**”).

(q) “**Contractor**” means any person or entity, including consultants, who performs services in connection with the Project or supplies labor, materials, or equipment for use in connection with the Project, other than the Developer, Master Developer, any General Contractor, or any Affiliate of the General Contractor.

(r) “**Design Documents**” is defined in Section 5.2.

(s) “**Developer**” means the Partnership.

(t) “**Developer Fee**” is defined in Section 4.4(a).

(u) “**Development Contingencies**” shall have the meaning provided in Section 3.1(a).

(v) “**Environmental Conditions**” means environmental conditions, including the presence of Hazardous Materials, geologic conditions, soils conditions, and water conditions.

(w) “**Environmental Measures**” means taking the actions or refraining from taking action as required by the Construction and Environmental Hazard Management Plan by Tetra Tech dated as of \_\_\_\_\_.

(x) “**Environmental Reports**” is defined in Section 6.12(b).

(y) “**Event of Default**” shall have the meaning set forth in Section 10.1 with respect to the Developer and the meaning set forth in Section 10.2 with respect to the Authority.

(z) “**Financing Documents**” is defined in Section 3.2(f).

(aa) “**Financing Plan**” means the plan for financing the Project, including the development budget for the Project and sources and uses analysis, as further detailed in Section 4.1 and attached hereto as Exhibit E, as such may be amended by mutual agreement of the Parties from time to time.

(bb) “**General Partner**” means HCDC School Street LLC, a Hawaii limited liability company, the managing general partner of the Partnership.

(cc) “**Ground Lease**” means the ground lease for the Project Site to be executed and delivered in conjunction with the Closing for the Project. The Ground Lease shall be in substantially the form set forth in Exhibit F; provided, however, that the Parties acknowledge that Developer’s lenders and/or equity investors may request modifications to the form of Ground Lease prior to the Closing.

(dd) “**Guarantor**” means the Master Developer or, subject to written approval by the Authority, an affiliate of the Master Developer.

(ee) “**Hazardous Materials**” means, without limitation, “hazardous substances” as defined by CERCLA; “hazardous wastes” as defined by RCRA; any hazardous, dangerous or toxic chemical, waste, pollutant, contaminant or substance (“pollutant”) within the meaning of any Environmental Law prohibiting, limiting or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant; petroleum crude oil or fraction thereof; any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 et seq., and amendments thereto and reauthorizations thereof; asbestos-containing materials in any form or condition; and polychlorinated biphenyls in any form or condition.

(ff) “**Hazardous Materials Laws**” means any and all applicable federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*),

the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

(gg) “**HHFDC**” means the Hawaii Housing Finance and Development Corporation.

(hh) “**HPHA Affordability Requirement**” means the Authority’s requirement as a condition for entering into the Ground Lease that the leased property is used to provide residential housing for households at or below sixty percent (60%) of the U.S. Department of Housing and Urban Development area median income for the City, adjusted for household size (except for the manager’s unit).

(ii) “**HUD**” means the U.S. Department of Housing and Urban Development.

(jj) [Reserved].

(kk) “**Investor**” and “**Investor Limited Partner**” means the entity or entities selected by the Developer to make an equity contribution associated with the Low-Income Housing Tax Credits for the Project.

(ll) “**Low-Income Housing Tax Credit**” or “**LIHTC**” refers to the credit available under Section 42 of the Code or State law.

(mm) “**Master Development Agreement**” and the “**MDA**” are defined in the Recitals.

(nn) “**Master Plan**” is defined in the Master Development Agreement.

(oo) “**Memorandum of Ground Lease**” is defined in Section 2.6(a).

(pp) “**Official Records**” means the official records of the Bureau of Conveyances, State of Hawaii.

(qq) “**Net Cash Flow**” is defined in Exhibit E-1 of this Agreement.

(rr) “**Partnership**” and “**Limited Partnership**” means School Street I, LP, a Hawaii limited partnership, in which the General Partner will serve as the managing general partner.

(ss) “**Partnership Agreement**” means the Partnership’s Amended and Restated Limited Partnership Agreement admitting the Investor Limited Partner to the Partnership.

(tt) “**Permitted Title Exceptions**” means the following exceptions to title with respect to the Project Site: (a) applicable building and zoning laws and regulations; (b) the provisions of this Agreement; (c) the encumbrances resulting from the recorded Closing Documents; (d) any lien for current taxes or taxes accrued subsequent to Closing; (e) the exceptions to title set forth in the Title Insurance Policy approved by the Developer; (f) any other conditions or exceptions caused by the Developer; and (g) such other conditions, covenants, restrictions or easements of record as may be approved by the Developer pursuant to Section 3.5(a).

(uu) “**Predevelopment Costs**” means the costs paid for services performed by parties not affiliated with the Authority or the Developer in connection with the planning and financing of the Project that are incurred prior to Closing and are part of the development budget for the Project. Developer overhead and Authority overhead are not considered “Predevelopment Costs.”

(vv) “**Project**” means the improvements to be constructed pursuant to this Agreement and the Ground Lease, including housing units, community facilities, if any, and infrastructure, and may refer as well to the process of planning, financing and constructing such improvements.

(ww) “**Project Site**” means the portion of the Redevelopment Site on which the Project is to be constructed, as generally described and depicted in Exhibit A. The description attached as Exhibit A may be removed and replaced with a metes and bounds or other legal description for the Project Site mutually acceptable to the Parties prior to Closing.

(xx) “**Post-Foreclosure Use Restriction**” means that following foreclosure or deed in lieu of foreclosure of Developer’s interest in the Project by any mortgagee permitted in accordance with the Ground Lease, that two hundred forty-nine (249) units on the Project Site must be reserved for occupancy by households at or below sixty percent (60%) of Area Median Income for the City, adjusted for actual household size in accordance with all applicable restrictive covenants and regulatory requirements (“**AMI**”).

(yy) “**Purchase Option**” means the option described in Section 7.4.

(zz) “**Redevelopment Site**” is defined in the Recitals.

(aaa) “**Regulatory Agreements**” means, collectively, as applicable, (i) any regulatory agreement to be entered into by the Developer and HHDFC in connection with the use of Low-Income Housing Tax Credits for the initial construction of the Project and/or other financing provided by HHFDC (ii) any regulatory agreement entered into by the Developer with the issuer of tax-exempt financing for the Project (iii) any regulatory agreement in favor of the City and



County of Honolulu pursuant to Chapters 201H-38 and 46-15.1 of the Hawaii Revised Statutes, and (iv) any regulatory agreement entered into for the Project with any public agency.

(bbb) [Reserved].

(ccc) [Reserved].

(ddd) “**Rent Restricted**” means that the gross rent with respect to the residential units in the Project shall not exceed the lowest of: (a) thirty percent (30%) of the imputed income limitation applicable to such Units as calculated pursuant to Section 42(g)(2) of the Code, (b) the rents permitted pursuant to the Regulatory Agreements.

(eee) Reserved.

(fff) “**RFQ**” is defined in the Recitals.

(ggg) “**Right of First Refusal**” is defined in Section 7.4.

(hhh) “**Schedule of Performance**” means the summary schedule of actions to be taken by the Parties pursuant to this Agreement and the Ground Lease and attached hereto as Exhibit C, as it may be amended by mutual agreement of the Parties from time to time.

(iii) “**Scope of Development**” means the description of the basic physical characteristics of the Project, including a basic site plan, which will serve as the basis for the Developer’s application for City approvals and for the preparation of the Construction Documents. The Scope of Development is attached hereto as Exhibit B, as may be revised by the Parties from time to time.

(jjj) “**Site Preparation Documentation**” means the following documents: (i) Right-of-Entry Agreement dated effective as of January 12, 2024 permitting the Developer to access the Project Site and portions of the Redevelopment Site to prepare the Project Site for development including relocating Building M, erecting construction fencing, certain work on Building J, and demolishing certain structures and (ii) the Building M Relocation Funding Agreement School Street Phase 1A dated effective as of January 12, 2024 (the “**Building M Funding Agreement**”).

(kkk) “**Tax Credit Compliance Period**” means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Code starting with the first year of the credit period.

(lll) “**Title Company**” means the title company referred to in Section 3.4 herein.

(mmm) “**Title Insurance Policy**” means the policy of title insurance referred to in Section 3.6 herein.

(nnn) “**Transfer**” means a transfer of this Agreement, an interest in the Partnership, an interest in the Ground Lease, or an interest in the Project as more particularly described in Section 8.5.

(ooo) “**Units**” means residential dwelling units, including the manager’s unit in the Project.

(ppp) “**Work**” is the total construction of the Project as described in the Construction Documents.

Section 1.2 List of Exhibits. The following exhibits are attached hereto and incorporated into this Agreement by this reference:

|             |                                    |
|-------------|------------------------------------|
| Exhibit A   | Project Site Description           |
| Exhibit B   | Scope of Development and Site Plan |
| Exhibit C   | Schedule of Performance            |
| Exhibit D   | Concept Plan                       |
| Exhibit E   | Financing Plan                     |
| Exhibit E-1 | Definition of Net Cash Flow        |
| Exhibit F   | Ground Lease                       |
| Exhibit G   | Project Labor Agreement            |
| Exhibit H   | Sustainability Plan                |
| Exhibit I   | Hawaii General Conditions          |

## ARTICLE II PROJECT

Section 2.1 Scope of Development. As more fully described in the Scope of Development and subject to review of the Authority, the Project will consist of the construction on the Project Site of (i) approximately two hundred fifty (250) Units of which two hundred forty-nine (249) shall be Rent Restricted, and (ii) one (1) will be a resident manager unit. The preliminary unit types, with their associated square footage and bedroom distribution, are described in Exhibit B.

Section 2.2 Ownership Structure.

(a) Upon satisfaction of the conditions specified in Article III, the Authority will lease the Project Site to the Partnership pursuant to the Ground Lease. Subject to any legal obligations the Authority must fulfill as the current owner of the Project Site, and under this Agreement (including Section 2.6(a)(ii), the Developer shall be responsible for obtaining all necessary Land Use Entitlements (as defined in the Master Development Agreement) for the

development of the Project Site, which approvals shall be obtained prior to the commencement of the term of the Ground Lease. The Authority agrees to cooperate fully with the Developer's efforts to obtain such Land Use Entitlements.

(b) In connection with the Closing for the Project, the Partnership will enter the Partnership Agreement to evidence the admission of the Investor Limited Partner, that will then own the principal equity interest in the Partnership. The Partnership Agreement shall be subject to the review and approval of the Authority, pursuant to Section 4.1(b).

(c) As a condition to the Closing for the Project, the Partnership shall indemnify, defend and hold the Authority, and the respective board members, commissioners, directors, elected and appointed officers and officials, employees, agents, and contractors, harmless from and against all claims, losses, actions, demands, costs, expenses and attorney's fees (all of the foregoing, "**Claims**"), arising out of, attributable to or otherwise occasioned in whole or in part by the Partnership, its agents, contractor's servants or employees which constitute a breach of Partnership's obligations under this Agreement. If any party performing work for the Partnership on the Project shall assert any Claim against the Authority on account of any damage alleged to have been caused by reason of the negligent acts or intentional misconduct of the Partnership, its agents, servants, employees or contractors (including, without limitation, its general construction contractor for the Project), the Partnership shall defend at its own expense any suit based upon such claim; and if any judgment or claim against the Authority shall be allowed, the Partnership shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith including attorneys' fees. The obligations, indemnities, and liabilities of the Partnership under this section shall not extend to any liability caused by the negligence or misconduct of the Authority or their employees, contractors, or agents. The foregoing indemnity shall also not apply to Claims arising from breach of the Partnership Agreement, this Agreement, the Ground Lease, or any Closing Documents by the Authority, or any actions or inactions of RHF or RHFFI.

Section 2.3 **Financing.** The preliminary Project development budget is included in the Financing Plan at Exhibit E. The Parties recognize that financial needs may arise which require budget revisions so that the Project may be accomplished, and the Parties will consider and pursue such revisions in good faith. The Developer shall be responsible for obtaining all financing required for the development of the Project. The Authority has no obligation to provide any financing for the construction or operation of the Project except as expressly set forth herein or in the Building M Funding Agreement. There shall be no lien or encumbrance on the Authority's fee interest in the Project Site. Without limiting the generality of the foregoing, in no event shall the Authority's fee interest in the Project Site be encumbered by a mortgage or other security interest.

Section 2.4 Developer Designation. Subject to events of Force Majeure as defined in Section 10.1(b), Developer will implement the Project in substantial accordance with the Schedule of Performance at Exhibit C. Developer will develop the Project in its own name and for its own account, and not as agent or contractor of the Authority.

Section 2.5 Affordability Requirements. The Parties anticipate that one Unit will be the manager's unit, and two hundred forty-nine (249) Rent Restricted Units will be subject to occupancy and affordability restrictions imposed by the Regulatory Agreements and may be subject to restrictions applicable to other financing sources including those required as a condition to the disposition of the Project Site, other statutory or regulatory restrictions, or the agreements of the Parties. Pursuant to the Ground Lease, following foreclosure or deed in lieu of foreclosure of Developer's interest in the Project by any mortgagee permitted in accordance with the terms of the Ground Lease, the Project shall thereafter be subject to Post-Foreclosure Use Restrictions and restricted for occupancy by households whose gross household income does not exceed sixty percent (60%) of AMI. This requirement shall be included in the Ground Lease, shall not be subordinated, and shall survive the foreclosure of any mortgage, deed of trust or other lien recorded against the Project or the Project Site.

Section 2.6 Authority Commitments. Upon the performance by Developer of all its prior obligations with respect to the Project, as set forth herein, Authority shall take the following actions and execute and deliver such documents as are required to complete Closing. At the Closing for the Project, the Developer shall reimburse the Authority for its actual out-of-pocket legal and consultant costs related to the negotiation of this Agreement, the Ground Lease, and the Site Preparation Documentation incurred by the Authority on or prior to the Closing in an aggregate amount not to exceed a combined total of [to be inserted by Board Meeting] Dollars (\$\_\_\_\_\_).<sup>1</sup>

(a) Site Conveyance. Upon Closing, the Authority shall lease the Project Site through a ground lease substantially in the form attached hereto as Exhibit F (the "**Ground Lease**") which shall have been negotiated and executed. The Ground Lease will provide for, without limitation, subject to final negotiations with lenders and investors, a term of not less than seventy-five (75) years. A Memorandum of Ground Lease ("**Memorandum of Ground Lease**") shall be recorded in the Official Records at Closing for the Project prior to all financing documents.

(b) Permission to Enter the Property. The Authority shall permit Developer to enter the Project Site prior to the Close of Escrow solely for purposes consistent with this Agreement provided that Developer indemnifies the Authority Indemnitees against any liability arising in connection with such entry as set forth in Section 3.1 (a)(1) below.

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<sup>1</sup> Amount to be complete by HPHA April board meeting.

(c) Ground Lease Payments. The payment for the leasehold interest in the Project Site will be equal to the appraised value of the leasehold interest in the Property and may be structured as annual ground lease payments. Ground Lease payments shall be paid annually to the Authority out of Net Cash Flow and any unpaid lease payment shall accrue interest as set forth in the Ground Lease.

(d) [Reserved].

### **ARTICLE III CONDITIONS PRECEDENT TO PERFORMANCE AT CLOSING AND EARLY START CONSTRUCTION**

Section 3.1 Mutual Conditions Precedent to Closing. The Parties' ability to perform responsibilities hereunder is substantially contingent upon actions by third parties over which Developer and Authority have limited control, upon factual circumstances which cannot be fully determined as of the date of this Agreement, and upon the negotiation of additional agreements (collectively, the "**Development Contingencies**"). The following Development Contingencies are conditions precedent to the obligations of both Parties to close escrow for the Project under Section 3.4:

(a) *Site Investigation; Due Diligence Investigation*. By the time set forth in the Schedule of Performance, Developer may make such investigations regarding the Project Site (including but not limited to Environmental Conditions) on or about the Project Site as the Developer deems appropriate. From and after the Effective Date until the Closing or earlier termination of this Agreement, the Authority shall afford authorized representatives of Developer access to the Project Site for purposes of satisfying Developer with respect to the condition of the Project Site and with respect to satisfaction of any conditions precedent contained herein, including, without limitation, site inspections and engineering and environmental surveys. Developer shall indemnify, defend and hold harmless the Authority Indemnitees from and against any Claims arising in connection with physical damage to the property or other damage or injury to persons or property which results from Developer's investigations except to the extent arising from the Authority's gross negligence or willful misconduct or for the discovery of pre-existing conditions (which indemnity and defense obligations shall survive the expiration or earlier termination of this Agreement).

(b) *Ground Lease*. The Ground Lease and the Memorandum of Ground Lease required by Section 2.6(a) shall have been executed by the Authority and the Developer. The Developer and Authority shall have agreed upon the Ground Lease.

(c) [Reserved].

(d) [Reserved].

(e) *Financing Plan.* Developer and Authority shall have agreed upon the Financing Plan attached hereto as Exhibit E.

(f) [Reserved].

(g) [Reserved].

(h) *Sustainability Plan.* The Developer shall have presented for Authority review feasible sustainable building methods for the Project in accordance with Section 5.4 of the Master Development Agreement. The Developer and the Authority shall have agreed to a plan to be compiled by the Architect for meeting the energy-efficiency requirements of the State of Hawaii's and/or the City's most recent building code(s) and the sustainability goals of the Master Development Agreement and attached hereto as Exhibit H.

(i) *Additional Agreements to be Negotiated.* The following agreements (the “**Closing Documents**”) shall have been negotiated for the Project in substance and form satisfactory to the Authority and the Developer executed by the respective parties thereto:

(1) Regulatory Agreements, as applicable, restricting the affordability of the Rent Restricted Units in the Project;

(2) All loan and financing documents for the construction and permanent financing of the Project, including but not limited to the Agreement of Limited Partnership for the Owner;

(3) Guarantees pursuant to Section 4.3(c);

(4) LIHTC and syndication documents including the Partnership Agreement and Developer guarantees to the Investor;

(5) Purchase Option and Right of First Refusal Agreement as described in Section 7.4; and

(6) Subdevelopment Fee Agreement and Asset Management Fee Agreement;  
and

(7) Property Management Agreement and Managing Agent Agreement..

(j) *Tax Credit Allocation.* Developer shall have obtained from issuing agencies such allocations of Low-Income Housing Tax Credits as will allow it to attract equity investments,

which, when combined with all other sources of financing, are sufficient for the feasible development of the Project as reflected in the Financing Plan.

(k) *Funding Commitments for Closing.* The Project shall have received commitments for all of the sources of projected assistance as enumerated in the Financing Plan attached as Exhibit E, or any substitute financing obtained by the Developer and reasonably acceptable to the Authority, including but not limited to the commitments described below, and, all on terms acceptable to Developer, at Closing, all construction loans and funding sources necessary to begin construction shall be in a position to close concurrently with the Closing:

(1) The commitment of a LIHTC equity investment at projected or other commercially reasonable rates;

(2) The commitment of private loans and other financing sources under projected or other commercially reasonable terms and conditions;

(3) The commitment of all projected assistance or reasonable substitutions therefor, including grants, loans and land transfers from other governmental bodies.

(l) *Environmental Review.* As of the date of this Agreement, the Parties agree that any Environmental Review in accordance with Section 2.2 of the Master Development Agreement has been completed. The Developer shall comply with the Environmental Measures.

(m) *Other Necessary Approvals.* The Developer shall have received all other necessary government approvals and permits for the Project.

(n) *Reimbursement of Predevelopment Costs.* The Developer and the Authority shall have provided for the reimbursement to each Party at Closing from the Project financing of the eligible, approved and budgeted Predevelopment Costs. As of the Effective Date, the Predevelopment Costs incurred by the Developer for the Project are estimated to be approximately [to be inserted by Board Meeting]<sup>2</sup> and the Predevelopment Costs incurred by the Authority are approximately [to be inserted by Board Meeting].<sup>3</sup> Except as provided in Section 3.7 herein, the Authority and Developer shall each be responsible for fifty percent (50%) of the Predevelopment Costs and shall be reimbursed for such costs at Closing; provided, however, that the Authority shall be reimbursed one hundred percent (100%) of the costs advanced pursuant to the Building M Funding Agreement. If the legal fees identified in Schedule 1 to the RHF Assignment (“**RHF Legal Costs**”) are not reimbursable at Closing, the Developer and the Authority agree to each pay fifty percent (50%) of such RHF Legal Costs from their respective shares of Developer Fee received pursuant to Section 4.4 (a) of this Agreement on a pari passu basis.

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<sup>2</sup> Amount to be complete by April HPHA board meeting.

<sup>3</sup> Same as above.

Section 3.2 Conditions Precedent to Authority Performance at Closing. The following are conditions precedent to Authority's obligation to enter into the Ground Lease and close escrow:

(a) *No Defaults*. The Developer shall not be in material default under this Agreement, after the expiration of any notice and cure period, and shall have completed all of its material predevelopment obligations required to be completed pursuant to this Agreement prior to Closing unless waived by Authority.

(b) *Construction Documents*. The Developer shall have prepared, or will have seen to the preparation of Construction Documents, including construction plans, budgets, schedules and a construction contract as provided in Article V.

(c) *Permits and Approvals*. The Developer shall have obtained (in its own name or, where appropriate and with the approval of the Authority, in the name of the Authority) all licenses, easements, zoning and approvals, and all building and construction permits necessary for construction of the Project, including commitments to provide the utilities necessary for the Project to the extent lenders or Investor require such commitments to be in place prior to commencement of construction.

(d) *Master Plan Certification*. The Developer shall have provided the Authority with a certification satisfactory to the Authority from the Architect that the Schematic Design Documents and Design Development Documents (each as defined in the Master Development Agreement) for the Project meet all requirements of the Master Plan.

(e) *Independent Report and Certification of Compliance with Accessibility Laws*. The Developer shall have provided the Authority with a written report from its Architect or an independent professional certifying that (i) it has reviewed the Plans and Specifications for the Project, (ii) the Plans and Specifications comply with all applicable State and Federal requirements concerning accessibility including, but not limited to, the Fair Housing Act of 1968, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended ("**Accessibility Requirements**"), and (iii) stating the number and type of Units that will be accessible in accordance with applicable Accessibility Requirements.

(f) *Financing Commitments and Documents*. Pursuant to Section 4.1(b), the Developer shall have provided to the Authority, for its review and approval, (a) evidence of firm financing commitments sufficient to complete the Project and (b) the iterations of all legal documents required by lenders and the Investor for the Project as such iterations are circulated to the financing participants, including, without limitation, all loan agreements, deeds of trust, mortgages, security instruments, covenants or restrictions to be recorded, promissory notes and partnership and/or operating agreements (the "**Financing Documents**"), such Financing Documents shall not be finalized without the Authority's approval pursuant to Section 4.1(b).



(g) *Recording Order.* The Developer shall have submitted and the Authority shall have accepted a recording order for the Financing Documents and any use restriction or other lien or encumbrance to be filed against the Project Site.

(h) *Equity Investors.* The Developer shall have solicited Investors to join and make equity contributions to the Project as set forth in the Financing Plan. The Developer shall seek equity investment competitively so as to maximize the benefit to the Project, all factors considered, including, without limitation, the amount, timing, other terms of contribution and the totality of Developer's past experiences with such Investors in prior transaction similar to those contemplated herein. The Developer shall disclose to the Authority any offers which are received; shall prepare for the Authority's review a comparative analysis of the offers; and shall give the Authority advance notice of which investor is proposed for selection. Developer will give good faith consideration to any objections the Authority has to the selected Investor.

(i) [Reserved].

(j) [Reserved].

(k) *Environmental Measures.* The Developer shall have provided evidence of compliance with the Environmental Measures applicable as of the date of the Closing.

(l) *Property Management Plan and Property Management Agreement.* The Developer shall have provided the Authority for its review and approval a plan for marketing the Project, as well as for asset and property management including but not limited to admissions criteria, a tenant selection plan, and a tenant lease designed to achieve the short and long term viability of the Project in accordance with the Master Plan;

(m) *Developer Guarantees.* The Guarantor shall provide the guaranties required by Section 4.3(c).

(n) *Additional Requirements.* The Developer shall have provided to the Authority proof of insurance as required by Article IX, the bonds required by Section 6.4, applicable Regulatory Agreements, copies of the conventional loan and other financing documents, and such other documents and instruments as reasonably requested by the Authority.

(o) *Partnership Agreement; Organizational Documents.* The Authority shall have reviewed and approved, and the parties to each shall have executed, the Partnership Agreement. Developer shall deliver to Authority fully-executed originals of the foregoing agreement. The Developer shall have provided to the Authority certified copies of the formation and organizational documents and a good standing certificate for the Partnership and the General Partner and any other general partner of the Partnership.

(p) *Purchase Option and Right of First Refusal.* The Purchase Option and Right of First Refusal Agreement (as defined herein) for the Project shall have been executed.

(q) [Reserved].

(r) *Compliance with Laws.* The Developer has included a provision in the Construction Documents to require the general construction contractor to comply with applicable laws concerning applicable wages and labor standards.

(s) [Reserved].

(t) *Evidence of Selection of Third Party Contractors.* The Developer shall have provided the Authority with satisfactory evidence that the Construction Contractor and all Third Party Contractors have been selected in accordance with Section 3.1(F) of the Master Development Agreement.

(u) *Ground Lease Payment.* If the Ground Lease requires an annual lease payment, the first such payment shall have been paid in escrow with the Title Company or, if the Ground Lease requires a seller note, such seller note shall have been placed in escrow with the Title Company.

The conditions set forth in this Section 3.2 shall have been satisfied as of the Closing, unless the Authority waives them in writing. If there is no waiver or satisfaction by the Closing, the Authority may terminate this Agreement upon written notice to Developer without further liability, except for such liability as may be provided for under any predevelopment loans or separate contracts to which the Authority is a party, entered pursuant to this Agreement and except for continuing indemnities provided elsewhere in this Agreement.

Section 3.3 Conditions Precedent to Developer's Performance at Closing. The following are conditions precedent to the Developer's obligation to lease the Project Site from the Authority and close escrow:

(a) *Project Site Condition Generally.* At Closing, there shall be no material adverse condition at the Project Site and or material adverse changes in the condition of the Project Site since the execution of this Agreement that would materially adversely interfere with the Project development.

(b) *Construction Documents.* The Authority shall have approved the Construction Documents required to be approved up to the time of Closing.

(c) *Title Insurance.* The Title Company shall be prepared to issue to the Developer all title insurance required by Section 3.6 to be delivered to Developer.

(d) *Financing Documents.* The Authority shall have approved the Financing Documents pursuant to Section 4.1(b).

(e) *Ground Lease.* The Ground Lease shall have been executed by the Authority and the Partnership such that the Partnership shall concurrently with Closing acquire a ground leasehold estate in the Project Site.

(f) *Government Approvals.* The Project shall have received (in its own name or, when appropriate and with the approval of the Authority, in the name of the Authority) all necessary governmental approvals and permits, including without limitation, all building and construction permits, licenses, easements, zoning and approvals necessary for the commencement of construction of the Project, including commitments to provide the utilities necessary for the Project.

(g) *Authority's Representation and Warranties.* At Closing, the Authority's representations and warranties set forth in Section 11.2 shall be true and correct in all material aspects as if made on and as of the Closing.

(h) *Final Map.* The final map, in a form approved by the Developer, for the Project has been recorded by the Authority.

(i) *No Litigation.* No litigation or claim with any governmental entity shall have been filed and be pending which may have a material, adverse impact on the Project.

(j) *No Authority Default.* No Event of Default on the part of the Authority shall exist and be continuing under this Agreement and the Authority shall have completed all of its material predevelopment obligations required to be completed pursuant to this Agreement prior to Closing unless waived by Developer.

(k) [Reserved].

The conditions set forth in this Section 3.3 shall be satisfied as of the Closing, unless the Developer waives them in writing. If there is no waiver or satisfaction by the Closing, the Developer may terminate this Agreement upon written notice to the Authority without further liability, except for such liability as may be provided for under the Master Development Agreement, any predevelopment loans or separate contracts entered pursuant to this Agreement, and except for continuing indemnities provided elsewhere in this Agreement.

#### Section 3.4 Delivery of Site.

(a) *Authority's Obligation to Ground Lease.* Provided that the conditions precedent in Sections 3.1, 3.2 and 3.3 have been satisfied or expressly waived, the Authority and the Developer shall instruct Old Republic Title Company (the "**Title Company**") or other title company selected by mutual agreement, to complete the Closing as set forth below. Upon the Closing, the Authority shall deliver the Project Site to the Partnership pursuant to the Ground Lease and subject only to the Permitted Exceptions.

(b) *Steps for Closing.* The Closing shall be completed as follows:

(1) By the Closing date set forth on the Schedule of Performance, the Authority shall obtain approval from the Authority Board for the disposition of a ground leasehold interest in the Project Site to the Partnership.

(2) On or before the Closing date, the Authority shall execute, acknowledge, deposit and deliver to the Title Company, as necessary and appropriate, the Ground Lease, the Memorandum of Ground Lease and Closing Documents to which the Authority is a party.

(3) On or before the Closing date, the Partnership shall execute, acknowledge, deposit and deliver to the Title Company, as necessary and appropriate, the Ground Lease, the Memorandum of Ground Lease, and the agreements listed in Section 3.1(a)(9).

(4) The Developer shall concurrently close on its construction financing and Investor equity for the Project.

(5) The Authority and the Developer shall instruct the Title Company to consummate the escrow and upon Closing, the Title Company shall record in the Official Records the Memorandum of Ground Lease and any other Closing Documents required to be recorded under the terms of this Agreement or the then applicable Financing Documents.

(6) The Title Company shall issue title policies to the Developer and the Authority, as required in Section 3.5.

(c) *Effect of Closing.* Once Closing has occurred, this Agreement will terminate, except with regard to any surviving indemnity provisions or other provisions that expressly survive the Closing, and the Ground Lease will govern the Parties' obligations as to matters set forth in them. In the event of any conflict between the Ground Lease and this Agreement, the provisions of the Ground Lease will govern. No termination of this Agreement, in and of itself, shall release the other Party from the obligations it has undertaken in the Ground Lease nor increase the rights and remedies it may have under such documentation.

### Section 3.5 Conditions of Title.

(a) Permitted Title Exceptions. Within ninety (90) days following the execution of this Agreement (the “**Permitted Title Exceptions Date**”), the Developer shall provide written notice to the Authority of any matters shown on a preliminary title report for the Project Site that the Developer shall reasonably require to be removed from title prior to conveyance of the Project Site. Within sixty (60) days after the receipt of such notice from Developer, the Authority shall deliver to the Developer a notice setting forth those disapproved exceptions the Authority agrees to use good faith efforts (with the Developer’s assistance if required) to eliminate prior to the Closing. If the Authority refuses to eliminate any of the disapproved exceptions prior to the Closing, the Developer may elect: (i) to waive such disapproval(s) and to accept title to the leasehold interest in the Project Site subject to such exceptions; or (ii) to terminate this Agreement. Title exceptions for which the Developer does not provide notice of disapproval or for which the Developer waives such disapproval pursuant to this Section 3.5(a) shall constitute Permitted Title Exceptions. The Authority shall convey a leasehold interest in the Project Site to the Partnership under and subject to the provisions of the Ground Lease and subject only to the Permitted Title Exceptions. At its expense, the Authority shall remove at or before the Closing all monetary liens (collectively, “**Monetary Liens**”) including without limitation: (1) all delinquent taxes, bonds and assessments and interest and penalties thereon; and (2) all other monetary liens, whether or not shown on the preliminary title report (including judgment and mechanics' liens, whether or not liquidated, and mortgages and deeds of trust, with the Authority being fully responsible for any fees or penalties incurred in connection therewith). Monetary Liens shall not include a lien for non-delinquent general real property taxes prorated in accordance with this Agreement. Notwithstanding the foregoing, the Authority shall not be responsible for the removal of liens that result from the activities of Developer or Developer’s employees, agents, or contractors.

(b) New Title Matters.

(1) From and after the Permitted Title Exceptions Date, the Authority shall not enter into any new agreements or contracts or modify any existing agreements or contracts related to or that may affect the Project Site without Developer's prior written consent, unless the same shall be cancelable without penalty or premium upon not more than thirty (30) days’ notice from the Authority. The Authority will cancel all such contracts and agreements, or any other Service Contracts as defined in Section 11.2 prior to Closing (unless otherwise agreed to by the Developer in writing).

(2) Without limiting the forgoing, the Authority shall be obligated, at the Authority’s expense, to cure any title defect which is curable by the payment of money or the posting of a bond if such title defect arises after the Permitted Title Exceptions Date and on or before the Closing, and is caused solely by the Authority, its agents, contractors or employees.

(3) Notwithstanding the above, and subject to reasonable negotiation with relevant utility companies, in its mapping process, the Authority shall take all necessary action to remove any utility easements which would materially and adversely affect the Project.

Section 3.6 Title Insurance to be Issued at Closing. The Title Company shall issue to the Developer an ALTA extended coverage title insurance policy (“**Title Insurance Policy**”) with such coinsurance or reinsurance and direct access agreements as the Developer may reasonably request, in an amount designated by the Developer, insuring that the leasehold estate in the Project Site is vested in the Partnership subject only to the Permitted Title Exceptions, and with the ALTA form endorsements and such other endorsements as may be reasonably requested by the Developer and the Investor. Authority shall execute and deliver at Closing the Title Company’s standard form affidavit and indemnity required in order to issue the Title Insurance Policy. The Title Company shall issue to the Authority an ALTA Lender’s policy of title insurance in the amount of each loan provided by the Authority, insuring that each mortgage is a lien on the leasehold estate, and that the Memorandum of Ground Lease and the Purchase Option and Right of First Refusal Agreement have been recorded, with such endorsements as may be reasonably requested by the Authority.

Section 3.7 Work Related to Building M Relocation, Building J, Fencing and Initial Demolition. The parties have entered into certain Site Preparation Documentation to permit the Developer to access the Project Site and portions of the Redevelopment Site identified therein to permit certain work commence to prepare the Project Site for timely development. The Authority has agreed to advance one hundred percent (100%) of the costs associated with the relocation of Building M pursuant to the Building M Funding Agreement, which provides that the Authority shall be reimbursed in full for such costs at the Closing. Other costs incurred by each Party related to the preparation of Site Preparation Documentation and the site preparation work related thereto are considered Predevelopment Costs pursuant to Section 3.1(n) herein.

#### **ARTICLE IV FINANCING ARRANGEMENTS**

Section 4.1 Financing Plan and Financial Commitments. The Parties acknowledge that subject to financing commitments and other requirements, the Developer shall use diligent efforts to obtain financing commitments consistent with the Financing Plan. The Financing Plan shall consist of the information set forth in subsection (a) below. The items set forth in subsections (a)(1), (a)(2), and (a)(3) shall be attached hereto as Exhibit E for the Project. The remaining information in subsection (a) shall be submitted by the Developer to the Authority.

(a) Financing Plan.

(1) the approved Project Budget, which budget shall include any Predevelopment Costs paid by the Authority, Master Developer or Developer for the Project;

- (2) the sources and uses analysis for the period of the construction for the Project, including an analysis of subsidized financing necessary from public entities, if any;
- (3) the sources and uses analysis from the date of the origination of the permanent loan, including an analysis of subsidized financing from public entities for the Project, if any;
- (4) the twenty (20)-year cash flow projections for the Project, including an analysis from the date of the issuance of the Certificate of Occupancy;
- (5) the initial operating budget for the Project, including without limitation an operating reserve fund and capital replacement reserve fund;
- (6) all underlying assumptions for each of the above, including terms, conditions, and pricing of all debt and equity; and
- (7) a rent schedule showing the number of units by bedroom size and projected rent amount.

(b) *Approvals.* The Developer shall also submit to the Authority for approval any revisions to the Financing Plan for the Project. The Developer shall submit to the Authority for review any and all commitments for financing necessary to undertake the construction of the Project and for permanent financing necessary for the Project. The Developer shall further submit to the Authority for its reasonable approval copies of any proposed partnership agreements and funding agreements between the Developer and Investors; any documents proposed to be entered into by the Developer with respect to any subsidies; and loan agreements and all other documents that the Developer and its proposed construction lender(s) and permanent lender(s) propose to execute in connection with such financing for the Project. With the exception of Financing Documents that are subject to Section 3.2(f), if the Developer does not receive approval or disapproval of any document submitted pursuant to this paragraph within twenty one (21) days, including the notice period required by Section 12.7(c), along with the specific reasons for any disapproval, such document may be deemed approved by the Authority as further provided in, and subject to the requirements of, Section 12.7. Notwithstanding the foregoing, the Authority shall not withhold approval of Financing Documents that are consistent with the terms of the final approved Financing Plan and that do not materially and adversely affect the rights of the Authority as contemplated herein and in the Ground Lease.

(c) *No Subordination.* The Authority will not approve any subordination of its fee interest in the Project Site to the interests of any lender or other funder. Notwithstanding the foregoing, the Authority's Purchase Option under Section 7.4 shall be subordinate to Developer's construction and permanent financing pursuant to commercially reasonable terms to be negotiated in good faith between the Authority and Developer, and the Purchase Option shall also be

subordinate to the loan and all regulatory agreements associated therewith, if required. The Ground Lease shall include a list of permitted subordinate liens.

Section 4.2 Intentionally omitted.

Section 4.3 Financing for the Development.

(a) *Authority Assistance.* The Authority will assist and support in good faith Developer's effort to obtain public and private financing for the Project, but shall have no obligation to provide any financing for the Project. Notwithstanding the foregoing, the Developer shall be primarily responsible for seeking all financing for the Project.

(b) *Developer Financial Information.* The Developer shall provide, and the Developer shall cause the Guarantor to provide, financial statements.

(c) *Guarantees.* The Guarantor or another Affiliate of Developer shall provide all guarantees required by investors and lenders, including, but not limited to, completion (development deficit), operating deficit, and tax credit recapture guarantees. The Guarantor shall provide a completion guaranty for the benefit of the Authority and in a form approved by the Authority and the Guarantor.

Section 4.4 Developer Fee and Other Fees.

(a) For developing the Project, Developer (or its Affiliates) and the Authority shall be entitled to receive a fee equal to [Fifteen Million and 00/100 Dollars (\$15,000,000.00)] to be disbursed as set forth herein (the "**Developer Fee**"); provided, however, that during the construction period, the Developer and its Affiliates shall earn no more than the amount allowable pursuant to restrictions imposed by Section 42 of the Code, HHFDC regulations or other applicable financing programs. The Developer Fee shall be paid as follows: fifty percent (50%) of the Developer Fee shall be paid to the Developer, and the other fifty percent (50%) of the Developer Fee shall be paid to the Authority on a pari passu basis and pursuant to a Subdevelopment Fee Agreement between the Developer and the Authority.

(b) Except as expressly provided in the Partnership Agreement or elsewhere herein, Developer (and its Affiliates) shall not receive any additional payment for providing goods or services to the Project except with the express written consent of the Authority. Developer will disclose any proposed relationship to the Authority and will provide the Authority sufficient information about the terms and conditions of the proposed relationship to enable the Authority to evaluate its propriety and commercial reasonableness. Without limiting the generality of the foregoing, Developer shall disclose to Authority in writing, and shall include in the Financing Plan, the interest rate, terms, and payee for any predevelopment loan that will be included in the development budget for the Project by an affiliate of the Developer.



(c) Developer has selected, and the Authority hereby approves, Michaels Management-Affordable LLC, a New Jersey limited liability company, or its affiliate (“**Michaels**” or “**Property Manager**”), as the initial property manager, and HCHP Property Management, LP, a California limited partnership, as the management agent (collectively, “**Management Agent**”). All proposed fees associated with property management, including without limitation, lease-up fees, management fee, accounting fees, set-up fees, reimbursement of eligible expenses, and charges for resident services shall be consistent with industry standards for multi-family residential developments similar to the Project, and all such proposed fees shall be disclosed in writing to the Authority, shall be subject to the Authority’s reasonable approval, and shall be included in the Financing Plan.

(d) The Authority has approved a \$7,500 annual asset management fee for the Project to an affiliate of the Developer (“**HCDC Asset Management Fee**”) and a \$7,500 annual asset management fee to the Authority (“**HPHA Asset Management Fee**”). HCDC Asset Management Fee and the HPHA Asset Management Fee (together, “**Asset Management Fees**”) shall be paid from Net Cash Flow in accordance with the asset management fee agreements. The Asset Management Fees will increase by three percent (3%) on an annual basis, will be cumulative and will accrue annually beginning upon the date the Project converts to permanent financing.

(e) The Authority has approved a Property Management Oversight Fee to an affiliate of the Developer in the amount equal to two percent (2%) of effective gross income (“**PM Oversight Fee**”) provided that the affiliate of the Developer pays fifty percent (50%) of the PM Oversight Fee to the Authority (“**HPHA PM Fee**”) upon receipt of any portion of the PM Oversight Fee pursuant to a HPHA Property Management Fee Agreement. Neither the PM Oversight Fee nor the HPHA PM Fee are cumulative.

## ARTICLE V DESIGN

Section 5.1 Design in Conformance with Scope of Development and Concept Plan. In designing and constructing the Project, the Developer shall require the Architect to cause all subsequent design documents to be consistent with the Scope of Development, attached as Exhibit B, the Concept Plan, attached as Exhibit D approved by the Authority, and the Accessibility Requirements defined and described in Section 5.11 below. The Scope of Development and the Concept Plan shall establish the baseline design standards from which the Developer shall prepare all subsequent Design Development Documents. The Project shall be designed to satisfy all of the Development Goals described in the Master Development Agreement. The Project shall be designed in a manner to achieve a density that is economically feasible, while also taking into consideration the views of community stakeholders. The Developer shall seek input from community stakeholders in accordance with the Master Development Agreement.

Section 5.2 Design Documents. The Developer shall cause its Architect to proceed diligently to prepare Schematic Design Documents, Design Development Documents and Construction Documents for the Project, consistent with the Scope of Development and the Concept Plan, including, without limitation, such drawings as may reasonably be required to show the location, bulk, height and other principal external features of the Project. In connection with its submittal to the Authority for its approval, the Developer shall provide to the Authority the Design Development Documents in the form and at each of the stages described in Section 5.3, as may reasonably be required by the Authority for its review. The Design Development Documents shall incorporate any conditions imposed by the City's planning and entitlements process.

Section 5.3 Submittal and Review of Design Development Documents. Within the times set forth in the Schedule of Performance, the Developer shall submit to the Authority the Design Development Documents in the following stages:

(a) *Design Development Drawings*. The Design Development Drawings shall be based on the Concept Plan and the Scope of Development. The Design Development Drawings shall indicate estimated structural dimensions, and delineation of site features and elevations, materials and colors, landscaping and other features. The drawings shall fix and describe all design features, as well as the size, character, and quality of the Project as to architectural, structural, and mechanical systems. Key details shall be provided in preliminary form. The Developer shall submit to the Authority concept drawings, 30% plans, 60% plans and 90% plans in accordance with the Schedule of Performance in Exhibit C.

(b) *Final Plans and Specifications*. Final Plans and Specifications are to be a continuation of approved Design Development Drawings. The Plans and Specifications shall provide all the detailed information necessary to allow for the Developer to obtain the superstructure building permit, and shall provide all the detailed information necessary to obtain building or site permits to build the Project including complete building, site, landscape, requirements, standards, and specifications. The Developer shall provide material samples upon the reasonable request of the Authority.

Section 5.4 Project Approvals. Within the times set forth in Section 5.6, the Authority shall have the right to review and approve the Design Development Documents in order to ensure that the Project will be constructed with high quality architectural design and materials and to ensure consistency with the Scope of Development and the provisions of this Agreement. The Authority shall have the right to review and approve the Design Documents associated with each phase of the design process. The Authority shall provide to Developer written approval or disapproval. For purposes of this Article V, "approval" means approval of the Authority Executive Director or his or her designee.

Section 5.5 New Material Concerns. If the Authority determines that there are material changes which are not logical progressions from previously approved Design Development

Documents or which raise material concerns that were not reviewable in previously approved Design Documents, then in approving or disapproving such Design Development Documents, the Authority shall act in its reasonable discretion.

Section 5.6 Approval Process. The Authority shall approve or disapprove submittals under this Article V within twenty (20) business days of receipt of the submittal from the Developer. In the event the Authority disapproves a submittal of the Design Development Documents pursuant to Section 5.4, the Authority shall submit a list of reasons for such disapproval to the Developer, together with its notice of disapproval. Upon receipt of such a list, the Developer shall have twenty (20) business days to resubmit a revised submission. Upon its receipt of a revised submission, the Authority shall have five (5) business days (or in the event Authority Board action is required as soon as reasonably possible) to approve or disapprove of the revised design.

Section 5.7 No Change in Design Documents. Once the Authority has approved Final Construction Drawings, the Developer shall not make any changes in those documents which would materially impact the matters set forth in Section 5.3, excluding any change required for compliance with building codes or other government health and safety requirements, without the prior written approval of the Authority, which approval shall be granted in the Authority's reasonable discretion and within the time periods set out in Section 5.6. Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the Authority's consent be required for any change orders associated with changes to the Scope of Development unless such change order (a) individually, increases the development budget by more than \$50,000, or (b) such change order, when added to increases in the development budget caused by all previous change orders, increases the development budget by more than \$250,000, or (c) represents a material change in the building materials or equipment, or the structural or architectural design or appearance of the Project as provided in the Scope of Development and Concept Plan approved by the Authority. The Developer shall not make any material change required for compliance with building codes or other government health and safety requirements without giving prior notice to the Authority.

Section 5.8 Submittal and Review of Construction Contract. Within the times set forth in the Schedule of Performance, the Developer shall submit to the Authority for its approval the proposed construction contract and other Construction Documents for the Project prepared in accordance with the Master Development Agreement.

Section 5.9 Additional Permits and Approvals. Within the times specified in the Schedule of Performance, Developer shall obtain all permits and approvals which are required by local jurisdictions prior to commencement of construction for the Project including building permits, but excluding any demolition permits. All applications for such permits and approvals shall be consistent with the approved Design Documents. The Developer shall not commence construction under a building or site permit, excluding any necessary demolition work pursuant to a separate agreement regarding demolition, until the Authority has approved the Plans and Specifications. The Developer acknowledges that execution of this Agreement by the Authority

does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process.

Section 5.10 Authority Review. The Developer shall be solely responsible for all aspects of Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the Authority with reference to the Project is solely for the purpose of determining whether the Developer is properly discharging its obligations to the Authority, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the Authority as to the quality of the design or construction of the Project.

Section 5.11 Accessibility Requirements. The design and operation of the Project shall meet the program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 or any applicable successor regulation, the Americans with Disabilities Act, and the Fair Housing Act and their implementing regulations. In addition, the Developer shall ensure that the percentage of accessible dwelling units complies with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8, subpart C or any applicable successor regulation. The Developer shall employ a Certified Access Specialist to conduct an accessibility review of the Project and provide the Authority with a written report certifying compliance with State and Federal standards and identification of the number and type of accessible units.

## ARTICLE VI CONSTRUCTION

Section 6.1 Commencement of Construction. Subject to events of Force Majeure as defined in Section 10.1(b), the Developer shall commence or cause to be commenced construction of the Project after the Closing and/or pursuant to the Site Preparation Documentation and otherwise in accordance with the Schedule of Performance.

Section 6.2 Completion of Construction. The Developer shall diligently prosecute or cause to be prosecuted to completion the construction of the Project, and shall complete or cause to be completed the construction the Project no later than the time specified in the Schedule of Performance, subject to events of Force Majeure as defined in Section 10.1(b).

Section 6.3 Construction Pursuant to Plans.

(a) The Developer shall construct or cause to be constructed the Project substantially in accordance with the Final Construction Drawings, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for Authority approval any proposed change in the Final Construction Drawings which materially changes the size, location or elevation of the Project or which would require an amendment to any approval or permits obtained from the City or other governmental agencies. The process for approving or disapproving change orders shall be negotiated further by the Authority and the Developer before the Closing.

(c) No change which is required for compliance with building codes or other laws, codes or regulation shall be deemed material. However, the Developer must submit or cause to be submitted to the Authority, in writing, any change that is required for such compliance within ten (10) business days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 6.4 Construction Bonds. The Partnership shall require its contractor to procure and deliver to the Authority copies of labor and material (payment) bonds and performance bonds, or a dual bond which covers both payment and performance obligations, in a penal sum each of not less than one hundred percent (100%) of the scheduled cost of construction of the Project, and one hundred percent (100%) payment bond. Said bonds shall be issued by an insurance company which is licensed to do business in the State and has a rating equivalent to A-.VII or as otherwise approved by the Authority. The labor and materials (payment) bond shall name the Authority as a co-obligee or assignee.

Section 6.5 Compliance with Applicable Law. The Developer shall cause all work performed in connection with the Project to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the Authority for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Project.

Section 6.6 Non-Discrimination; Equal Opportunity. The Developer, for itself and its successors and assigns, and transferees agrees that in the construction, operation and management of the Project:

(a) It will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, disability, medical condition, age, marital status, gender identity status, sex, sexual orientation, HIV status or Acquired Immune Deficiency Syndrome (AIDS) condition or perceived condition, or retaliation for having filed a discrimination complaint (nondiscrimination factors). The Developer will take affirmative action to ensure that

applicants are considered for employment by the Developer without regard to the nondiscrimination factors, and that Developer's employees are treated without regard to the nondiscrimination factors during employment including, but not limited to, activities of: upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein;

(b) It will ensure that its solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors; and

(c) It will cause the foregoing provisions to be inserted in all contracts for the construction, operation or management of the Project entered into after the Effective Date of this Agreement; provided, however, that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

(d) [Reserved].

Section 6.7 Equal Opportunity/Non-Discrimination in Employment and Contracting Procedures, Including Utilization of Minority and Women Businesses. The Developer and the Authority acknowledge and agree that it is the policy of the Authority to promote and ensure equal opportunity through employment and in the award of contracts and subcontracts for construction. During the period of this Agreement, the Developer shall not discriminate on the basis of race, color, creed, religion, national origin, ancestry, disability, medical condition, age, marital status, gender identity status, sex, sexual orientation, HIV status or Acquired Immune Deficiency Syndrome (AIDS) condition or perceived condition, in the hiring, firing, promoting or demoting of any person.

(a) During the construction of the Project, the Developer shall provide to the Authority such information and documentation as reasonably requested by the Authority.

(b) The Developer shall use reasonable efforts to monitor and enforce, or shall cause its general contractor to monitor and enforce, the equal opportunity requirements imposed by this Agreement. In the event, after notice from the Authority and an opportunity to cure such failure as set forth in Article X of this Agreement, the Developer fails to use reasonable efforts to monitor or enforce these requirements, the Authority may declare the Developer in default of this Agreement and pursue any of the remedies available under this Agreement.

Section 6.8 Prevailing Wages. In the construction of the Project, for all on-site and adjacent construction activities, the Developer shall execute and submit an "Agreement to be Bound" in connection with the Project Labor Agreement between the State of Hawai'i and the

Hawai'i Construction Alliance, as attached hereto as Exhibit G ("PLA"). The Developer shall comply with all applicable requirements of the PLA. The Developer shall provide the Authority with any required reports confirming compliance with the PLA requirements.

Section 6.9 Progress Reports. Until such time as the Developer is entitled to the issuance of a Certificate of Occupancy by the City, the Developer shall provide the Authority with monthly progress reports regarding the status of the construction of the Project, including the Developer's compliance with all applicable State and Federal requirements.

Section 6.10 Entry by the Authority. The Developer shall permit the Authority, through its officers, agents, or employees, to enter the Project Site with advance written notice, at all reasonable times and in a safe, unobtrusive manner to review the work of construction to determine that such work is in conformity with the approved Plans and Specifications or to inspect the Project for compliance with this Agreement. The Authority is under no obligation to (a) supervise construction, (b) inspect the Project, or (c) inform the Developer of information obtained by the Authority during any review or inspection, and the Developer shall not rely upon the Authority for any supervision, inspection, or information.

Section 6.11 Taxes. At all times both prior to and after obtaining any applicable property tax exemptions, the Limited Partnership shall pay prior to delinquency all real property taxes and assessments assessed and levied on the Project Site after the Partnership takes title to a leasehold interest therein, and shall remove any levy or attachment made on the Project Site. The Limited Partnership may, however, contest the validity or amount of any tax, assessment, levy, attachment or lien on the Project Site.

Section 6.12 Hazardous Materials.

(a) *Certain Covenants and Agreements*. The Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Project or the Project Site or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Project in violation of any applicable law;

(2) The Developer shall keep and maintain the Project and each portion thereof in compliance with, and shall not cause or permit the Project or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same, the Developer shall immediately advise the Authority in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer

or the Project pursuant to any applicable Hazardous Materials Laws; (B) any and all Claims made or threatened by any third party against the Developer or the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as “**Hazardous Materials Claims**”); (C) the presence of any Hazardous Materials in, on or under the Project in such quantities which require reporting to a government agency; or (D) the Developer’s discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project Site or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Project under any Hazardous Materials Laws. If the Authority reasonably determines that the Developer is not adequately responding to a Hazardous Material Claim, the Authority shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its attorney’s fees in connection therewith paid by the Developer.

(4) Without the Authority’s prior written consent, which shall not be unreasonably withheld or delayed, the Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Project (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(5) Notwithstanding any contrary provision hereof, construction materials, gardening materials, household products, office supply products and janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential property, and which are used, stored, and disposed of in accordance with all applicable Hazardous Materials Laws may be used in connection with the construction and operation of the Project.

(b) *Indemnity.* Without limiting the generality of any other indemnification set forth herein, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Authority) the Authority, any Affiliate of the Authority that participates as a partner of the Limited Partnership, and the City, and their respective board members, commissioners, directors, elected and appointed officers and officials, employees, members, agents, consultants, volunteers and representatives (all of the foregoing, the “**Authority Indemnitees**”) from and against any and all Claims arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer or any other person or entity, except for the Authority and the Authority Indemnitees, to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Project subsequent to the conveyance of the Project Site to the Limited Partnership; (2) the presence in, on or under the Project of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Project which presence, discharge, or release occurred after the date of



the Ground Lease; or (3) any activity carried out on, or undertaken on or adjacent to the Project subsequent to the conveyance of the Project Site to the Partnership, by the Developer or any of its affiliates, employees, agents, contractors or subcontractors, or any third persons except for the Authority and the Authority Indemnitees, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Project (collectively “**Indemnification Claims**”).

The foregoing indemnity shall further apply to any residual contamination in, on or under the Project or the Project Site, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials subsequent to (i) the rights of access pursuant to the Site Preparation Documentation and/or (ii) the conveyance of the Project Site to the Limited Partnership pursuant to the Ground Lease, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration or earlier termination of this Agreement, and shall remain in full force and effect, except that this indemnity shall not apply to contamination that first occurs after termination of the Ground Lease (as documented by a Phase I environmental report and, if needed, a Phase II environmental report performed by the Lessee upon the termination of the Ground Lease) or contamination caused by the gross negligence or willful misconduct of the Authority, any affiliate of the Authority, or Authority Indemnitees.

Notwithstanding anything to the contrary herein, Developer shall not be liable under this Section 6.12 for any claims or other liabilities resulting from circumstances under the Authority’s control, including without limitation, any condition existing on the Project Site prior to the effective date of the Site Preparation Documentation and/or the Ground Lease, as previously identified in (i) the Phase I Environmental Site Assessment, prepared by Partner Engineering and Science, Inc. and dated December 12, 2023 (the “**Phase I Report**”); (ii) the Phase II Environmental Site Assessment, prepared by Partner Engineering and Science, Inc. and dated January 4, 2024 (the “**Phase II Report**”); or (iv) the Final Environmental Impact Statement dated April 2018 (collectively, the “**Environmental Reports**”), done prior to the effective date of the Site Preparation Documentation and/or the Ground Lease, or for any claim or other liability caused by the negligent acts of the Authority or its agents other than Developer.

(c) *No Limitation.* The Developer hereby acknowledges and agrees that the Developer’s duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the Authority may have concerning the Project Site and/or the presence in, on or under the Project Site of any Hazardous Materials, whether the Authority obtained such information from the Developer or from its own investigations, unless the Authority intentionally and knowingly withholds such information from Developer, and except as otherwise expressly provided herein.

(d) *Environmental Work.* After Closing the Developer shall be responsible for performing the work of any investigation and remediation which may be required by applicable law on the Project Site in order to develop the Project. The determination as to whether any such remediation is needed, and as to the scope and methodology thereof, shall be made by mutual agreement of the governmental agency with responsibility for monitoring such remediation, the Authority and the Developer. During the term of the Ground Lease, the Developer shall notify the Authority promptly upon discovery of any actionable levels of Hazardous Materials, and upon any release thereof, and shall consult with the Authority in order to establish the extent of remediation to be undertaken and the procedures by which remediation thereof shall take place. The Developer shall comply with, and shall cause its agents and contractors to comply with, all laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. The investigation and remediation work shall be carried out in accordance with all applicable laws (including Hazardous Materials Laws) and such other procedures and processes as may be described in this Agreement.

(e) *Developer Right to Terminate.* If, prior to the Closing, Developer discovers Hazardous Materials, the cost of remediation of which exceeds the amount of insurance proceeds available for payment to Developer pursuant to any applicable insurance policy, then Developer, subject to the conditions set forth below, shall have the right to terminate this Agreement by delivery of thirty (30) days' written notice to Authority. Developer's right so to terminate this Agreement shall be subject to the condition precedent that Developer shall first have: (a) submitted to Authority any and all information then available to Developer as to the nature and scope of the Hazardous Materials discovered and as to the cost estimated to remediate them, if any such cost estimate exists, and (b) offered to Authority the right, within six (6) months after receipt of such information, or such longer period of time as may reasonably be required by Authority to obtain competitive bids for the work, to elect, at its sole and absolute discretion, to cause such work to be performed, at Authority's sole cost and expense, to the satisfaction of Developer; provided however, the Parties will cooperate to expeditiously address Hazardous Materials discovered after the date upon which low-income housing tax credits are allocated to the Project and in all events shall avoid jeopardizing compliance with construction completion/placed in service deadlines. Unless the Developer makes a reasonable determination that the remediation work cannot be completed prior to any applicable construction completion or placed in service deadlines, if the Authority so elects and causes such work to be performed as soon as reasonably possible, then Developer shall not have the right to terminate this Agreement under this Section 6.12(e).

(f) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, Developer's termination rights set forth in this Section 6.12(e) shall not apply to the discovery of Hazardous Materials that have migrated onto the Project Site from adjoining properties developed, controlled or operated by Developer or Developer affiliates, nor shall the Authority have any obligation to remediate any such Hazardous Materials.

Section 6.13 AS-IS Conveyance. The Ground Lease shall convey a leasehold interest in the Project Site in its “AS-IS, WHERE-IS, WITH ALL FAULTS” condition with no warranties or representations by the Authority concerning the condition of the Project Site, including without limitation, the presence or absence of any Hazardous Materials, except as expressly provided in writing. Developer hereby agrees and acknowledges that except in the event of any fraud, misrepresentation, or withholding of information by Authority: (i) neither Authority, nor anyone acting for or on behalf of Authority, has made any representation, statement, warranty or promise to Developer concerning the development potential or condition of the Project Site; (ii) in entering into this Agreement, Developer has not relied on any representation, statement or warranty of Authority, or anyone acting for or on behalf of Authority, other than as may expressly be contained in writing in this Agreement; (iii) all matters concerning the Project Site have been or shall be independently verified by Developer and that the Limited Partnership shall lease the Project Site based upon Developer’s own prior examination thereof; and (iv) THAT THE LIMITED PARTNERSHIP SHALL LEASE THE PROJECT SITE, IN AN “AS IS” PHYSICAL CONDITION AND IN AN “AS IS” STATE OF REPAIR.

Section 6.14 City and Other Governmental Authority Permits. Before the commencement of construction or development of any buildings, structures or other work of improvement upon the Project Site, the Developer shall secure or cause to be secured any and all permits or other authorizations, which may be required by the City or any other governmental agency regulating such construction, development or work. The Authority shall provide all assistance deemed appropriate by the Authority to the Developer in securing these permits. Costs and fees associated with Developer’s performance under this Section shall be a cost to the Project.

Section 6.15 Planning/Zoning Approvals for the Project Site. It shall be the responsibility of the Developer to ensure that the zoning of the Project Site shall be such as to permit the development and use of the Project Site in accordance with the provisions of this Agreement. The Authority shall cooperate with the Developer in seeking any variances, conditional use permits, parcel maps or other discretionary approvals, to implement this Agreement. Costs and fees associated with Developer’s performance under this Section shall be a cost to the Project.

Section 6.16 Environmental Measures. The Developer and the Authority have agreed to implement Environmental Measures.

## **ARTICLE VII OWNERSHIP, OPERATION AND DISPOSITION OF PROJECT SITE**

Section 7.1 Ownership. Units developed pursuant to this Agreement shall be owned by the Partnership, and all net income therefrom shall be subject to the terms and provisions of the documents governing the operation of the Project, including without limitation, the Ground Lease. The Project will be owned and operated by the Partnership in which the managing general partner will be Master Developer or its Affiliate.

Section 7.2 Property Management and Management Agent. Developer, through a management agent and professional property manager or property management company, shall manage the Project or cause it to be managed pursuant to a management agent agreement, property management agreement and management plan that are subject to the Authority's review and approval. Any manager or management company retained to act as agent for Developer in meeting the obligation of providing a property manager shall be subject to prior written approval of the Authority, which approval shall not be unreasonably withheld or delayed. In exercising its approval rights hereunder, the Authority may require proof of ability and qualifications of the management company based upon (i) prior experience, (ii) assets, (iii) insurance coverage, and (iv) other factors determined by the Authority as reasonably necessary. Furthermore, upon sixty (60) days' prior written demand from the Authority for cause in the Authority's reasonable discretion, Developer shall remove and replace a property management company. In any agreement with a Management Agent ("**Management Agreement**"), Developer shall expressly reserve the right to terminate such agreement with cause. Notwithstanding, the Authority agrees that the Management Agent or Property Manager, as the case may be, shall be entitled to a sixty (60)-day notice of default and a reasonable opportunity to cure before any such termination.

Section 7.3 Approval of Operating Budgets; Financial Statements; Books and Records. The Authority shall have the right to review and approve the annual operating budgets for the Project, which approval shall not be unreasonably withheld. The Limited Partnership shall submit to the Authority a proposed annual operating budget for the Project not later than sixty (60) days prior to the beginning of each fiscal year during the term of the Ground Lease. The proposed budget shall include a description of anticipated repairs and capital replacements to be undertaken in the next fiscal year. In addition, the Limited Partnership shall be required to annually submit to the Authority a copy of audited financial statements for the Project within ninety (90) days following the end of each fiscal year, but in no event later than April of each year, during the term of the Ground Lease, except that the Limited Partnership shall not be required to submit a copy of audited financial statements for the Project for the first fiscal year that the Project is operating until no later than July of such year. The Authority shall have the right to inspect all books and records related to the development, operation and management of the Project.

Section 7.4 Purchase Option and Right of First Refusal. The Authority (directly or through an Affiliate) shall have options (the "**Purchase Options**") to acquire the Project or any and/or all general and limited partnership interests in the Partnership, and a right of first refusal ("**Right of First Refusal**"), as more fully described in Section 8.4 of the MDA and subject to the terms and conditions set forth in a Purchase Option and Right of First Refusal Agreement between the Parties ("**Purchase Option and Right of First Refusal Agreement**").

## **ARTICLE VIII OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION; ASSIGNMENT AND TRANSFERS**

Section 8.1 Maintenance. The Developer hereby agrees that, upon Closing, and prior to completion of the construction of the Project, the Project Site shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards.

Section 8.2 Non-Discrimination. The Developer covenants by and for itself and its successors and assigns acting as Developer that there shall be no discrimination against or segregation of a person or of a group of persons on account of race; sex, including gender identity or expression; sexual orientation; color; religion; marital status; familial status; ancestry; disability; age; or human immunodeficiency virus infection in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Site or of the Project by the Developer, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees of the Project Site or of the Project.

Section 8.3 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All deeds, leases or contracts entered into by the Developer on or after the date of execution of this Agreement as to any portion of the Project shall contain the following language:

(a) In Deeds: “Grantee herein covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race; sex, including gender identity or expression; sexual orientation; color; religion; marital status; familial status; ancestry; disability; age; or human immunodeficiency virus infection in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees in the property herein conveyed. The foregoing covenant shall run with the land.”

(b) In Leases (except for leases from the Developer to a residential tenant): “The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns and all persons claiming under the lessee or through the lessee that his lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race; sex, including gender identity or expression; sexual orientation; color; religion; marital status; familial status; ancestry; disability; age; or human immunodeficiency virus infection in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessee, subtenants, or vendees in the land herein leased.”

(c) In Contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of race; sex, including gender identity or expression; sexual orientation; color; religion; marital status; familial status; ancestry; disability; age; or human immunodeficiency virus infection in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee, or vendees of the land.”

Section 8.4 Employment Opportunity. During the operation of the Project, there shall be no discrimination by the Developer on the basis of race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, reproductive health decision, or domestic or sexual violence victim status in the hiring, firing, promoting, or demoting of any person engaged in the operation of the Project.

Section 8.5 Transfer.

(a) For purposes of this Agreement, “**Transfer**” shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Project, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Project is transferred and Developer retains title. The term “**Permitted Transfer**” shall mean (a) the admission or withdrawal of limited partners in the Limited Partnership; (b) the transfer of interests in the limited partners of the Partnership; (c) the leasing of any single unit in the Project to a tenant in compliance with the Regulatory Agreements, as applicable; (d) the transfer of this Agreement to the Partnership; (e) the removal of the general partners by the limited partners pursuant to the terms of the Partnership Agreement, (f) the granting of any security interests pursuant to the terms of financing for the Project pursuant to the approved Financing Plan, and (g) the substitution of an Affiliate of the Developer as a general partner or limited partner of the Limited Partnership.

(b) No Transfer other than Permitted Transfers shall be permitted without the prior written consent of the Authority, which the Authority may withhold in its sole discretion. The Authority will not unreasonably withhold consent to the granting of any easements necessary for the development of the Project Site as contemplated herein. The Authority may approve in writing other Transfers as requested by the Developer. In connection with such request, there shall be submitted to the Authority for review all instruments and other legal documents proposed to effect any such Transfer. If a requested Transfer is approved by the Authority such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the Authority within thirty (30) days of receipt by the Authority of Developer’s request for approval of a Transfer.

(c) The Partnership Agreement shall specify that forty five percent (45%) of the net proceeds of sale or refinancing received by the Limited Partnership, after payment of any priority payments (including, but not limited to, brokerage fees, commissions, proceeds set aside in reserve for repairs, title and escrow fees, transfer taxes, financing costs, legal costs and all other customary costs incurred during a sale or refinancing) required by the Partnership Agreement, shall be allocated to the Authority. If the Project is sold or otherwise conveyed or Transferred, the Authority shall be entitled to receive forty five percent (45%) of the net proceeds of such sale or other Transfer.

Section 8.6 Encumbrance of Property. Except as otherwise provided in this Agreement, the Developer shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Project Site or part thereof other than a lien for current taxes, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or attached to the Project Site, except with the prior written consent of the Authority. The Developer shall notify the Authority in writing in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Project or the Project Site, and of any encumbrance or lien that has been created on or attached to the Project Site whether by voluntary act of the Developer or otherwise.

## ARTICLE IX INSURANCE

Section 9.1 Developer. The Developer shall maintain and keep in full force and effect and shall cause all of its Contractors to maintain and keep in full force and effect, during the term of this Agreement and the Ground Lease the policies of insurance described in this Section. Each liability policy shall name the Authority, any affiliate of the Authority participating as a partner in the Partnership, and their respective board members, commissioners, directors, elected and appointed officers and officials, employees, agents, and consultants as additional insureds. The property insurance policies shall name the Authority as loss payee as its interests may appear. Each policy shall be underwritten and issued by reputable companies authorized to do business in the State with an A.M. Best's rating of not less than A:VII, shall not be subject to cancellation without thirty (30) days' prior written notice to the Authority, and shall be primary and non-contributing to any insurance carried by the Authority. Any language purporting to limit the insurer's liability for failure to give the required 30-day prior written notice shall be unacceptable to Authority. Developer shall provide the Authority with certificates of insurance and endorsements evidencing the required insurance, and upon request, copies of all insurance policies. All liability policies shall be written on an occurrence basis.

(a) Commercial General Liability (CGL) insurance, insuring for legal liability of the Developer, and caused by bodily injury, property damage, personal injury or advertising injury, contractual liability, and products and completed operations arising out of the ownership or management of the Project and including the costs to defend such actions brought against the Partnership. Limits of the policy shall be not less than Five Million Dollars (\$5,000,000) per

occurrence; provided however, during the period prior to the start of construction such limit may be reduced to Two Million Dollars (\$2,000,000). During construction, the Partnership shall be obligated to maintain CGL coverage consistent with the requirements of this paragraph with coverage in the amount of Two Million Dollars (\$2,000,000) and the general contractor shall be required to maintain CGL coverage consistent with the requirements of this paragraph with coverage in the amount of Five Million Dollars (\$5,000,000). Upon completion of construction, the Limited Partnership shall be required to maintain CGL coverage consistent with the requirements of this paragraph with coverage in the amount of Five Million Dollars (\$5,000,000).

(b) Worker's Compensation insurance, insuring for occupational disease or injury and employer's liability, and covering the Developer's full liability for statutory compensation to any person or persons who perform work for the Developer or perform duties on the Project Site, and liability to the dependents of such persons. The policy will be in a form and amount which complies with the worker's compensation acts and safety laws of the State. Worker's Compensation limits shall be not less than One Million Dollars (\$1,000,000) per occurrence;

(c) Automobile Liability insurance, insuring for legal liability of the Developer, and caused by bodily injury, property damage, or personal injury arising out of the ownership or use of motor vehicles, including uninsured motorist liability, and including the costs to defend such actions brought against the Developer. Limits of the policy shall be not less than One Million Dollars (\$1,000,000) each person and One Million Dollars per accident for bodily injury, and One Million Dollars (\$1,000,000) per accident or Two Million Dollars (\$2,000,000) combined single limit for property damage;

(d) Property insurance covering the Project, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the Authority, naming the Authority as a loss payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations; and

(e) Builder's Risk insurance, insuring for all risks of physical loss of or damage (including the perils of fire, vandalism and malicious mischief, excluding the perils of earthquake, and excluding the perils of flood unless specifically required by the Authority) to the Project, and personal property of the Developer used to maintain or service the Project construction. Limits of policy will be the estimated replacement value of the completed the Project.

## **ARTICLE X TERMINATION FOR CAUSE**

### **Section 10.1 Events of Default by the Developer.**

(a) The following shall constitute an “**Event of Default**” by the Developer:



(1) if Developer shall fail to use diligent efforts to comply with the Schedule of Performance (other than due to Force Majeure as defined in Section 10.1(b)) and such failure shall continue after expiration of the notice and cure period set forth in Section 10.3(a); or

(2) if Developer shall materially breach or fail to diligently pursue its obligations under this Agreement (other than due to Force Majeure as defined in Section 10.1(b)) and such failure shall continue after expiration of the notice and cure period set forth in Section 10.3(a); or

(3) any fraud or willful misconduct on the part of the Developer or any of its general partners; or

(4) if the Developer or any of its general partners (i) is or becomes insolvent or bankrupt or otherwise ceases to pay its debts as they mature or makes any arrangement with or for the benefit of its creditors or consents to or acquiesces in the appointment of a receiver, trustee or liquidator for the Project or for any substantial part of either; (ii) institutes any bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding under the laws of any jurisdiction, or any such proceeding is instituted against the Developer in any jurisdiction which is not stayed or dismissed within 90 days after its institution; (iii) files any action or answer admitting, approving or consenting to any such proceeding; (iv) becomes subject to levy of any distress, execution or attachment upon its property which interferes with its performance hereunder, and the Developer fails within 90 days to discharge such levy, execution or attachment, or to substitute another entity (whether or not an Affiliate) acceptable to the Authority to perform the obligations of the Developer without material delay in performance; or (v) is convicted of any criminal offense or violation of law.

(5) A material Event of Default hereunder by the Developer with respect to any portion of the Project shall constitute an Event of Default by the Developer for which the Authority may exercise any of its remedies under this Agreement with respect to the Developer.

(b) For purposes hereof, “**Force Majeure**” shall mean causes beyond the control and without the fault or negligence of Developer. Such causes shall include without limitation: (i) acts of God, or of the public enemy, (ii) court order, acts, delays, failure or refusal to act on the part of a governmental entity in either its sovereign or contractual capacity, (iii) acts of a contractor other than Developer, or subcontractor, in the performance of an agreement with the Authority (and not pursuant to a contract with the Developer), (iv) riots, war or acts of terrorism, (v) fires, (vi) floods or earthquakes, (vii) strikes or lockouts, (ix) freight embargoes, (x) litigation, (xi) non-issuance of permits, (xii) lack of HUD approval (if applicable), (xiii) unusually severe weather, (xiv) the presence of Hazardous Materials or archaeological finds on the Project Site, (xv) delays of subcontractors or suppliers at any tier arising from unforeseeable causes, or (xvi) in connection with any action that the Authority is required to take pursuant to this Agreement, the Authority’s failure to act within the applicable time period specified in this Agreement.

Section 10.2 Events of Default by the Authority.

(a) The following shall constitute an “**Event of Default**” by the Authority:

(1) if the Authority shall fail to perform its obligations under this Agreement and such failure shall continue after expiration of notice and cure periods set forth in Section 10.3(a); or

(2) any fraud or willful misconduct on the part of the Authority.

(b) It shall not be an Event of Default if any failure by Authority arises due to Force Majeure. For purposes hereof, “Force Majeure” shall mean causes beyond the control and without the fault or negligence of Authority. Such causes shall include without limitation: (i) acts of God, or of the public enemy, (ii) court order, acts, refusal, delay or failure to act on the part of a governmental entity (other than the Authority) in either its sovereign or contractual capacity, (iii) acts of another contractor or subcontractor in the performance of an agreement with the Developer (and not pursuant to a contract with the Authority or an Affiliate of Authority), (iv) riots, war or acts of terrorism, (v) fires, (vi) floods or earthquakes, (viii) strikes or lockouts, (viii) freight embargoes, (ix) litigation, (xii) non-issuance of permits, (xiii) lack of HUD approval (if applicable), (xiv) unusually severe weather, (xv) the presence of Hazardous Materials or archeological finds on the Project Site, or (xvi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes.

Section 10.3 Procedure for Termination For Cause/Remedies.

(a) The occurrence of any event described in Sections 10.1(a)(1), 10.1(a)(2), 10.2(a)(1) or 10.2(a)(2) shall not constitute an Event of Default unless the non-defaulting Party has delivered written notice of default to the defaulting Party, and such defaulting Party shall fail to cure the default within thirty (30) days from its receipt of such notice or, if such cure cannot reasonably be completed within such thirty (30) day period, fails to commence such cure or having commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time period thereafter, provided that such time period does not exceed 120 days. Notwithstanding the foregoing, if any event described in Sections 10.1(a)(1), 10.1(a)(2), 10.2(a)(1) or 10.2(a)(2) occurs within thirty (30) days of Closing, the defaulting Party shall have only until Closing to cure such default.

(b) Upon the occurrence of an Event of Default by either Party, the non-defaulting Party shall be entitled to all remedies permitted by law or at equity, including but not limited to specific performance.

(c) Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law, in equity or by this Agreement, are cumulative, and not in derogation of other rights and remedies found in this Agreement, or after Closing, in the Ground Lease. The exercise by either Party of any one or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach, or the exercise of any of such remedies for any other default or breach by the other Party. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

## **ARTICLE XI REPRESENTATIONS AND WARRANTIES**

Section 11.1 Developer's Warranty of Good Standing and Authority. Developer represents and warrants to the Authority as follows:

(a) *Organization*. Developer is duly organized and validly existing, is in good standing under the laws of the State, and has the power and authority to own its property and carry on its business as now being conducted.

(b) *Authority of Developer*. Developer has full power and authority to execute and deliver this Agreement, to execute and deliver the Ground Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) *Authority of Persons Executing Documents*. This Agreement and all other documents or instruments executed and delivered or to be executed and delivered pursuant or in connection with this Agreement, have been executed and delivered, or will be executed and delivered, by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement, the Ground Lease, and all other documents or instruments executed and delivered or to be executed and delivered pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of the above-named documents.

(d) *Valid and Binding Agreements*. This Agreement, the Ground Lease and all other documents or instruments which have been executed and delivered or will be executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute, legal, valid and binding obligations of

Developer, enforceable against it in accordance with their respective terms, subject to the laws affecting creditors' rights and principles of equity.

(e) *No Breach of Law or Agreement.* Neither the execution nor delivery of this Agreement, the Ground Lease, or any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) *Pending Proceedings.* Except as disclosed in writing to the Authority prior to execution of this Agreement, Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and, to the best of its knowledge, there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer or the Project at law or in equity, before or by any court, board, commission or agency whatsoever.

(g) *Financial Statements.* The financial statements of Developer and other financial data and information furnished by Developer to the Authority fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Developer from that shown by such financial statements and other data and information.

Section 11.2 Authority's Warranty of Good Standing and Authority. The Authority represents and warrants to Developer that (i) the Authority is a duly organized, validly organized, public body, corporate and politic, and is in good standing under the laws of the State, (ii) the Authority has all necessary power and authority under State law, (iii) this Agreement has been duly entered into and is the legally binding obligation of the Authority, (iv) this Agreement will not violate any judgment, law, consent decree, or agreement to which the Authority is a party or is subject to, and will not violate any law or ordinance under which the Authority is organized, and (v) there is no claim pending, or to the best knowledge of the Authority, threatened, that would impede the Authority's ability to perform its obligations hereunder.

## **ARTICLE XII MISCELLANEOUS**

Section 12.1 Term. This Agreement shall commence upon the Effective Date, and unless sooner terminated in accordance with the provisions herein shall terminate as to the Project upon Closing; provided however all indemnification provisions incorporated in this Agreement shall survive the Closing or earlier termination of this Agreement.

Section 12.2 Decision Standards. In any approval, consent or other determination by any party required under this Agreement, the party shall act reasonably and in good faith, unless a different standard is explicitly stated. "Good faith" shall mean honesty in fact in the conduct or transaction concerned based on the facts and circumstances actually known to the individual(s) acting for the party. "Discretion," "sole discretion," "option," "election" or words of similar import in this Agreement denote the party's privilege to act in furtherance of the party's interest.

Section 12.3 Notices. Any notice or other communication given or made pursuant to this Agreement shall be in writing and shall be deemed given if (a) delivered personally or by courier, (b) electronic mail, (c) sent by overnight express delivery, or (d) mailed by registered or certified mail (return receipt requested), postage prepaid, to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party):

|                      |   |
|----------------------|---|
| If to the Authority: | Hawaii Public Housing Authority<br>1002 North School Street<br>Honolulu, HI 96817<br>Attn: Hakim Ouansafi, Executive Director<br>Email: hakim.ouansafi@hawaii.gov |
| with a copy to:      | Department of the Attorney General<br>of the State of Hawaii<br>425 Queen Street<br>Honolulu, HI 96813<br>Attn: Linda L.W. Chow<br>Email: linda.l.chow@hawaii.gov |
| If to the Developer: | c/o Highridge Costa Development Company, LLC<br>330 West Victoria Street<br>Gardena, CA 90248<br>Attn: Mohannad H. Mohanna, President                             |
| with a copy to:      | Settle Meyer Law LLLC<br>Pioneer Plaza,<br>900 Fort Street Mall, Suite 1800<br>Honolulu, HI 96813<br>Attn: Scott W. Settle  |
| And:                 | Cox, Castle & Nicholson LLP<br>50 California Street, Suite 3200<br>San Francisco, CA 94111<br>Attn: Christian D. Dubois   |

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, electronic mail transmission, delivery to overnight courier or express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of electronic mail, upon receipt of electronic confirmation thereof, (iii) in the case of delivery by overnight courier or express delivery service, on the date following dispatch, and (iv) in the case of mailing, on the date specified in the return receipt therefor.

Section 12.4 Time of Performance. All performance dates (including cure dates) expire at 5:00 p.m., Honolulu, Hawaii time, on the performance or cure day. A performance date which falls on a Saturday, Sunday or Authority holiday is deemed extended to the next business day. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

Section 12.5 Amendment. Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties.

Section 12.6 Attorneys' Fees. Developer shall pay all costs, including attorney's fees, and expenses which may be incurred by or paid by the State and/or Authority in enforcing the covenants and conditions of this Agreement, in recovering possession of the Project Site, or in the collection of delinquent fees, taxes, assessments, and any and all other charges. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the State related to this Agreement, the Developer shall pay all costs, including attorney's fees, and expenses incurred by or imposed on the State.

Section 12.7 Authority Approvals.

(a) For all actions requiring Authority approval, Developer shall submit the request for approval and supporting information with a notice that bears a bold face legend substantially as follows: "Important: Your Response is Required in [insert number of days from applicable provision of this Agreement] Days."

(b) The Authority shall have a specified number of days to respond in writing. Authority's response, if not an approval, must include the basis for any objection and suggested modifications to obtain approval. For issues identified in this Agreement, this Agreement identifies the number of days that Authority shall have to respond. For issues not specified, the amount of response time shall be stated in the notice and shall be proportionate to the type and magnitude of the decision. For example, but not in limitation, the decision time for emergency situations shall be shorter than the time for review and approval of budgets.

(c) If the Developer does not receive a response within the specified number of days, it may send the Authority a notice of non-response, which shall be delivered to the President and Chief Executive Officer of the Authority in accordance with the formal notice provisions hereof and which shall bear the bold-faced legend, “Important: Notice of Non-response.” Following the giving of this notice, the Authority will have five (5) days in which to respond. If the Authority does not respond within such five (5) days, the Authority shall be deemed to have approved the action.

Section 12.8 Representatives. To facilitate communication, the Parties to this Agreement shall designate a representative with responsibility for the routine administration of each Party’s obligations under this Agreement. The Parties initially appoint the following as representatives:

Authority: Hakim Ouansafi  
Developer: Mohannad H. Mohanna

Section 12.9 Further Assurances. Each Party will promptly execute and deliver without further consideration such additional agreements and other documents as the other Parties may reasonably request to carry out the transactions contemplated herein, so long as the Parties’ rights and obligations thereunder are not substantively affected, modified or otherwise altered by such additional agreements and other documents, except as mutually agreed to between the Parties. Whenever this Agreement requires any Party to submit matters to another Party for approval, and there is no time specified herein for such approval, the submitting Party may submit a letter requiring approval or rejection by the other Party of the documents or matter submitted within twenty (20) days after submission or within sixty (60) days of submission if the document or matter requires approval by the Authority Board (unless another time frame is expressly set forth herein), and unless rejected within the stated time such documents or matter shall be deemed approved. Except where such approval is expressly reserved to the sole discretion of the approving Party, all approvals required hereunder by any Party shall be reasonable and not unreasonably withheld, conditioned or delayed.

Section 12.10 Counterparts. This Agreement may be executed on one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

Section 12.11 Interpretation and Governing Law. This Agreement shall not be construed against the party who prepared it but shall be construed as though prepared by both Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii. Any lawsuit to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement shall be filed in Hawaii state court in the City and County of Honolulu. This Agreement is subject to the Hawaii General Conditions (AG-008 103D) attached as Exhibit I to the MDA; provided, however, that only Sections 2, 4, 5, 8, 24, 25, 31, 33, and 42 of the Hawaii General Conditions apply to this Agreement. The Developer shall comply with the

terms and provisions of this Agreement and the foregoing sections of the Hawaii General Conditions to the extent applicable to the transactions contemplated herein. In the event of a direct conflict among any of the foregoing, the following order of precedence shall apply: (a) the terms and provisions of this Agreement; and (b) the Hawaii General Conditions.

Section 12.12 Severability. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

Section 12.13 Final Agreement. This Agreement, together with Exhibits attached hereto, represents the final agreement of the Parties with respect to the subject matter hereof and may not be contradicted by evidence of prior or contemporaneous oral or written agreements of the Parties. There are no unwritten oral agreements between the Parties.

Section 12.14 Limitation of Liability. Except as may be expressly set forth herein, no present or future member, partner, shareholder, participant, employee, agent, commissioner, director, or officer of or in Developer or any transferee shall have any personal liability, directly or indirectly, under or in connection with this Agreement; provided, however, that the foregoing shall not void or diminish the obligations of Developer under this Agreement. No present or future employee, agent, commissioner, director, or officer of or in the Authority shall have any personal liability, directly or indirectly, under or in connection with this Agreement; provided, however, that the foregoing shall not void or diminish the obligations of the Authority under this Agreement.

Section 12.15 Developer Not an Agent. Nothing in this Agreement shall be deemed to appoint Developer as an agent for or representative of the Authority, and Developer is not authorized to act on behalf of the Authority with respect to any matters except those specifically set forth in this Agreement. The Authority shall not have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of Developer, whether arising from actions under this Agreement or otherwise.

Section 12.16 Conflict of Interest. Developer represents and warrants that to its actual knowledge, no member, official, employee, agent, consultant or contractor of the Authority or the City has any direct or indirect personal interest in this Agreement or participated in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested. Developer further represents and warrants to the Authority that it has not paid or given, and will not pay or give, to any third party (other than as specifically set forth in this Agreement) any money or other consideration for obtaining this Agreement.



Section 12.17 Waivers. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorized representatives of the Authority and Developer, as applicable.

Section 12.18 Successors. This Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties.

Section 12.19 Headings; Exhibits. The headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions. The Exhibits attached hereto are hereby incorporated into this Agreement by this reference.

Section 12.20 Construction. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other genders. The terms “herein”, “hereof”, “hereto”, “hereunder” and similar terms refer to this Agreement and not to any particular section or subsection of this Agreement. The terms “include” and “including” shall be interpreted as if followed by the words “without limitation”. All references in this Agreement to sums denominated in dollars or with the symbol “\$” refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency.

Section 12.21 Cumulative Rights. The rights, powers, options, and remedies given to the Parties under this Agreement shall be cumulative, except as otherwise specifically provided for in this Agreement.

Section 12.22 Business Licenses. The Developer has obtained or will obtain all licenses required to conduct its business in the City and State and is not in default of any fees or taxes due to the State or City.

[signature page(s) to follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their duly authorized signatories effective on or as of the date written at the commencement of this Agreement.

**AUTHORITY:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

*SIGNATURES CONTINUE ON FOLLOWING PAGE(S).*

**DEVELOPER:**

**SCHOOL STREET I, LP,**  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its General Partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company,  
LLC, a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
President

**EXHIBIT A**

**PROJECT SITE DESCRIPTION**

LOT 2  
HPHA SCHOOL STREET SENIOR AFFORDABLE HOUSING  
REDEVELOPMENT PHASE 1A

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;

10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being; 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;

- 26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;
- 27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

- 1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 267° 19' 93" 12.94 feet;
- 2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
- 3. 247° 38' 38" 20.14 feet along same;
- 4. 241° 56' 41" 81.98 feet along same;
- 5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 283° 18' 25" 45.50 feet;
- 6. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
- 7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being: 301° 57' 23" 45.95 feet;

8. 279° 14' 37" 60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 305° 34' 40" 40.37
10. 331° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 13° 27' 19" 66.98;
12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;

24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;
28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;
29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;



40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;

10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;
16. 61° 56' 41" 47.84 feet along the remainder of Former Lanakila Emergency Homes;
17. 151° 56' 41" 10.00 feet along the same to the point of beginning containing an Area of 1208 square feet.

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

#### EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;

2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;
9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.

SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

#### EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

#### EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

- |    |      |         |        |   |
|----|------|---------|--------|---|
| 1. | 64°  | 35'     | 22.53  | feet along the northerly side of Lanakila Avenue  |
| 2. | 151° | 30'     | 444.95 | feet along the remainder of Former Lanakila Emergency Homes;                            |
| 3. | 61°  | 54' 43" | 28.18  | feet along same;  |
| 4. | 331° | 30'     | 496.00 | feet along same to the point of beginning and containing an Area of 10,023 square feet, |

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

#### EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

- |    |      |         |       |   |
|----|------|---------|-------|---|
| 1. | 157° | 57' 40" | 11.21 | feet along the northeasterly side of School Street; |
| 2. | 241° | 56' 41" | 70.50 | feet along the same;                                |

3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning an containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

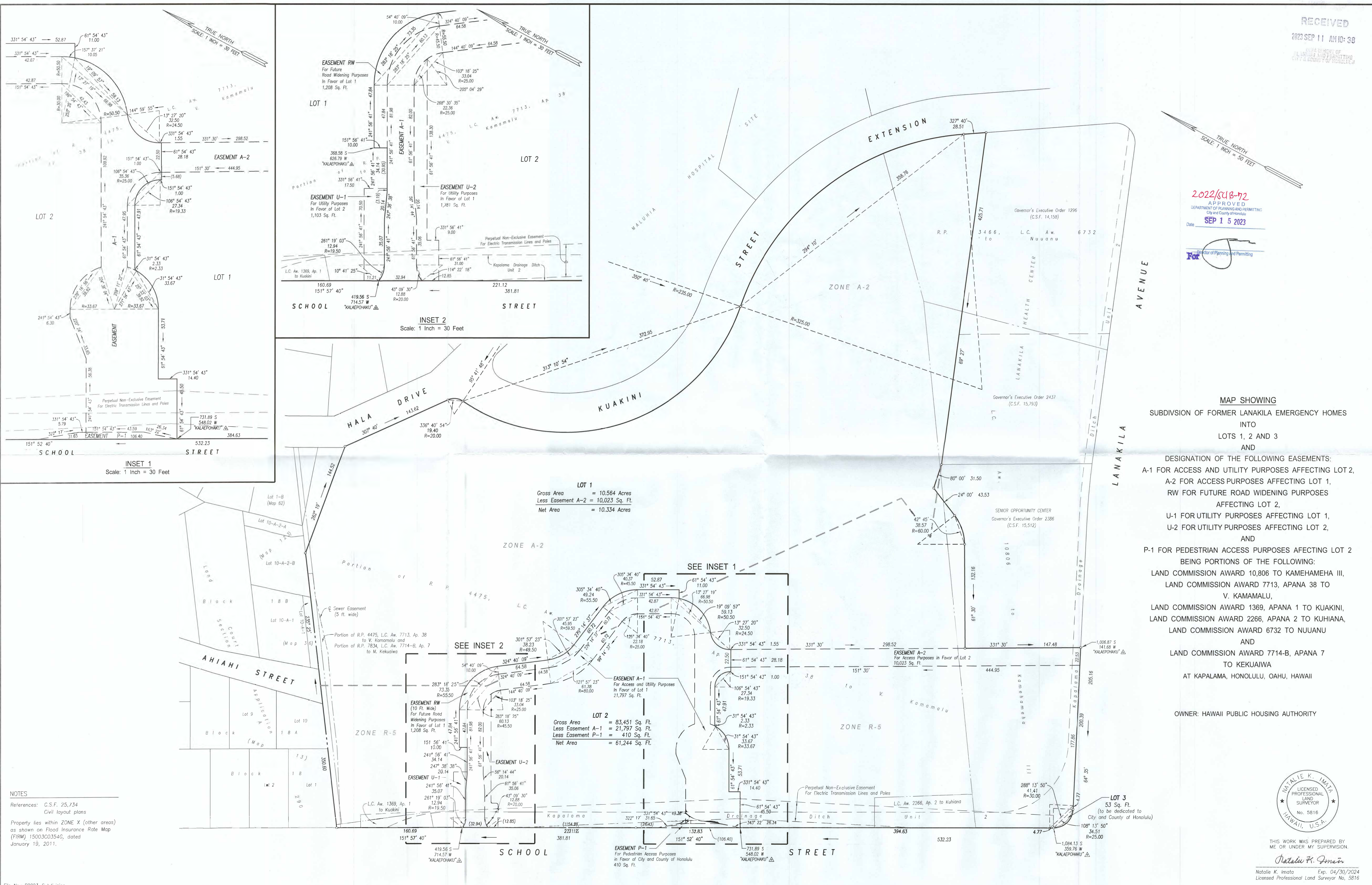
Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]

**EXHIBIT A (continued)**  
**MAP OF PROJECT SITE**

[attached]

RECEIVED  
2023 SEP 11 AM 10:30  
HONOLULU CITY & COUNTY



2022/SCUB-72  
APPROVED  
DEPARTMENT OF PLANNING AND PERMITTING  
City and County of Honolulu  
SEP 15 2023  
Date

Director of Planning and Permitting  
FOR

**MAP SHOWING**  
SUBDIVISION OF FORMER LANAKILA EMERGENCY HOMES  
INTO  
LOTS 1, 2 AND 3  
AND  
DESIGNATION OF THE FOLLOWING EASEMENTS:  
A-1 FOR ACCESS AND UTILITY PURPOSES AFFECTING LOT 2,  
A-2 FOR ACCESS PURPOSES AFFECTING LOT 1,  
RW FOR FUTURE ROAD WIDENING PURPOSES  
AFFECTING LOT 2,  
U-1 FOR UTILITY PURPOSES AFFECTING LOT 1,  
U-2 FOR UTILITY PURPOSES AFFECTING LOT 2,  
AND  
P-1 FOR PEDESTRIAN ACCESS PURPOSES AFFECTING LOT 2  
BEING PORTIONS OF THE FOLLOWING:  
LAND COMMISSION AWARD 10,806 TO KAMEHAMEHA III,  
LAND COMMISSION AWARD 7713, APANA 38 TO  
V. KAMAMALU,  
LAND COMMISSION AWARD 1369, APANA 1 TO KUAKINI,  
LAND COMMISSION AWARD 2266, APANA 2 TO KUHIANA,  
LAND COMMISSION AWARD 6732 TO NUUANU  
AND  
LAND COMMISSION AWARD 7714-B, APANA 7  
TO KEKUIWA  
AT KAPALAMA, HONOLULU, OAHU, HAWAII

OWNER: HAWAII PUBLIC HOUSING AUTHORITY



THIS WORK WAS PREPARED BY  
ME OR UNDER MY SUPERVISION.  
Natalie K. Imata  
Natalie K. Imata Exp. 04/30/2024  
Licensed Professional Land Surveyor No. 5816

**NOTES**  
References: C.S.F. 25,134  
Civil layout plans  
Property lies within ZONE X (other areas)  
as shown on Flood Insurance Rate Map  
(FIRM) 15003C0354G, dated  
January 19, 2011.

**LOT 1**  
Gross Area = 10.564 Acres  
Less Easement A-2 = 10,023 Sq. Ft.  
Net Area = 10.334 Acres

**LOT 2**  
Gross Area = 83,451 Sq. Ft.  
Less Easement A-1 = 21,797 Sq. Ft.  
Less Easement P-1 = 410 Sq. Ft.  
Net Area = 61,244 Sq. Ft.

File No.: P2023-Subdivision  
Tax Map Key: 1st Div. 1-6-009: 003  
School Street & Lanakila Avenue

SITE DESIGN  
115 Makani Avenue  
Wahiawa, Hawaii 96786

November 22, 2021  
Revised: September 8, 2023  
95

**EXHIBIT B**

**SCOPE OF DEVELOPMENT**

[attached Scope of Development Narrative, Unit Distribution Chart, Parking and Physical Goals and Requirements]



**Exhibit B - Project Description**  
**SCHOOL STREET SENIOR AFFORDABLE HOUSING PHASE 1A**

PALEKANA PERMITS  
 THIRD PARTY CERTIFICATION  
 BUILDING CODE  ELECTRICAL CODE  
 MECHANICAL CODE  ZPRB (LAND USE ORDINANCE)  
 STRUCTURAL (NON-SINGLE-2-FAMILY DWELLINGS)

| PROJECT INFORMATION   | PROJECT DEVELOPMENT / ZONING INFORMATION   |   |                     |  |
|---|--|---|---------------------|--|
|   | ITEM   | ALLOWABLE (PER RESOLUTION 20-251, CD1, FD1)   | PROPOSED (PHASE 1A) |  |
| <b>PROJECT DESCRIPTION:</b><br>THE RETIREMENT HOUSING FOUNDATION PROPOSES TO DEVELOP A 250 - UNIT RESIDENTIAL TOWER FOR THE STATE OF HAWAII, HAWAII PUBLIC HOUSING AUTHORITY (HPHA) WHICH WILL BE PART OF PHASE 1A.<br><br>TMK: (1) 1-6-009-003<br>ADDRESS: 1002 NORTH SCHOOL STREET HONOLULU, HI 96817<br>TOTAL LOT AREA: 543,672 SF (12,421 ACRES)<br>FLOOD ZONE: X - FEMA<br>ZONING: BMX-3 (COMMUNITY BUSINESS DISTRICT)   | LUO ZONING : BMX-3<br>LOT AREA: 543,672 SF (12,421 ACRES)<br>MAXIMUM HEIGHT: 170'-0"<br>SETBACKS<br>FRONT: 10'-0"<br>SIDE AND REAR: 10'-0"<br>HEIGHT: 10'-0" (SIDE) 10'-0" (REAR)<br>ANY PORTION OF THE STRUCTURE OVER 40'-0" IN HEIGHT MUST HAVE ADDITIONAL SETBACKS:<br>A) EACH 10'-0" OF ADDITIONAL HEIGHT OR PORTION THEREOF AN ADDITIONAL 1'-0" SETBACK MUST BE PROVIDED AND,<br>B) ADDITIONAL SETBACK MUST BE A CONTINUOUS PLANE FROM THE TOP OF THE STRUCTURE TO THE HEIGHT OF 40'-0" ABOVE GRADE.<br>MAXIMUM DENSITY (FAR): MAX FAR ALLOW: 2.5 (1,359,180 SF) (PER LAND USE ORDINANCE TABLE 21-3.4)<br>UNIT COUNTS: 797 UNITS (ALL THREE PHASES PER RESOLUTION 20-251) | BMX-3<br>145'-0"<br>10'-0"<br>10'-0" (SIDE) 10'-0" (REAR)<br>A) COMPLY, SEE SITE PLAN<br>B) COMPLY, SEE SITE PLAN<br>227,009 SF + EXISTING STRUCTURES TO REMAIN. CURRENT DEVELOPMENT SIGNIFICANTLY UNDER THE MAX. ALLOWABLE, NOT REQUIRING OVERALL SITE DATA AT THIS TIME.<br>250 UNITS   |                     |  |
|   | PARKING STALLS: 250 STALLS (820 TOTAL STALLS FOR ALL THREE PHASES)<br><br>ADA STALLS:<br>VISITOR<br>RESIDENCE<br>NOTE: VAN ACCESSIBLE PARKING SPACES ARE 1 OF 6 ACCESSIBLE SPACES<br><br>ELECTRICAL VEHICLE CHARGING STALLS:<br>5 ELECTRICAL VEHICLE CHARGING STALLS (1 VAN ACCESSIBLE STALL)<br><br>LOADING STALLS:<br>1 TOTAL (8'-6" x 19'-0" x 10'-0" VERTICAL CLEAR) LOADING STALLS & (6 STALLS FOR ALL THREE PHASES)<br>1 TOTAL (12'-0" x 35'-0" x 15'-0" VERTICAL CLEAR) LOADING STALLS (3 STALLS FOR ALL THREE PHASES)<br>BIKE PARKING SPACE:<br>250 LONG-TERM STALLS<br>65 SHORT-TERM STALLS<br>315 TOTAL BIKE STALLS (FOR ALL THREE PHASES)                           | 244 STALLS + 3 ON-GRADE STALLS = 247 STALLS<br><br>*BOTH ADA & EV STALLS ARE INCLUDED IN THE TOTAL 247 STALLS*<br>1 TOTAL VISITOR ADA STALLS (1 VAN ACCESSIBLE)<br>10 TOTAL RESIDENCE ADA STALLS (2 VAN ACCESSIBLE)<br><br>5 ELECTRICAL VEHICLE CHARGING STALLS (1 VAN ACCESSIBLE STALL)<br><br>1 TOTAL (8'-6" x 19'-0" x 10'-0" VERTICAL CLEAR) LOADING STALL &<br>1 TOTAL (12'-0" x 35'-0" x 14'-0" VERTICAL CLEAR) LOADING STALL<br><br>92 LONG-TERM STALLS<br>20 SHORT-TERM STALLS<br>112 TOTAL BIKE STALLS |                     |  |
| <b>CODE INFORMATION</b><br><br>APPLICABLE CODES:<br>INTERNATIONAL BUILDING CODE (IBC) 2018 EDITION<br>CITY AND COUNTY OF HONOLULU CHAPTER 21 LAND USE ORDINANCE (LUO)<br>RESOLUTION 20-251, CD1: ADOPTED OCTOBER 1, 2020<br>INTERNATIONAL ENERGY CONSERVATION CODE (IECC) 2018 EDITION WITH LOCAL AMENDMENTS<br>UNIFORM PLUMBING CODE (UPC) 2018 EDITION WITH LOCAL AMENDMENTS<br>UNIFORM FIRE CODE (UFC)<br>NFPA 1 2018 EDITION WITH LOCAL AMENDMENTS<br>NATIONAL ELECTRICAL CODE (NEC) 2018 EDITION<br>AMERICANS WITH DISABILITIES ACT (ADA) GUIDELINES<br>FAIR HOUSING ACT (FHA) DESIGN MANUAL - 1998  |  |   |                     |  |
| <b>ENTITLEMENT APPROVALS:</b><br>1. RESOLUTION 20-251, CD1, FD1<br><br><b>LAND USE ORDINANCE (LUO) EXEMPTIONS UNDER RESOLUTION 20-251, CD1, FD1</b><br>1. EXEMPTION FROM LUO SECTION 21-3.70-1(a) AND TABLE 21-3.2, RELATING TO PERMITTED USES AND STRUCTURES IN THE R-5 RESIDENTIAL DISTRICT, TO ALLOW THE PROJECT TO HAVE MULTIFAMILY DWELLINGS, OFFICE BUILDINGS, AND COMMERCIAL USES AS PERMITTED IN THE BMX-3 COMMUNITY BUSINESS MIXED-USE DISTRICT.<br>2. EXEMPTION FROM LUO SECTION 21-3.70-1(b) AND (c) AND TABLE 21-3.2, RELATING TO DEVELOPMENT STANDARDS IN THE R-5 RESIDENTIAL DISTRICT, TO ALLOW THE PROJECT TO COMPLY INSTEAD WITH THE DEVELOPMENT STANDARDS APPLICABLE IN THE BMX-3 COMMUNITY BUSINESS MIXED USE DISTRICT.<br>3. EXEMPTION FROM LUO SECTION 21-3.70-1(b) AND (c) AND TABLE 21-3.2, RELATING TO MAXIMUM BUILDING HEIGHT IN THE R-5 DISTRICT, TO ALLOW A PROJECT MAXIMUM BUILDING HEIGHT OF 170 FEET (INSTEAD OF A MAXIMUM BUILDING HEIGHT OF 25 FEET).<br>4. EXEMPTION FROM LUO SECTION 21-6.20 AND TABLE 21-6.1, RELATING TO OFF-STREET PARKING FOR MULTIFAMILY DWELLINGS, TO ALLOW THE PROJECT TO PROVIDE A MINIMUM OF 820 TOTAL PARKING SPACES (RATHER THAN THE REQUIRED MINIMUM 1,200 PARKING SPACES), INCLUDING A MINIMUM OF 578 RESIDENTIAL PARKING SPACES; PROVIDED THAT THE DPP MAY, UPON REQUEST OF THE APPLICANT, APPROVE FURTHER REDUCTIONS IN THE REQUIRED MINIMUM NUMBER OF RESIDENTIAL PARKING SPACES.<br>5. EXEMPTION FROM LUO SECTION 21-6.100, RELATING TO OFF-STREET LOADING SPACES, TO ALLOW THE PROJECT TO PROVIDE SIX 8.5-FOOT BY 19-FOOT LOADING SPACES WITH A 10-FOOT VERTICAL CLEARANCE, AND THREE 12-FOOT BY 35-FOOT LOADING SPACES WITH A 14-FOOT VERTICAL CLEARANCE (RATHER THAN THE REQUIRED FOUR 8.5-FOOT BY 19-FOOT LOADING SPACES WITH A 10-FOOT VERTICAL CLEARANCE, AND FIVE 12-FOOT BY 35-FOOT LOADING SPACES WITH A 15-FOOT VERTICAL CLEARANCE).<br>6. EXEMPTION FROM THE SIGN STANDARDS IN LUO ARTICLE 7 TO ALLOW THE PROJECT TO COMPLY WITH A PROJECT MASTER SIGN PLAN ("MSP") APPROVED BY THE DPP.<br>7. EXEMPTION FROM LUO SECTION 21-6.150, RELATING TO BICYCLE PARKING SPACES, TO ALLOW THE PROJECT TO PROVIDE 250 LONG-TERM AND 65 SHORT-TERM BICYCLE PARKING SPACES (RATHER THAN THE REQUIRED 400 LONG-TERM AND 80 SHORT-TERM BICYCLE PARKING SPACES).<br><br><b>APPLICATION FEES AND INFRASTRUCTURE AND/OR PUBLIC WORKS FEES AND CHARGES EXEMPTIONS UNDER RESOLUTION 20-251, CD1, FD1</b><br>1. EXEMPTION FROM SECTION 14-13.6 OF THE REVISED ORDINANCES OF HONOLULU ("ROH"), AND THE DPP RULES RELATED TO WATER QUALITY, TO ALLOW AN EXEMPTION FROM PAYMENT OF WATER QUALITY REVIEW FEES FOR THE EROSION CONTROL AND SEDIMENT PLAN ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$713.99.<br>2. EXEMPTION FROM ROH SECTIONS 14-10.1, 14-10.2, AND 14-10.3, TO ALLOW AN EXEMPTION FROM PAYMENT OF WASTEWATER SYSTEM FACILITY CHARGES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$4,234,195.71.<br>3. EXEMPTION FROM ROH SECTION 14-12.2(d), TO ALLOW AN EXEMPTION FROM PAYMENT OF THE PRIVATE STORM DRAIN CONNECTION LICENSE FEE ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$571.19.<br>4. EXEMPTION FROM ROH SECTION 14-14.4, TO ALLOW AN EXEMPTION FROM PAYMENT OF GRADING AND GRUBBING PERMIT FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$2,766.80.<br>5. EXEMPTION FROM ROH SECTION 18-6.1, TO ALLOW AN EXEMPTION FROM PAYMENT OF PLAN REVIEW FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$86,625.41.<br>6. EXEMPTION FROM ROH TABLE 18-A, TO ALLOW AN EXEMPTION FROM PAYMENT OF SPECIAL ASSIGNMENT INSPECTION (COURTESY INSPECTION) FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$19,053.59.<br>7. EXEMPTION FROM ROH TABLE 18-6.2, TO ALLOW AN EXEMPTION FROM PAYMENT OF BUILDING PERMIT FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$1,731,761.64.<br>8. EXEMPTION FROM ROH SECTION 20-1.1, ITEM 3, TO ALLOW AN EXEMPTION FROM PAYMENT OF HONOLULU FIRE DEPARTMENT PLAN REVIEW FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$11,908.49.<br><br><b>SUBDIVISION AND PARK DEDICATION ORDINANCE REQUIREMENTS:</b><br>1. EXEMPTION FROM ROH SECTION 22-1.2(a), TO ALLOW AN EXEMPTION FROM PAYMENT OF SUBDIVISION PERMIT FEES, ESTIMATED AT \$800.<br>2. EXEMPTION FROM ROH CHAPTER 22, ARTICLE 7, TO ALLOW AN EXEMPTION FROM PARK DEDICATION REQUIREMENTS, TOTALING APPROXIMATELY 88,000 SQUARE FEET OF PARK SPACE, OR PAYMENT OF AN EQUIVALENT IN-LIEU FEE, ESTIMATED AT \$3,774,596.45. (REFER TO PAGE 4 IN THE RESOLUTION 20-251 CD1, FD1 FOR FURTHER DETAILS). |  |   |                     |  |

**Design Partners Incorporated**  
 Architecture Planning Interiors

*Signature*  
 APRIL 30, 2024  
 LICENSED PROFESSIONAL ARCHITECT  
 No. 3971  
 HAWAII U.S.A.

This work was prepared by me or under the supervision and control of the project and I am a duly licensed professional architect in the State of Hawaii. I am not responsible for any errors or omissions in this document.

REVISION SCHEDULE

|  |  |
|--|--|
|  |  |
|--|--|

**Bid Set**

**School Street Senior Affordable Housing Phase 1A**

1002 North School St, Honolulu, 96817  
 TMK: (1) 1-6-009-003

Project Name

Project Title  
 PROJECT DATA - PROJECT DESCRIPTION, ZONING & CODE INFO

|                |            |             |
|----------------|------------|-------------|
| Project Number | Date       |             |
| 19066          | 06/30/2023 |             |
| Drawn JK / E.J | Checked T1 | Designed MM |

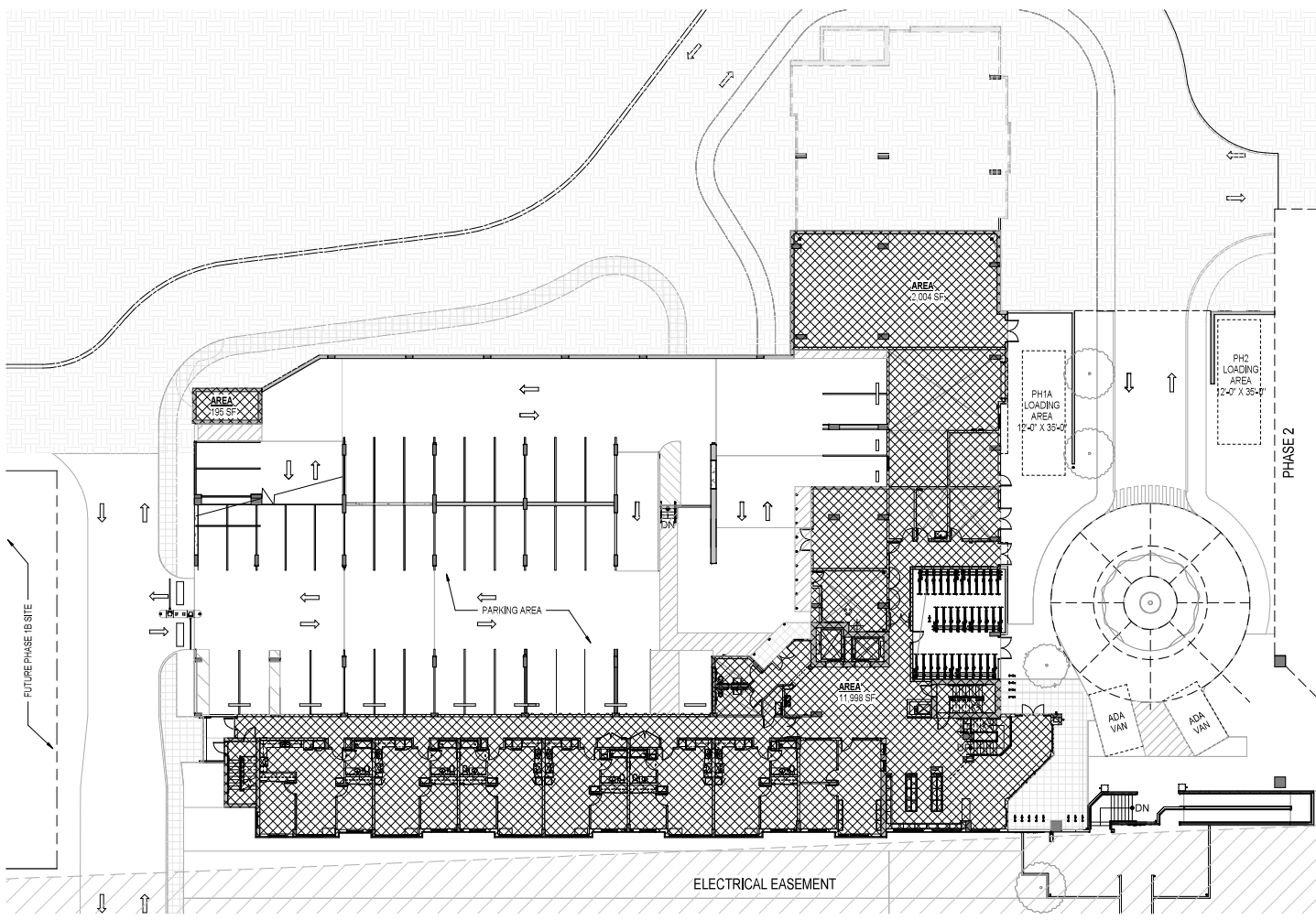
Drawing Number  
**97007**

Sheet No.   9   of   9

1 2 3 4 5

PALEKANA PERMITS  
THIRD PARTY CERTIFICATION

- BUILDING CODE  ELECTRICAL CODE
- MECHANICAL CODE  ZPRB (LAND USE ORDINANCE)
- STRUCTURAL (NON-SINGLE/FAMILY DWELLINGS)

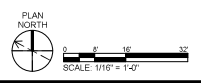


**A1 F.A.R. CALCULATION - GROUND FLOOR**  
1/16" = 1'-0" GS-005

**F.A.R. AREA TABLE**

|                   |
|-------------------|
| TOTAL = 14,157 SF |
|-------------------|

**F.A.R. LEGEND**  
 [Cross-hatch pattern] AREA OF F.A.R. FLOOR  
 [Cross-hatch pattern] AREA CALCULATION



**Design Partners Incorporated**  
 Architecture Planning Interiors

**MUZILLA WASAM WARD**  
 LICENSED PROFESSIONAL ARCHITECT  
 No. 5571  
 State of Hawaii

*M. Wasam*  
 Signature  
 APR 18, 2024  
 Expiration Date of the License

This work was prepared by me or under my supervision and completion of this project will be under my observation.

REVISION SCHEDULE

|  |  |
|--|--|
|  |  |
|--|--|

**Bid Set**

**School Street Senior Affordable Housing Phase 1A**  
 1002 North School St. Honolulu, 96817  
 TMK: (1) 1-G-009-003

Project Name

|                |            |             |
|----------------|------------|-------------|
| Project Number | Date       |             |
| 19066          | 06/30/2023 |             |
| Drawn JK / EJ  | Checked TI | Designed MM |

Drawing Number  
**GS-005**  
 Sheet No. of

**School Street Apts - Phase 1A**  
**PRO FORMA INCOME AND EXPENSE SUMMARY**  
 Senior/ New Construction / 15 Story / 4% Tax Credits

06-Mar-24

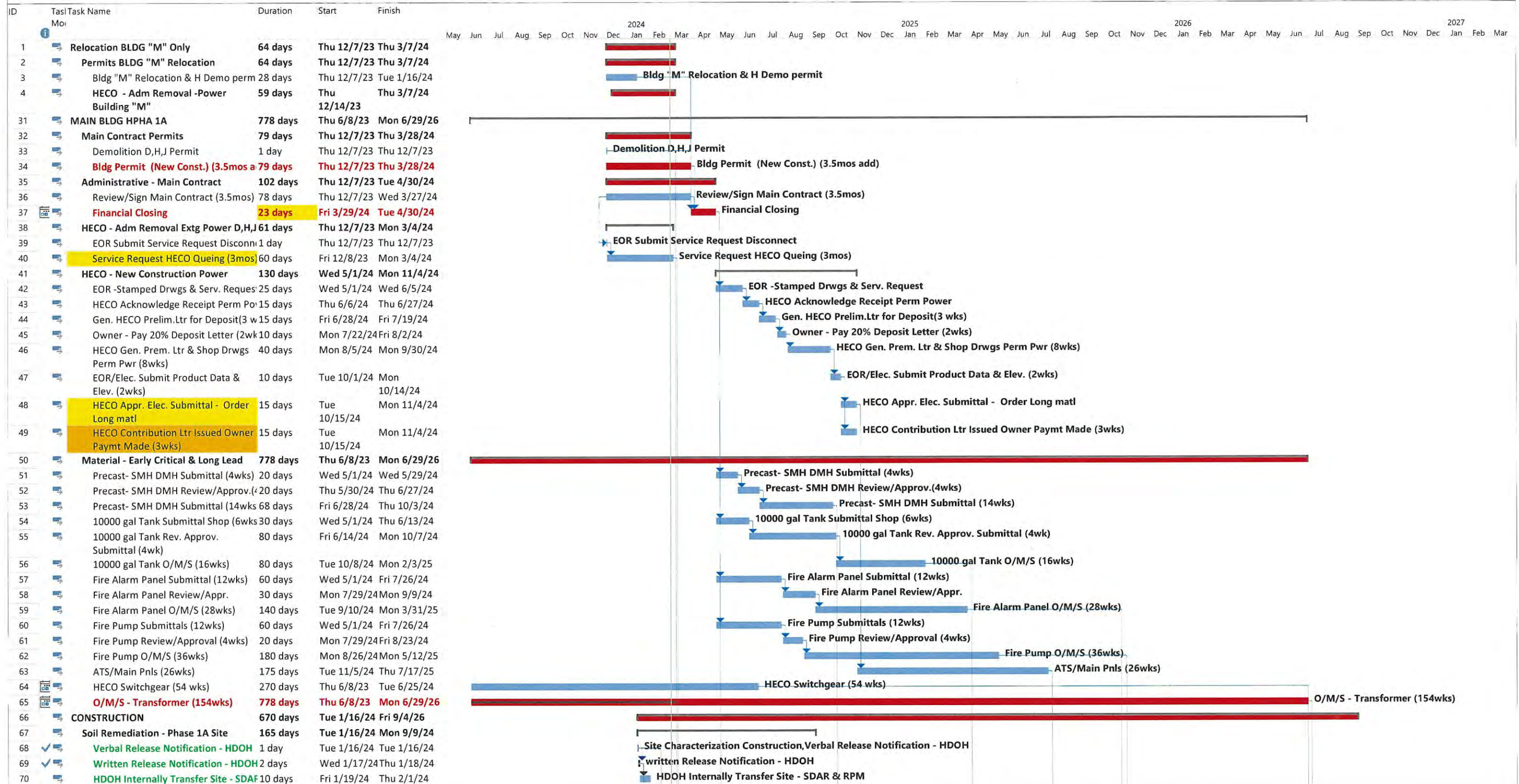
| NUMBER OF UNITS | TYPE OF UNIT       | SQUARE FOOTAGE | AMI        | ALLOWED RENT/MO. | OPENING RENT/MO. | UTILITY ALLOW. | MONTHLY RENT | TOTAL RENT | RENT PER S.F. |
|-----------------|--------------------|----------------|------------|------------------|------------------|----------------|--------------|------------|---------------|
|                 |                    |                | <b>HUD</b> | <b>2023</b>      | <b>RENTS</b>     |                |              |            |               |
| 4               | 0 BD - 1 BA - Flat | 350            | 30.00%     | 687              | 687              | 64             | 623          | 2,492      | 1.78          |
| 16              | 0 BD - 1 BA - Flat | 350            | 50.00%     | 1,146            | 1,146            | 64             | 1,082        | 17,312     | 3.09          |
| 12              | 0 BD - 1 BA - Flat | 350            | 60.00%     | 1,375            | 1,375            | 64             | 1,311        | 15,732     | 3.75          |
| 21              | 1 BD - 1 BA - Flat | 575            | 30.00%     | 736              | 736              | 82             | 654          | 13,734     | 1.14          |
| 104             | 1 BD - 1 BA - Flat | 575            | 50.00%     | 1,228            | 1,228            | 82             | 1,146        | 119,184    | 1.99          |
| 83              | 1 BD - 1 BA - Flat | 575            | 60.00%     | 1,473            | 1,473            | 82             | 1,391        | 115,453    | 2.42          |
| 1               | 2 BD - 1 BA - Flat | 800            | 30.00%     | 884              | 884              | 95             | 789          | 789        | 0.99          |
| 5               | 2 BD - 1 BA - Flat | 800            | 50.00%     | 1,473            | 1,473            | 95             | 1,378        | 6,890      | 1.72          |
| 3               | 2 BD - 1 BA - Flat | 800            | 60.00%     | 1,768            | 1,768            | 95             | 1,673        | 5,019      | 2.09          |
| 1               | 2 BD - 1 BA - Flat | 800            | MGR        | 0                | 0                | 0              | 0            | 0          | 0.00          |
| Other           |                    | 0              |            |                  |                  |                |              |            |               |
| Retail          |                    | 0              |            |                  |                  |                |              |            |               |
| Other           |                    | 101,339        |            |                  |                  |                |              |            |               |
| <b>250</b>      | <b>Total</b>       | 240,139        |            |                  |                  |                |              | 296,605    |               |

**EXHIBIT C**

**SCHEDULE OF PERFORMANCE**

[attached]

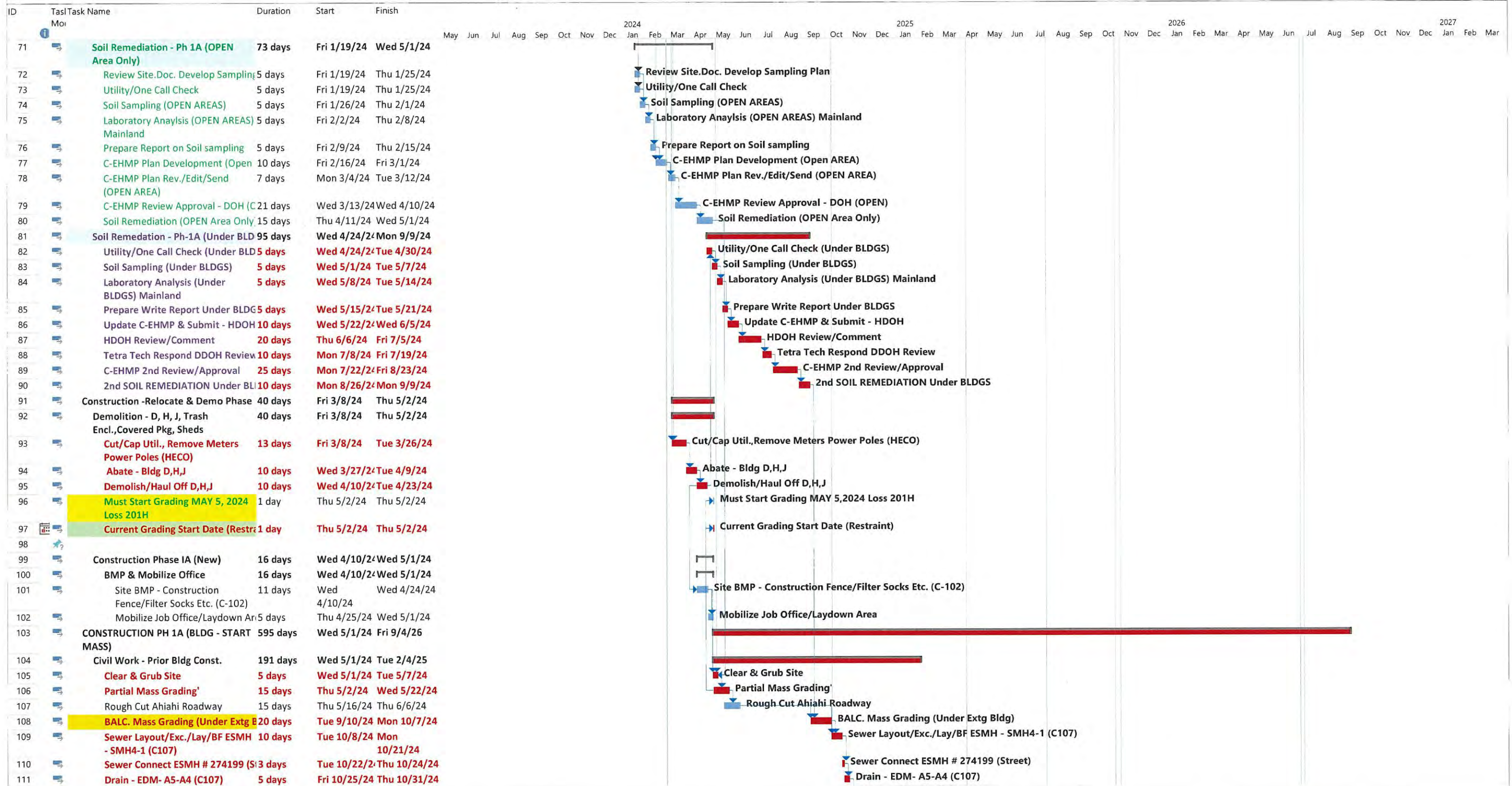
EXHIBIT D  
 School Street Senior Phase 1A (Preliminary Bid Schedule -Original) 154 weeks (Due Transformer) & Soil Remediation  
 Dated 3.1.2024  
 Honolulu, HI



Project: HPHA 1A  
 Date: Fri 3/1/24



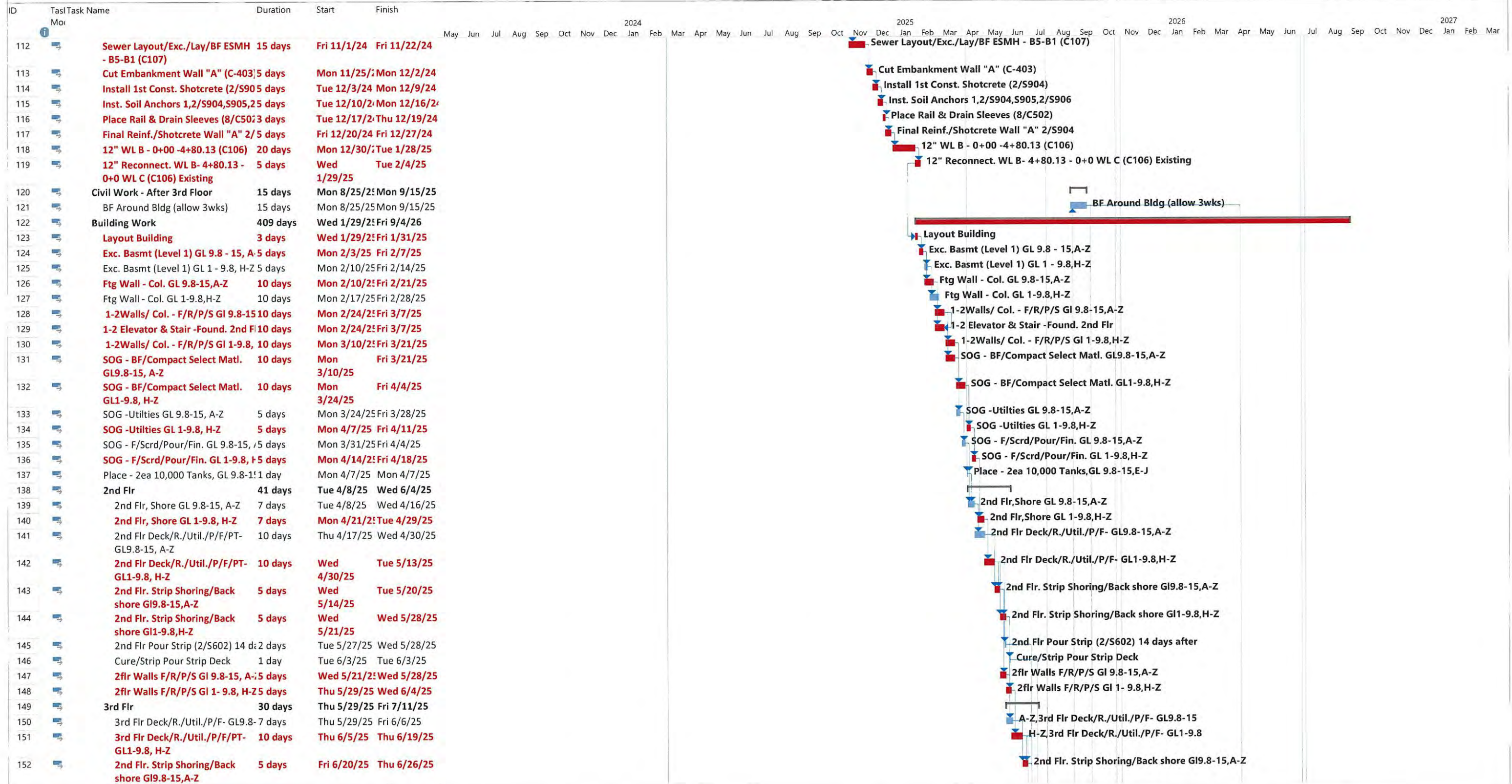
EXHIBIT D  
 School Street Senior Phase 1A (Preliminary Bid Schedule -Original) 154 weeks (Due Transformer) & Soil Remediation  
 Dated 3.1.2024  
 Honolulu, HI



Project: HPHA 1A  
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 School Street Senior Phase 1A (Preliminary Bid Schedule -Original) 154 weeks (Due Transformer) & Soil Remediation  
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 Honolulu, HI



Project: HPHA 1A  
 Date: Fri 3/1/24

|          |                 |                    |                       |                |                    |                 |
|----------|-----------------|--------------------|-----------------------|----------------|--------------------|-----------------|
| Task     | Milestone       | Inactive Task      | Manual Task           | Manual Summary | External Tasks     | Progress        |
| Split    | Summary         | Inactive Milestone | Duration-only         | Start-only     | External Milestone | Manual Progress |
| Critical | Project Summary | Inactive Summary   | Manual Summary Rollup | Finish-only    | Deadline           |                 |

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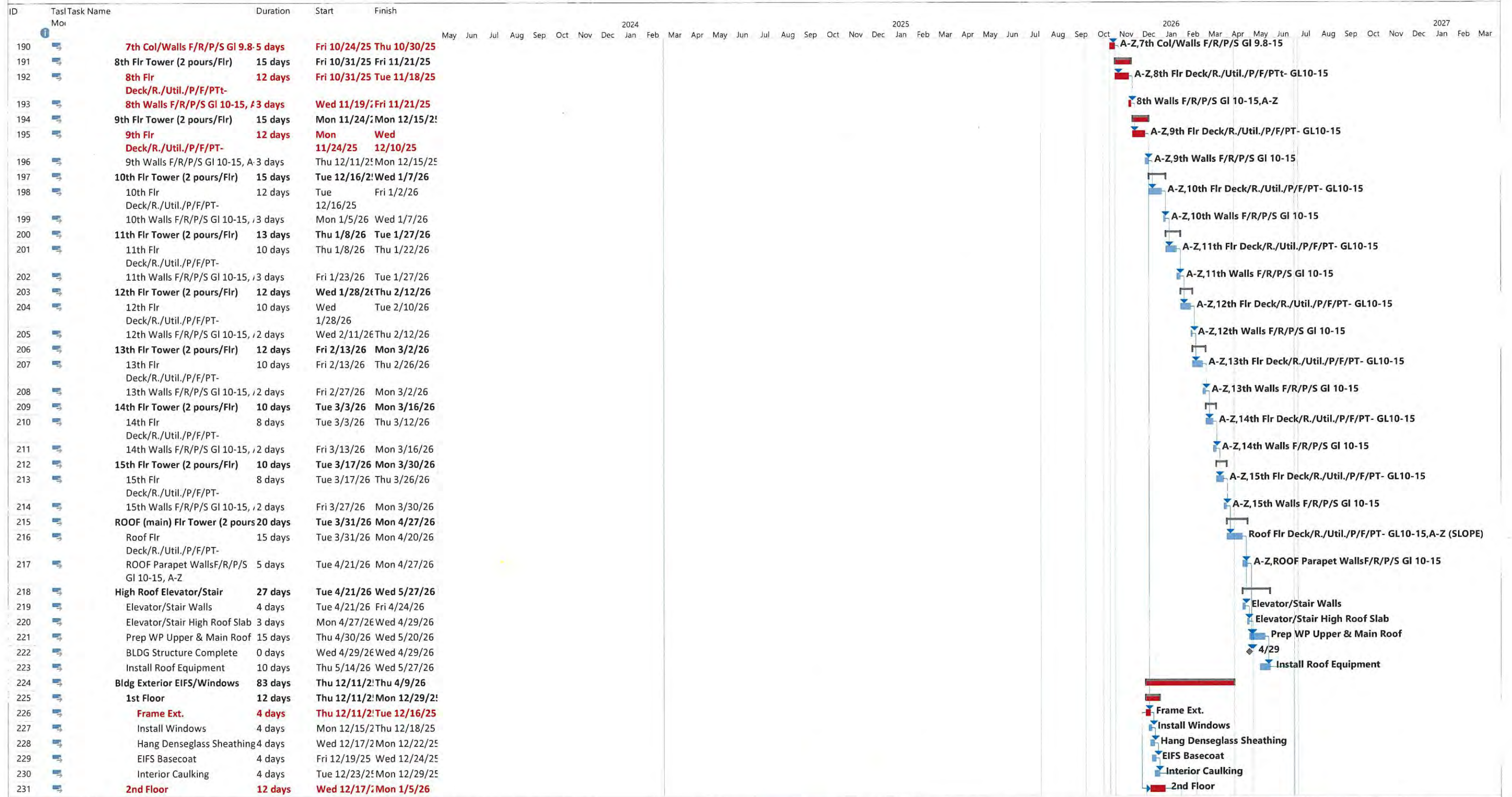
| ID  | Task Name  | Duration | Start        | Finish       |
|-----|--|----------|--------------|--------------|
| 153 | 2nd Flr. Strip Shoring/Back shore GI1-9.8,H-Z                        | 5 days   | Fri 6/27/25  | Thu 7/3/25   |
| 154 | 3rd Flr Pour Strip (2/S602) 14 Days After Cure/Strip Pour Strip Deck | 14 days  | Wed 7/2/25   | Thu 7/3/25   |
| 155 | Cure/Strip Pour Strip Deck   | 1 day    | Thu 7/10/25  | Thu 7/10/25  |
| 156 | 3rd Walls F/R/P/S GI 9.8-15, A-Z                                     | 5 days   | Fri 6/27/25  | Thu 7/3/25   |
| 157 | 3rd flr Walls F/R/P/S GI 1- 9.8, 15 days                             | 15 days  | Mon 7/7/25   | Fri 7/11/25  |
| 158 | Basement Walls   | 30 days  | Mon 7/14/25  | Fri 8/22/25  |
| 159 | Grind/Patch/Cement Wash Basemt Walls                                 | 20 days  | Mon 7/14/25  | Fri 8/8/25   |
| 160 | WP Basemt Walls  | 10 days  | Mon 8/11/25  | Fri 8/22/25  |
| 161 | 4th Flr  | 30 days  | Mon 7/7/25   | Fri 8/15/25  |
| 162 | 4th Flr Deck/R./Util./P/F- GL9.8-7                                   | 7 days   | Mon 7/7/25   | Tue 7/15/25  |
| 163 | 4th Flr Deck/R./Util./P/F/PT- GL1-9.8, H-Z                           | 10 days  | Mon 7/14/25  | Fri 7/25/25  |
| 164 | 3rd Flr. Strip Shoring/Back shore GI9.8-15,A-Z                       | 5 days   | Mon 7/28/25  | Fri 8/1/25   |
| 165 | 3rd Flr. Strip Shoring/Back shore GI1-9.8,H-Z                        | 5 days   | Mon 8/4/25   | Fri 8/8/25   |
| 166 | 4th Walls F/R/P/S GI 9.8-15, A-Z                                     | 5 days   | Mon 8/4/25   | Fri 8/8/25   |
| 167 | 4th flr Walls F/R/P/S GI 1- 9.8, 15 days                             | 15 days  | Mon 8/11/25  | Fri 8/15/25  |
| 168 | 5th Flr  | 30 days  | Mon 8/11/25  | Mon 9/22/25  |
| 169 | 5th Flr Deck/R./Util./P/F- GL9.8-7                                   | 7 days   | Mon 8/11/25  | Tue 8/19/25  |
| 170 | 5th Flr Deck/R./Util./P/F/PT- GL1-9.8, H-Z                           | 10 days  | Mon 8/18/25  | Fri 8/29/25  |
| 171 | 4rd Flr. Strip Shoring/Back shore GI9.8-15,A-Z                       | 5 days   | Tue 9/2/25   | Mon 9/8/25   |
| 172 | 4rd Flr. Strip Shoring/Back shore GI1-9.8,H-Z                        | 5 days   | Tue 9/9/25   | Mon 9/15/25  |
| 173 | 5th Walls F/R/P/S GI 9.8-15, A-Z                                     | 5 days   | Tue 9/9/25   | Mon 9/15/25  |
| 174 | 5th flr Walls F/R/P/S GI 1- 9.8, 15 days                             | 15 days  | Tue 9/16/25  | Mon 9/22/25  |
| 175 | 6th Flr  | 30 days  | Tue 9/16/25  | Mon 10/27/25 |
| 176 | 6th Flr Deck/R./Util./P/F/PT- GL9.8-15, A-Z                          | 10 days  | Tue 9/16/25  | Mon 9/29/25  |
| 177 | 6th Flr Deck/R./Util./P/F/PT- GL1-9.8, H-Z                           | 10 days  | Tue 9/23/25  | Mon 10/6/25  |
| 178 | 5th Flr. Strip Shoring/Back shore GI9.8-15,A-Z                       | 5 days   | Tue 10/7/25  | Mon 10/13/25 |
| 179 | 5th Flr. Strip Shoring/Back shore GI1-9.8,H-Z                        | 5 days   | Tue 10/14/25 | Mon 10/20/25 |
| 180 | 6th Walls F/R/P/S GI 9.8-15, A-Z                                     | 5 days   | Tue 10/14/25 | Mon 10/20/25 |
| 181 | 6th flr Walls F/R/P/S GI 1- 9.8, 15 days                             | 15 days  | Tue 10/21/25 | Mon 10/27/25 |
| 182 | 7th Flr (Smaller Area Slab S222)                                     | 23 days  | Tue 9/30/25  | Thu 10/30/25 |
| 183 | 7th Flr Deck/R./Util./P/F/PT- GL9.8-15, A-Z                          | 8 days   | Tue 9/30/25  | Thu 10/9/25  |
| 184 | 7th Flr Deck/R./U./P/F/PT- GL1-9.8, S-Z (S222)                       | 8 days   | Tue 10/7/25  | Thu 10/16/25 |
| 185 | 6th Flr. Strip Shoring/Back shore GI9.8-15,A-Z                       | 5 days   | Fri 10/17/25 | Thu 10/23/25 |
| 186 | 6th Flr. Strip Shoring/Back shore GI1-9.8,H-Z                        | 5 days   | Fri 10/24/25 | Thu 10/30/25 |
| 187 | Planter Walls/Parapet - F/R/P/Strip                                  | 10 days  | Fri 10/17/25 | Thu 10/30/25 |
| 188 | Tower (7-15 + Roof)  | 149 days | Fri 10/24/25 | Wed 5/27/26  |
| 189 | 7th Flr - Tower (S223)   | 5 days   | Fri 10/24/25 | Thu 10/30/25 |

Project: HPHA 1A  
Date: Fri 3/1/24

|          |  |                 |  |                    |  |                       |  |                |  |                    |  |                 |  |
|----------|--|-----------------|--|--------------------|--|-----------------------|--|----------------|--|--------------------|--|-----------------|--|
| Task     |  | Milestone       |  | Inactive Task      |  | Manual Task           |  | Manual Summary |  | External Tasks     |  | Progress        |  |
| Split    |  | Summary         |  | Inactive Milestone |  | Duration-only         |  | Start-only     |  | External Milestone |  | Manual Progress |  |
| Critical |  | Project Summary |  | Inactive Summary   |  | Manual Summary Rollup |  | Finish-only    |  | Deadline           |  |                 |  |



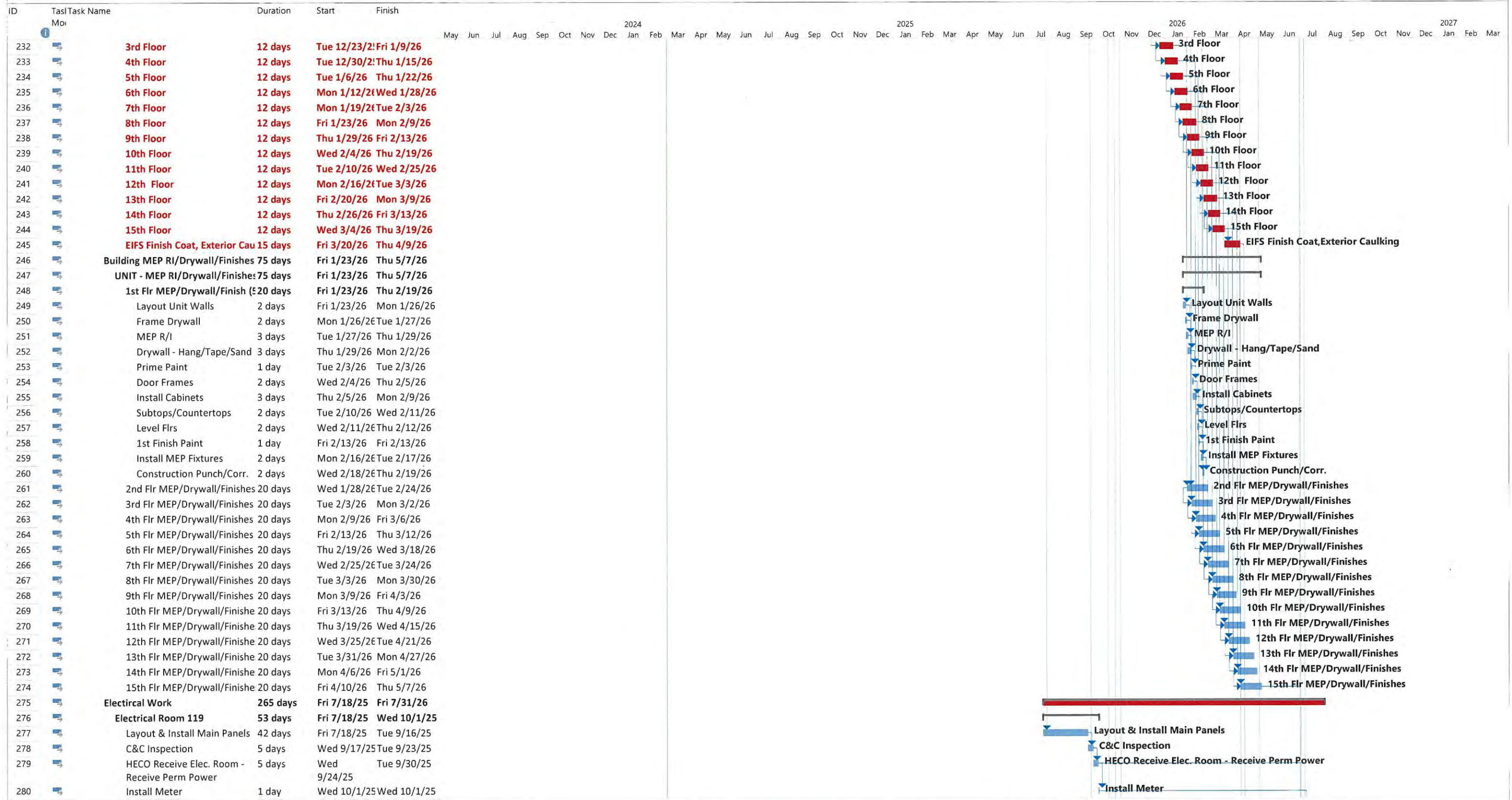
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|          |                 |                    |                       |                |                    |                 |
|----------|-----------------|--------------------|-----------------------|----------------|--------------------|-----------------|
| Task     | Milestone       | Inactive Task      | Manual Task           | Manual Summary | External Tasks     | Progress        |
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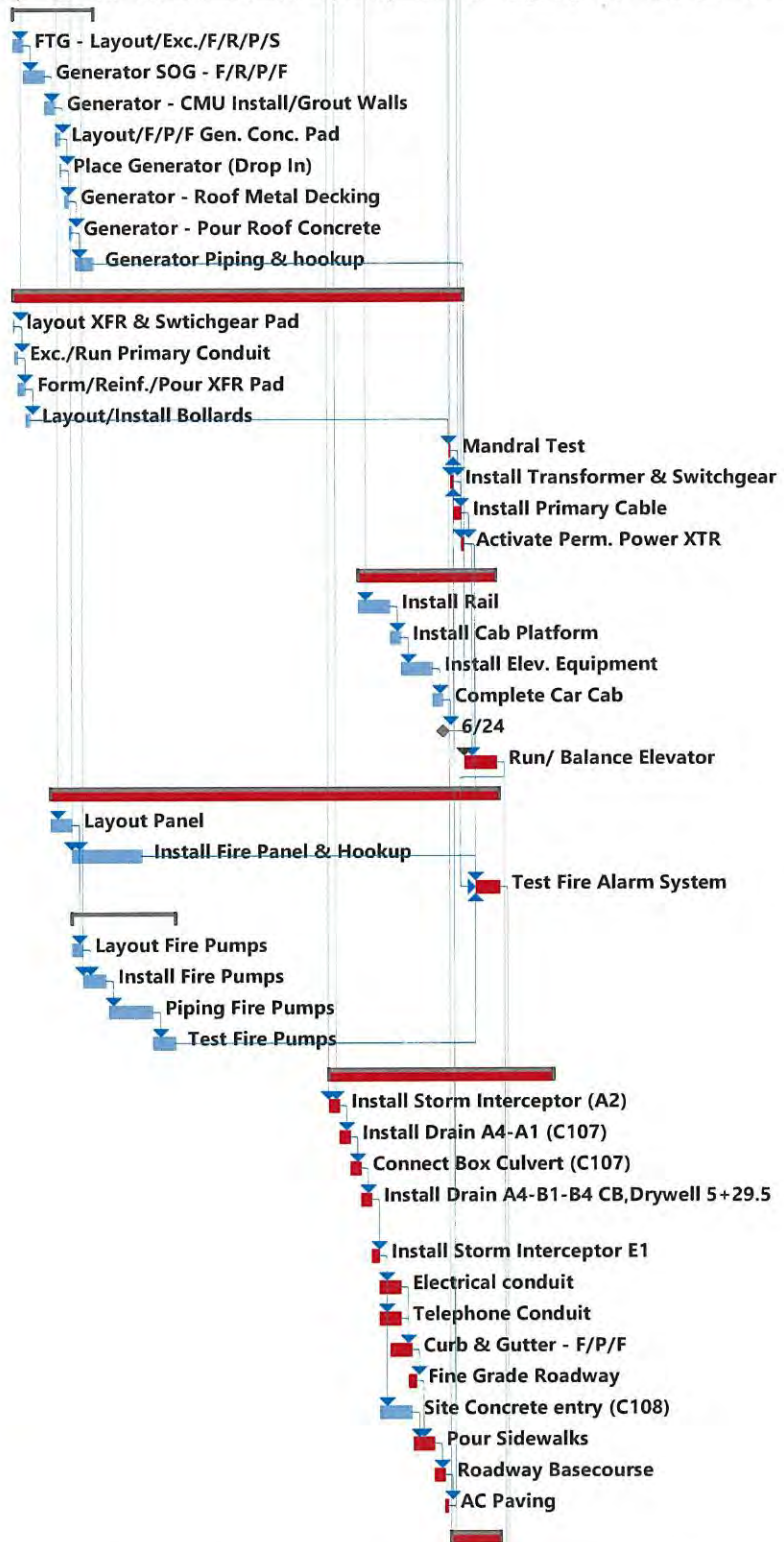


Project: HPHA 1A  
 Date: Fri 3/1/24

|          |  |                 |  |                    |  |                       |  |                |  |                    |  |                 |  |
|----------|--|-----------------|--|--------------------|--|-----------------------|--|----------------|--|--------------------|--|-----------------|--|
| Task     |  | Milestone       |  | Inactive Task      |  | Manual Task           |  | Manual Summary |  | External Tasks     |  | Progress        |  |
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 Honolulu, HI

| ID  | Task Name  | Duration        | Start               | Finish              |
|-----|--|-----------------|---------------------|---------------------|
| 281 | <b>Generator Room</b>                            | <b>39 days</b>  | <b>Tue 9/16/25</b>  | <b>Fri 11/7/25</b>  |
| 282 | FTG - Layout/Exc./F/R/P/S                        | 5 days          | Tue 9/16/25         | Mon 9/22/25         |
| 283 | Generator SOG - F/R/P/F                          | 10 days         | Tue 9/23/25         | Mon 10/6/25         |
| 284 | Generator - CMU Install/Grout Walls              | 5 days          | Tue 10/7/25         | Mon 10/13/25        |
| 285 | Layout/F/P/F Gen. Conc. Pad                      | 3 days          | Tue 10/14/25        | Thu 10/16/25        |
| 286 | Place Generator (Drop In)                        | 1 day           | Fri 10/17/25        | Fri 10/17/25        |
| 287 | Generator - Roof Metal Decking                   | 3 days          | Mon 10/20/25        | Wed 10/22/25        |
| 288 | Generator - Pour Roof Concrete                   | 2 days          | Thu 10/23/25        | Fri 10/24/25        |
| 289 | Generator Piping & hookup                        | 10 days         | Mon 10/27/25        | Fri 11/7/25         |
| 290 | <b>Transformer &amp; Switchgear</b>              | <b>207 days</b> | <b>Tue 9/16/25</b>  | <b>Wed 7/8/26</b>   |
| 291 | layout XFR & Swtichgear Pad                      | 1 day           | Tue 9/16/25         | Tue 9/16/25         |
| 292 | Exc./Run Primary Conduit                         | 2 days          | Wed 9/17/25         | Thu 9/18/25         |
| 293 | Form/Reinf./Pour XFR Pad                         | 3 days          | Fri 9/19/25         | Tue 9/23/25         |
| 294 | Layout/Install Bollards                          | 3 days          | Wed 9/24/25         | Fri 9/26/25         |
| 295 | <b>Mandral Test</b>                              | <b>1 day</b>    | <b>Mon 6/29/26</b>  | <b>Mon 6/29/26</b>  |
| 296 | <b>Install Transformer &amp; Switchgear</b>      | <b>2 days</b>   | <b>Tue 6/30/26</b>  | <b>Wed 7/1/26</b>   |
| 297 | <b>Install Primary Cable</b>                     | <b>3 days</b>   | <b>Thu 7/2/26</b>   | <b>Mon 7/6/26</b>   |
| 298 | <b>Activate Perm. Power XTRM</b>                 | <b>2 days</b>   | <b>Tue 7/7/26</b>   | <b>Wed 7/8/26</b>   |
| 299 | <b>Elevator Work</b>                             | <b>65 days</b>  | <b>Thu 4/30/26</b>  | <b>Wed 7/29/26</b>  |
| 300 | Install Rail                                     | 15 days         | Thu 4/30/26         | Wed 5/20/26         |
| 301 | Install Cab Platform                             | 5 days          | Thu 5/21/26         | Wed 5/27/26         |
| 302 | Install Elev. Equipment                          | 15 days         | Thu 5/28/26         | Wed 6/17/26         |
| 303 | Complete Car Cab                                 | 5 days          | Thu 6/18/26         | Wed 6/24/26         |
| 304 | Permanent Power                                  | 0 days          | Wed 6/24/26         | Wed 6/24/26         |
| 305 | <b>Run/ Balance Elevator</b>                     | <b>15 days</b>  | <b>Thu 7/9/26</b>   | <b>Wed 7/29/26</b>  |
| 306 | <b>Fire Command Ctr. Rm 120</b>                  | <b>206 days</b> | <b>Fri 10/10/25</b> | <b>Fri 7/31/26</b>  |
| 307 | Layout Panel                                     | 10 days         | Fri 10/10/25        | Thu 10/23/25        |
| 308 | Install Fire Panel & Hookup                      | 30 days         | Fri 10/24/25        | Mon 12/8/25         |
| 309 | <b>Test Fire Alarm System</b>                    | <b>12 days</b>  | <b>Thu 7/16/26</b>  | <b>Fri 7/31/26</b>  |
| 310 | <b>Fire Pumps</b>                                | <b>45 days</b>  | <b>Fri 10/24/25</b> | <b>Tue 12/30/25</b> |
| 311 | Layout Fire Pumps                                | 5 days          | Fri 10/24/25        | Thu 10/30/25        |
| 312 | Install Fire Pumps                               | 10 days         | Fri 10/31/25        | Fri 11/14/25        |
| 313 | Piping Fire Pumps                                | 20 days         | Mon 11/17/25        | Mon 12/15/25        |
| 314 | Test Fire Pumps                                  | 10 days         | Tue 12/16/25        | Tue 12/30/25        |
| 315 | <b>Civil Work Balance - Drain/Elect./</b>        | <b>106 days</b> | <b>Fri 4/10/26</b>  | <b>Fri 9/4/26</b>   |
| 316 | <b>Install Storm Interceptor (A2)</b>            | <b>5 days</b>   | <b>Fri 4/10/26</b>  | <b>Thu 4/16/26</b>  |
| 317 | <b>Install Drain A4-A1 (C107)</b>                | <b>5 days</b>   | <b>Fri 4/17/26</b>  | <b>Thu 4/23/26</b>  |
| 318 | <b>Connect Box Culvert (C107)</b>                | <b>5 days</b>   | <b>Fri 4/24/26</b>  | <b>Thu 4/30/26</b>  |
| 319 | <b>Install Drain A4-B1-B4 CB, Drywell 5+29.5</b> | <b>5 days</b>   | <b>Fri 5/1/26</b>   | <b>Thu 5/7/26</b>   |
| 320 | <b>Install Storm Interceptor E1</b>              | <b>3 days</b>   | <b>Fri 5/8/26</b>   | <b>Tue 5/12/26</b>  |
| 321 | <b>Electrical conduit</b>                        | <b>10 days</b>  | <b>Wed 5/13/26</b>  | <b>Tue 5/26/26</b>  |
| 322 | <b>Telephone Conduit</b>                         | <b>10 days</b>  | <b>Wed 5/13/26</b>  | <b>Tue 5/26/26</b>  |
| 323 | <b>Curb &amp; Gutter - F/P/F</b>                 | <b>10 days</b>  | <b>Wed 5/20/26</b>  | <b>Tue 6/2/26</b>   |
| 324 | <b>Fine Grade Roadway</b>                        | <b>5 days</b>   | <b>Mon 6/1/26</b>   | <b>Fri 6/5/26</b>   |
| 325 | Site Concrete entry (C108)                       | 15 days         | Wed 5/13/26         | Tue 6/2/26          |
| 326 | <b>Pour Sidewalks</b>                            | <b>10 days</b>  | <b>Thu 6/4/26</b>   | <b>Wed 6/17/26</b>  |
| 327 | <b>Roadway Basecourse</b>                        | <b>5 days</b>   | <b>Thu 6/18/26</b>  | <b>Wed 6/24/26</b>  |
| 328 | <b>AC Paving</b>                                 | <b>2 days</b>   | <b>Thu 6/25/26</b>  | <b>Fri 6/26/26</b>  |
| 329 | <b>Landscape</b>                                 | <b>25 days</b>  | <b>Mon 6/29/26</b>  | <b>Fri 7/31/26</b>  |

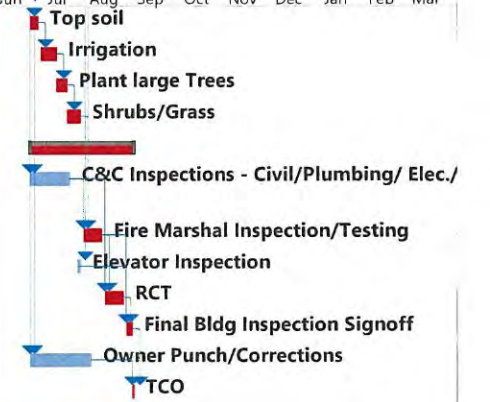


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EXHIBIT D  
 School Street Senior Phase 1A (Preliminary Bid Schedule -Original) 154 weeks (Due Transformer) & Soil Remediation  
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| ID  | Task Name                                    | Duration | Start       | Finish      |
|-----|--|----------|-------------|-------------|
| 330 | Top soil                                     | 5 days   | Mon 6/29/26 | Fri 7/3/26  |
| 331 | Irrigation                                   | 8 days   | Mon 7/6/26  | Wed 7/15/26 |
| 332 | Plant large Trees                            | 5 days   | Thu 7/16/26 | Wed 7/22/26 |
| 333 | Shrubs/Grass                                 | 7 days   | Thu 7/23/26 | Fri 7/31/26 |
| 334 | Inspections/Signoffs                         | 50 days  | Mon 6/29/26 | Fri 9/4/26  |
| 335 | C&C Inspections - Civil/Plumbing/ Elec./Bldg | 20 days  | Mon 6/29/26 | Fri 7/24/26 |
| 336 | Fire Marshal Inspection/Test                 | 10 days  | Mon 8/3/26  | Fri 8/14/26 |
| 337 | Elevator Inspection                          | 2 days   | Thu 7/30/26 | Fri 7/31/26 |
| 338 | RCT  | 10 days  | Mon 8/17/26 | Fri 8/28/26 |
| 339 | Final Bldg Inspection Signoff                | 4 days   | Mon 8/31/26 | Thu 9/3/26  |
| 340 | Owner Punch/Corrections                      | 30 days  | Mon 6/29/26 | Fri 8/7/26  |
| 341 | TCO  | 1 day    | Fri 9/4/26  | Fri 9/4/26  |



Project: HPHA 1A  
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|          |  |                 |  |                    |  |                       |  |                |  |                    |  |                 |  |
|----------|--|-----------------|--|--------------------|--|-----------------------|--|----------------|--|--------------------|--|-----------------|--|
| Task     |  | Milestone       |  | Inactive Task      |  | Manual Task           |  | Manual Summary |  | External Tasks     |  | Progress        |  |
| Split    |  | Summary         |  | Inactive Milestone |  | Duration-only         |  | Start-only     |  | External Milestone |  | Manual Progress |  |
| Critical |  | Project Summary |  | Inactive Summary   |  | Manual Summary Rollup |  | Finish-only    |  | Deadline           |  |                 |  |

**EXHIBIT D**  
**CONCEPT PLAN**

[attached]





**EXHIBIT E**  
**FINANCING PLAN**  
[attached]



**The proposed Financing Structure is as follows:**

| <b>Source</b>          | <b>Interim</b>        | <b>Permanent</b>      |
|------------------------|-----------------------|-----------------------|
| LIHTC Equity           | \$ 7,283,259          | \$ 72,832,593         |
| HMMF Bond*             | 85,152,621            | 16,020,236            |
| RHRF Loan              | 56,995,573            | 67,860,277            |
| Deferred Developer Fee | 14,000,000            | 7,500,000             |
| Other Deferred Costs   | 781,653               | –                     |
| <b>Total</b>           | <b>\$ 164,213,106</b> | <b>\$ 164,213,106</b> |

*\*Original requested HMMF amount of \$88,690,614 was adjusted by staff to \$85,152,621 to reduce the 50% test cushion to 5.55%*

**The updated proposed Use of Funds is as follows:**

| <b>Budget/Cost Item</b>                | <b>Amount</b>         | <b>Cost/sf</b> | <b>Total Cost %</b> |
|--|-----------------------|----------------|---------------------|
| Acquisition                            | \$ –                  | \$ –           | 0.00                |
| Construction - Site Work               | 7,000,000             | 30.97          | 4.26%               |
| Construction - Vertical/Rehabilitation | 91,169,295            | 403.35         | 55.52%              |
| Construction - Contractor Profit       | 13,692,322            | 60.58          | 8.34%               |
| Interim and Soft Costs                 | 12,386,735            | 54.80          | 7.54%               |
| Financing and Syndication Costs        | 15,572,794            | 68.90          | 9.48%               |
| Developer's Fee                        | 14,000,000            | 61.94          | 8.53%               |
| Developers Overhead and Other          | 1,000,000             | 4.42           | 0.61%               |
| Project Reserves                       | 781,653               | 3.46           | 0.48%               |
| Contingency                            | 8,610,307             | 38.09          | 5.24%               |
| <b>Total</b>                           | <b>\$ 164,213,106</b> | <b>726.51</b>  | <b>100.00%</b>      |

**EXHIBIT E-1**

**DEFINITION OF NET CASH FLOW**

[attached]

# School Street Apts Phase 1A

Cash Flow Waterfall (draft, subject to HPHA approval)

3/21/2024

|                              |
|------------------------------|
| <b>Proposed CF Waterfall</b> |
|------------------------------|

- 1) To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP
  - 2) To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)
  - 3) To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis
  - 4) To replenish the Operating Reserve up to original balance
  - 5) To repay the Deferred Developer Fee until paid in full
  - 6) To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)
  - 7) To repay any GP or Developer Loans
  - 8) Of the remaining balance:
    - a) 75% to repay the RHRF Loan until paid in full, and then
    - b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease
  - 9) Of the remaining balance:
    - (i) 45% to the GP as Incentive Management Fee
    - (ii) 45% to pay the current and accrued Base Rent due on the Ground Lease
  - 10) Of the remaining balance:
    - (i) 0.01% to the GP 0.0100%
    - (ii) 0.001% to the Special LP 0.0010%
    - (iii) 1% to the State LP 1.0000%
    - (iv) 98.989% to the Federal LP 98.9890%
- 100.0000%

**EXHIBIT F**  
**GROUND LEASE**

[attached]

**HPHA GROUND LEASE AGREEMENT**

**HPHA School Street Redevelopment Project  
(Phase 1A)**

**LANDLORD:**

Hawaii Public Housing Authority,  
a public body corporate and politic, organized under the laws of the State of Hawaii

**TENANT:**

School Street I, LP,  
a Hawaii limited partnership

as of [insert date of closing]

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**HPHA GROUND LEASE  
BETWEEN THE HAWAII PUBLIC HOUSING AUTHORITY  
AND  
SCHOOL STREET I, LP**

**BASIC LEASE INFORMATION**

**DATE:** AS OF [insert date of closing]

**LANDLORD:** HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic, organized under the laws of the State of Hawaii

**TENANT:** SCHOOL STREET I, LP, a Hawaii limited partnership

**PREMISES:** CERTAIN PREMISES SITUATED IN THE CITY AND COUNTY OF HONOLULU, STATE OF HAWAII, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A"

**ANNUAL BASE RENT:** \$[insert based on appraisal], increasing annually at the rate of \_\_\_\_ percent (\_\_.00%)

**COMMENCEMENT DATE:** [insert date of closing]

**TERM:** 65 years

**LANDLORD'S ADDRESS FOR NOTICES:** Hawaii Public Housing Authority  
1002 N School Street  
Honolulu, Hawaii 96817

**TENANT'S ADDRESS FOR NOTICES:** C/O HIGHRIDGE COSTA DEVELOPMENT COMPANY, LLC  
330 W. VICTORIA STREET  
GARDENA, CA 98445

WITH A COPY TO:

C/O RBC COMMUNITY INVESTMENTS, LLC  
600 SUPERIOR AVENUE  
SUITE 2300  
CLEVELAND, OHIO 44114  
ATTENTION: PRESIDENT AND GENERAL COUNSEL

WITH A COPY TO:

BOCARSLY EMDEN COWAN ESMAIL & ARNDT LLP  
633 WEST FIFTH STREET, SUITE 5880  
LOS ANGELES, CALIFORNIA 90071  
ATTENTION: KYLE ARNDT, ESQ.  
FACSIMILE NO.: (213) 559-0733

The Basic Lease Information is part of the Lease; however, if any of the Basic Lease Information contradicts any provision of the Lease, the provisions of the Lease will prevail.

## HPHA GROUND LEASE AGREEMENT

THIS HPHA GROUND LEASE AGREEMENT (the “Lease”) effective as of \_\_\_\_\_, \_\_\_\_\_ is by and between the HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic organized and existing pursuant to Chapter 356D of the Hawaii Revised Statutes, with a principal place of operation located at 1102 N School Street, Honolulu, HI 96817 (“Landlord”), and SCHOOL STREET I, LP, a Hawaii limited partnership, with a principal place of business located at 330 W. Victoria Street, Gardena, CA 98445 (“Tenant”).

### **ARTICLE 1- RECITALS**

Landlord is the fee simple owner of the land consisting of 83,451 square feet, located at 1002 North School Street, in the City and County of Honolulu, and State of Hawaii, identified as Tax Map Key No. (1) 1-6-009-012 as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Demised Premises”).

Landlord selected Retirement Housing Foundation, a California nonprofit corporation (“RHF”) to undertake the redevelopment of the School Street Redevelopment Project (the “Redevelopment”). Landlord and RHF’s affiliate, RHF Foundation, Inc. (“RHFFI”) entered into that certain Master Development Agreement, effective on or about November 15, 2019 (“Master Development Agreement”), which Master Development Agreement was assigned to HCDC School Street LLC, a Hawaii limited liability company (“HCDC”), an experienced developer of affordable housing projects on January 11, 2024 pursuant to an Assignment and Assumption of Master Development Agreement. Tenant is an affiliate of HCDC.

Phase 1A of the Redevelopment will consist of two hundred fifty (250) residential rental units all as more particularly described and set forth in the Plans and Specifications.

Tenant wishes to ground lease from Landlord, pursuant to this Lease, the Demised Premises, on which Tenant will construct Phase 1A of the Redevelopment.

NOW, THEREFORE, in consideration of these presents, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby enter into this Lease on the terms and conditions set forth herein.

### **ARTICLE 2- DEFINITIONS**

Capitalized terms used in this Lease and not otherwise defined shall have the meanings referred to below.

“Additional Rent” - See Section 18.1.

“AFR”- shall mean the long-term applicable federal rate pursuant to U.S. Internal Revenue Code Section 1274(d) in effect as of the date hereof.

“Assignment of Leases and Rents” - shall mean such assignments of leases and rent executed by the Tenant in favor of any Leasehold Mortgagee, whether the assignment is made in a document titled an “assignment of leases and rents” is contained within a mortgage.

“Base Rent” - See Section 7.1.

“City” - See Section 4.1.

“Commencement Date” - See Basic Lease Information.

“Completion Date” - shall mean [insert date at closing].

“Compliance Period” - shall mean the compliance period as defined in Internal Revenue Code Section 42(i)(1).

“Conversion Date” - shall mean the date upon which the Tenant converts from construction to permanent financing.

“Controlling Interest” - See Section 12.4.

“Demised Premises” - See Article 1.

“Environmental Laws” - See Exhibit C.

“Environmental Report” - See Section 5.1(g) and Exhibit E.

“Event of Default” - See Section 18.2.

“First Leasehold Mortgagee” - shall mean the first leasehold mortgagee during construction and prior to the conversion to permanent financing is First Hawaiian Bank and after conversion to permanent financing the first leasehold mortgagee shall be Citicorp USA, Inc.

“Governmental Authorities” - See Section 4.2.

“Hazardous Materials” - See Exhibit C.

“HPHA Affordability Requirement” - means the Landlord’s requirement as a condition for entering into this Lease that the Premises are used to provide residential housing for households at or below sixty percent (60%) of the U.S. Department of Housing and Urban Development area median income for the City, adjusted for household size (except for the manager’s unit).

“Improvements” - means all buildings, structures and other permanent improvements now or hereafter erected on, over or under the Demised Premises, including all walkway and road improvements, parking areas and facilities, landscaping improvements of whatever nature, utility and sewage lines (to the extent of Tenant’s interest therein) and the appurtenances to all of the foregoing.

“Investor Member” or “Investor Limited Partner(s)” - shall mean the Tax Credit Investor(s), in its capacity as the investor member or partner(s) of tenant, and its successors and assigns.

“Landlord” - See Preamble.

“Lease” - See Preamble.

“Lease Year” - shall mean a calendar year.

“Leasehold Mortgage(s)” - shall mean a mortgage, or other security instrument (a) that encumbers the Leasehold Estate or any interest in the Leasehold Estate; (b) a copy of which is promptly after execution delivered to Landlord and recorded in the Bureau of Conveyances of the State of Hawaii, with a certification by Leasehold Mortgagee that the copy is accurate and stating Leasehold Mortgagee’s name and Notice address; and (c) that is held by a Leasehold Mortgagee subject to the jurisdiction of the courts of the State of Hawai`i.

“Leasehold Mortgagee(s)” - shall mean a holder of a Leasehold Mortgage and its successor and assigns, provided that: (a) it is not an affiliate of Tenant; and (b) Landlord has received notice of its name and address and a copy of its Leasehold Mortgage.

“LIHTC” - shall mean Low Income Housing Tax Credits as provided in Section 42 of the Internal Revenue Code, as amended, or under State law.

“Limited Partnership Agreement” - shall mean that certain Amended and Restated Limited Partnership Agreement of Tenant of substantially even date herewith.

“Management Agent” - shall mean the management agent selected by Tenant and approved by Landlord, and its successors and assigns, which shall select the Property Manager to manage the Premises. The initial Management Agent shall be, and Landlord hereby approves, HCHP Property Management, LP, a California limited partnership (which shall have subcontracted management duties to Michaels Management-Affordable, LLC).

“Operating Expenses” - See Section 8.2

“Permitted Encumbrances - shall mean all mortgages, easements and other encumbrances permitted to exist with regard to the title to the Property, as set forth on Exhibit F, attached hereto and incorporated herein by this reference, or as otherwise jointly agreed to by Landlord and Tenant.

“Plans and Specifications” - shall mean all those plans and specifications for the Improvements to be constructed on the Demised Premises and all associated work, as approved by the Landlord.

“Premises” - shall mean the Demised Premises and the Improvements.

“Property Manager” - shall mean the property manager selected by the Management Agent and approved by Landlord, and its successors and assigns. The initial Property Manager shall be, and Landlord hereby approves, Michaels Management-Affordable, LLC, a New Jersey limited liability company.

“Regulatory Default” - See Article 18.4(a).

“Rent” - shall mean, collectively, Base Rent and Additional Rent.

“State” shall mean the State of Hawaii.

“Tax Credit Investor(s)” - shall mean RBC Community Investments, LLC, an Illinois limited liability company, and its permitted successors and/or assigns (the “Limited Partner”), RBC Community Investments Manager II, Inc., a Delaware corporation, and its permitted successors and/or assigns (the “Special Limited Partner”) and RBC Community Investments, LLC, an Illinois limited liability company, and its permitted successors and/or assigns (the “State Limited Partner”).

“Tax Credit Requirements” - shall mean any and all matters required by Section 42, the Hawaii Housing Finance and Development Corporation (HHFDC) or any agreement with a condition of receipt of tax credits, whether or not such requirement is explicitly stated in Section 42, regulations thereunder, or HHFDC requirements.

“Tax Credit Units” - See Section 4.1

“Tenant”- See Preamble

“Term” - See Section 6.1

“Transfer” - See Section 12.1

### **ARTICLE 3- DEMISE OF LEASEHOLD INTEREST**

**Section 3.1 Lease to Tenant.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Demised Premises, upon the terms and conditions stated herein. The Demised Premises are leased (a) subject only to (i) any state of facts an accurate survey of the Premises would show, (ii) any state of facts a personal inspection would show, (iii) Permitted Encumbrances, (iv) present and future zoning laws, ordinances, resolutions and regulations of any governmental authority and all present and future ordinances, statutes, laws, regulations and orders of all boards, bureaus, departments, agencies, commissions and bodies of any municipal, county, state or federal sovereign, (v) the effect of all present and future municipal, state or federal laws, orders and regulations relating to the Tenant, sub-tenants or occupants of the Demised Premises; and (b) with the right to pass and repass over all permitted existing and future ways and public areas located on, in or appurtenant to the Demised Premises and/or shown on the ALTA/ACSM Land Title Survey Subdivision Map set forth in Exhibit A, and the right to use such other portions of the Demised Premises and all utilities and service conduits and facilities thereon to facilitate the construction of the Improvements pursuant to the Plans and Specifications.

Section 3.2 Services by Landlord. Except as otherwise provided herein, it is expressly agreed that Landlord is not and shall not be required under this Lease to render any services of any kind to Tenant. Nothing herein shall modify the terms of any separate agreement between Tenant and Landlord.

Section 3.3 Quiet Enjoyment. Tenant, upon paying the rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease, including Permitted Exceptions.

## **ARTICLE 4- IMPROVEMENTS**

Section 4.1 Improvements to be Constructed. Tenant shall construct the Improvements or cause the Improvements to be constructed on the Demised Premises, at its sole expense no later than the Completion Date. Upon completion, the Improvements shall, subject to a Force Majeure Event, include a total of two hundred fifty (250) housing units (which includes one manager's unit not subject to income restrictions), which shall be available for rental solely for (a) the period required by the Tax Credit Requirements to households with incomes at or below sixty percent (60%) of the area median income (the "Tax Credit Units") at initial occupancy and (b) the term of this Lease households with incomes at or below sixty percent (60%) of area median income at initial occupancy ("HPHA Affordability Requirement"). Tenant shall take no action to effectuate any material amendments, modifications or any other material alterations to the Plans and Specifications without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

Section 4.1 Compliance with Laws. The Improvements shall be constructed in good and workmanlike manner and in conformance with all applicable laws, ordinances, codes, orders, rules and regulations of all governmental authorities, agencies or departments having jurisdiction over the Improvements (collectively, "Governmental Authorities"), including, insofar as applicable, Landlord, the United States Government, the State, and City and County of Honolulu (the "City").

Section 4.2 Approvals, Permits and Licenses. Tenant shall apply for, assume all costs of and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use, utility easements, operation and occupancy of the Improvements, all in accordance with the Plans and Specifications. Landlord agrees to cooperate with and publicly support Tenant's efforts to obtain such permits and licenses that are substantially in accordance with the Plans and Specifications. If required, Landlord shall consent and allow Tenant to apply for and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use, operation, and occupation of the Improvements, in the name of Landlord, at Tenant's sole cost and expense.

Section 4.3 Ownership of Improvements. Landlord and Tenant acknowledge and agree that during the entire Term, Tenant shall be the owner of the Improvements, and as such, Tenant shall be entitled to all depreciation deductions and low-income housing tax credits or other benefits for income tax purposes relating to the Improvements. At the expiration of the Term or other

termination of this Lease, ownership of the Improvements shall, at the option of the Landlord, remain and become the property of the Landlord.

Section 4.4 Public Improvements. The Demised Premises are currently serviced by School Street which is a public street owned by the City.

## **ARTICLE 5- REPRESENTATIONS AND WARRANTIES**

Section 5.1 Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that:

- (a) Landlord owns fee simple good and marketable title to the Demised Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for the Permitted Encumbrances and the title exceptions listed in Exhibit F-1.
- (b) Landlord has full right, power and authority to make, execute, deliver, and perform its obligations under this Lease. Landlord has obtained all required and necessary consents and approvals to enter into this Lease with Tenant. The entry by Landlord into this Lease with Tenant and the performance of all of the terms, provisions, and conditions contained herein does not and will not violate or cause a breach or default under any agreement or obligation to which Landlord is a party or by which it is bound.
- (c) There are no unpaid special assessments of which Landlord has received notice, or of which Landlord is otherwise aware for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Demised Premises.
- (d) Except for the Purchase Option and Right of First Refusal executed on substantially even date herewith, Landlord is not obligated under any contract, lease, or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Demised Premises.
- (e) Except as disclosed to Tenant in writing, to the best of Landlord's knowledge, there is no action, suit, litigation, or proceeding pending or, to Landlord's knowledge, threatened against Landlord which could prevent or impair Landlord's entry into this Lease and/or performance of its obligations hereunder.
- (f) The person signing this Lease on behalf of Landlord is duly and validly authorized to do so.
- (g) Except as may be referenced in those environmental reports referenced at Exhibit E hereto (the "Environmental Report"), to the best of Landlord's information, knowledge and belief, there are no Hazardous Materials or



underground storage tanks located in, on or under the Premises. Except as may be referenced in the Environmental Report, to the best of Landlord's information, knowledge and belief, no notice from any governmental authority or any person has ever been issued to Landlord, its agents or employees, claiming any violation of any Environmental Law with respect to the Premises.

**Section 5.2** **Tenant's Representations and Warranties.** Tenant hereby warrants and represents to Landlord that:

- (a) Tenant is a duly organized, lawfully existing limited partnership and is in good standing under the laws of the State.
- (b) Tenant has the full right, power and authority to make, execute, deliver and perform its obligations under this Lease.
- (c) Tenant's execution and delivery of this Lease has been authorized by all requisite action on the part of Tenant and its general partner, and the execution and delivery of this Lease by Tenant and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.
- (d) There is no action, suit, litigation, or proceeding pending or, to Tenant's knowledge, threatened against Tenant or any Tenant affiliate which could prevent or impair Tenant's entry into this Lease and/or the full and complete performance of its obligations hereunder.
- (e) The person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

## **ARTICLE 6- TERM**

**Section 6.1** **Term of Lease.** The term of this Lease shall be, unless sooner terminated in accordance with the provisions hereof, for a period of time commencing upon the Commencement Date and ending on [fill in 65 years from date of closing], 2089 (the "**Term**").

## **ARTICLE 7- PAYMENTS BY TENANT**

**Section 7.1** **Base Rent**<sup>1</sup>. As consideration for this Lease and the use of the Demised Premises, the Tenant shall pay to the Landlord the Base Rent, as set forth in this Section 7.1. The term "**Base Rent**" shall mean the annual rent payment due from the Tenant to the Landlord on June 1 of each year of the Term beginning the Lease Year after the date of Conversion Date. The Base Rent shall be (i) in the initial amount of [insert based on appraisal] (\$\_\_\_\_\_), increasing annually at the rate of two percent (2.00%), beginning the Lease Year after the Conversion Date and continuing for \_\_\_\_\_(\_\_\_\_) years and continuing for the remainder of the Term. Notwithstanding

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<sup>1</sup> Base rent amount to be determined by an appraisal. We expect to finalize this section by the HPHA board meeting on April 4, 2024.

the foregoing, prior to [May 1, 2089]<sup>2</sup>, such Base Rent shall be due and payable only to the extent of Net Cash Flow (as defined in Exhibit G) available annually for such purposes pursuant to the priority described in Exhibit G attached hereto. Any Base Rent for which the Parties have agreed there is not sufficient Cash Flow in any given year shall be deferred to the following year, and shall be paid from subsequent years' Cash Flow (in the same priority) until paid in full and shall bear interest at the AFR. All accrued and unpaid Base Rent plus interest (“Accrued Base Rent”), shall be due and payable in full by the Tenant on the earlier of (a) a sale of the Project and (b) [May 20\_\_\_] [and, thereafter, the Base Rent shall be paid currently.] The Landlord and Tenant acknowledge and agree that the Base Rent provided herein constitutes fair market rent for the right to use the Demised Premises and agree to account for payment thereof as an expense for tax and accounting purposes.

Section 7.2    Reserved.

Section 7.3    Payments by Tenant. Unless otherwise expressly set forth in this Lease, all costs, expenses, liabilities, charges, or other deductions whatsoever with respect to the Demised Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, or occupation of the Demised Premises or the Improvements or both, or with respect to any interest of Landlord in the Demised Premises or this Lease, shall be the responsibility of and paid by Tenant.

**ARTICLE 8- TAXES: OPERATING EXPENSES**

Section 8.1    Taxes. Tenant shall pay any and all real property taxes which are assessed against the Premises by any taxing authority and any payments required by any cooperation agreement providing for payments in lieu of taxes which now exist or at any time in the future may be entered into by Tenant with the City or other taxing authorities. Landlord shall pay all other local, state, or federal taxes assessed against Landlord, if any; local, state, or federal capital levy of Landlord, if any; or sales, excise, franchise, gift, estate, succession, inheritance taxes, of Landlord, if any.

Section 8.2    Property Operating Expenses. Tenant shall pay or cause to be paid all costs and expenses attributable to or incurred in connection with the operation, maintenance, and repair of the Demised Premises and the Improvements (collectively, “Operating Expenses”).

Section 8.3    Adjustments. Rents and other revenues, taxes and Operating Expenses, payable with respect to the Premises for the month in which the Commencement Date occurs shall be prorated as of the Commencement Date. Rents and other charges which at the Commencement Date are past due shall not be prorated and Tenant shall retain those amounts, as and when collected by Tenant. The right to receive and collect all rents and profits, delinquent or otherwise, shall be transferred to Tenant as of the Commencement Date.

All other income and Operating Expenses of the Premises, including, without limitation, public utility charges, maintenance, management, and other service charges, and all other normal operating charges shall be prorated as of the Commencement Date based upon the best available information. The obligation of the parties to adjust, Post-Commencement Date, operating

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<sup>2</sup> Subject to refinement based on appraisal. Year to be specified by the HPHA board meeting on April 4, 2024.

expenses as of the closing date, to the extent unknown or not provided for at the execution of this Lease, shall be paid by the party responsible therefor within thirty (30) days after written demand has been made. Such demand shall include a copy of the invoice(s) for which payment or reimbursement is sought.

## ARTICLE 9- INSURANCE

### Section 9.1 Tenant's Insurance.

- (a) Tenant agrees, at its sole expense, to procure and maintain at all times during the term of this Lease the types of insurance specified in Exhibit B hereto, and on the terms specified below, in order to protect Landlord from the liability arising from the negligence of the Tenant, its officers, subcontractors, joint venture, members, partners, agents or employees. The insurance carriers used by Tenant must be authorized to conduct business in the State of Hawaii and shall have a BEST Rating of not less than an "A-" except where noted. The insurance provided shall cover all operations under this Lease, whether performed by Tenant, its agents, or by its subcontractors. In the event of the failure or insolvency of any insurer of Tenant which results in the failure of such insurer to pay for a claim that would otherwise be covered under Tenant's policy of insurance with the same, Tenant shall indemnify and hold Landlord harmless from and against any and all claims, suits, liability and damages which might result therefrom, including but not limited to attorneys' fees and the costs of defending the same.
- (b) Certificates of Insurance. Prior to Closing, Tenant and its subcontractors shall furnish Landlord with satisfactory evidence (subject to approval of Landlord) that Tenant and its subcontractors have the insurance coverage set forth in Exhibit B, and which shall name Landlord and the State of Hawaii as additional named insureds. Tenant will immediately provide written notice to the Landlord should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope or not renewed upon expiration.
- (c) All insurance policies shall contain the following clauses:
  - (i) "The State of Hawaii, the HPHA, its elected and appointed officials, officers, and employees are added as additional insured with respect to operations performed on the Demised Premises."
  - (ii) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

Tenant shall advise all insurers of the contract provisions regarding insurance and other requirements of this Lease. The failure of Tenant to

notify insurers of the contract provisions shall not relieve Tenant from its insurance obligations under this Lease. Nonfulfillment of the insurance provisions shall constitute a breach of this Lease and the Landlord retains the right to stop work until satisfactory evidence of insurance is provided.

- (d) Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Landlord prior to expiration of insurance coverage. At the Landlord's option, following non-compliance and reasonable opportunity to cure (but no less than fifteen (15) days) the Landlord may purchase insurance on behalf of Tenant and will charge back all costs to Tenant. The receipt of any certificate does not constitute agreement by the Landlord that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Lease. The Tenant shall provide thirty (30) days written notice to be given to Landlord in the event coverage is to be substantially changed, canceled or non-renewed.
- (e) If any of the required insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincident with the date of this Lease and the Certificate of Insurance shall state the coverage is "claims made" and also the Retroactive Date. Tenant shall maintain coverage for the duration of this Lease. Any extended reporting period premium (tail coverage) shall be paid by Tenant.
- (f) Not less than annually, Tenant shall provide to Landlord certificate of insurance naming Landlord as an additional insured, and a certified copy of the insurance policies obtained pursuant hereto. It is further agreed that Tenant shall provide Landlord thirty (30) days prior written notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the Retroactive Date, cancellation and/or non-renewal.
- (g) Tenant shall require all subcontractors to carry the insurance required herein or Tenant may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in this Section 9.1. Evidence of such coverage must be submitted to Landlord not later than fifteen (15) days prior to the date on which such subcontractor is to begin work on the Demised Premises.
- (h) Tenant expressly understands and agrees that any insurance or self-insurance programs maintained by Landlord shall be only for the benefit of Landlord and shall apply in excess of and will not contribute with insurance provided by Tenant under this Lease.

Section 9.2 Waiver of Insured Claims. Each of Landlord and Tenant hereby waives right of recovery against the other for loss or injury against which the waiving party is protected by insurance, but only to the extent of such insurance.

**ARTICLE 10- USE OF DEMISED PREMISES: COVENANTS RUNNING WITH THE LAND**

Section 10.1 Permitted Use. Tenant will cause the Demised Premises to be used as residential rental housing consistent with the HPHA Affordability Requirement and in the manner permitted by any and all documents including modifications, renewals, or replacements required by the Tax Credit Requirements including the Extended Low-Income Housing Commitment of substantially even date herewith, which is recorded on the land records of the State, to which reference may be had. Such covenants contained herein are intended to create covenants running with the land and shall also be binding upon Tenant's successors and assigns, including any entity which succeeds to Tenant's interest in the Demised Premises by foreclosure or an instrument in lieu of foreclosure, so long as such covenant remains in effect.

Section 10.2 Compliance with Laws. Tenant shall not use or occupy or suffer or permit any portion of the Premises to be used or occupied in violation of any law, ordinance, order, rule, regulation, certificate of occupancy, or other governmental requirements. Tenant shall comply with applicable laws and all rules, orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any other similar body having jurisdiction over the Premises.

**ARTICLE 11- ENVIRONMENTAL COVENANTS AND INDEMNITIES**

Section 11.1 Tenant's Environmental Covenants. Without limiting any of Tenant's other covenants, agreements and obligations set forth in this Lease, Tenant hereby specifically covenants and agrees to fulfill the obligations set forth below with respect to environmental matters:

- (a) Tenant shall comply with all applicable Environmental Laws (as defined in Exhibit C) applicable to Tenant's use of the Premises. All required governmental permits and licenses issued to Tenant and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Tenant shall comply therewith. All Hazardous Materials present, handled or generated or used by Tenant on the Premises which are removed from the Premises by Tenant shall be transported and disposed of in a lawful manner.
- (b) Tenant shall provide Landlord with copies of all forms, notices and other information received by or on behalf of Tenant concerning any releases, spills or other incidents relating to Hazardous Materials or any violations of Environmental Laws at or relating to the Premises when and as supplied to any government agency.
- (c) Tenant shall not itself, and Tenant shall not permit any other person, including third parties with whom Tenant contracts in regard to this Lease, to bring onto the Premises any Hazardous Materials (other than quantities

or such substances, including gasoline, diesel fuel and the like as are customary and necessary to prosecute construction of the Improvements, and any repair, maintenance or replacement thereof). Tenant shall be responsible for proper removal and lawful disposal, at its sole cost and expense, any Hazardous Materials brought onto the Premises by Tenant, its agents, contractors, subcontractors, servants, employees, or invitees, resulting from a default under this Section and shall be responsible for all costs and expenses associated with the remediation of any such Hazardous Materials on the Premises.

- (d) In the event that Tenant or any contractor or subcontractor encounters any Hazardous Materials on the Premises, Tenant shall immediately notify Landlord in writing and comply with all laws, ordinances, regulations and orders of all governmental, regulatory and other public and quasi-public agencies, authorities and entities having jurisdiction over the same with respect thereto.

Section 11.2 Landlord's Environmental Covenants. Without limitation of any of Landlord's other covenants, agreements and obligations under this Lease, Landlord hereby specifically covenants and agrees to fulfill the responsibilities set forth below with respect to environmental matters:

- (a) Landlord shall not be liable for any Hazardous Materials on the Premises unless the Landlord or its agents, contractors or employees bring such Hazardous Materials on to the Premises after the Commencement Date, or the Landlord had actual knowledge of such Hazardous Materials and failed to disclose the same to Tenant in writing before the Commencement Date, or such Hazardous Materials are brought onto the Premises by the Landlord or any of its agents, contractors or employees after the Commencement Date.
- (b) Landlord shall comply with all Environmental Laws applicable to Landlord relative to the Premises. All required governmental permits and licenses issued to Landlord and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Landlord shall comply therewith.
- (c) Landlord shall provide Tenant with copies of all forms, notices and other information received by or on behalf of Landlord concerning any releases, spills or other incidents relating to Hazardous Materials or any violations of Environmental Laws at or relating to the Premises when and as supplied by any governmental agency.
- (d) Without limiting any responsibilities of the Landlord and Tenant under this Lease, to the extent there are any unforeseen remediation costs with respect

to the Premises, Landlord will work in good faith with the Tenant to identify third-party funding sources to pay for such unforeseen remediation costs.

Section 11.3 Tenant's Environmental Indemnity Tenant covenants and agrees to and shall indemnify, defend, and hold Landlord free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses (including attorneys' fees and expenses) which may at any time be imposed upon, reasonably incurred by or asserted or awarded against Landlord in connection with or arising from:

- (a) any Hazardous Materials which are first placed on, in, or under all or any portion of the Premises by Tenant, its agents, contractors, subcontractors, servants, employees, or invitees during the period defined herein as the Term; or
- (b) any violation of any Environmental Laws by Tenant, or its employees, agents, contractors or subcontractors at or relating to the Premises.
- (c) Tenant shall indemnify and hold harmless Landlord, its officers, employees, agents, contractors, and directors from all claims, actions, demands, costs, expenses and attorneys' fees arising out of, attributable to or otherwise occasioned, in whole or in part, by an act or omission of Tenant or its agents, contractors, subcontractors, servants, employees, or invitees, which shall constitute a breach of the Tenant's obligations under this Lease. If any party performing work for the Tenant on the Premises shall assert any claim against the Landlord on account of any damage alleged to have been caused by reason of the negligent acts or intentional misconduct of the Tenant, its agents, servants, employees, invitees or contractors (including, without limitation, its construction contractor), Tenant shall defend at its own expense any suit based upon such claim, and if any judgment or claim against Landlord shall be allowed, Tenant shall immediately pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith. The obligations, indemnities, and liabilities of Tenant under this Section 11.3 shall not extend to any liability caused by (i) the negligence or willful misconduct of Landlord, or its employees, contractors or agents, (ii) Hazardous Materials with respect to which the Landlord had actual knowledge but did not disclose in writing to Tenant or (iii) pre-existing conditions existing prior to the Effective Date and discovered after the Effective Date and not previously disclosed to the Tenant. Tenant's liability hereunder shall not be limited to any provisions or limits of insurance set forth in this Lease. Tenant shall not be liable for any claims that result from the action or inaction of Landlord or its contractors, agents or employees with respect to their obligations under this Lease.

Section 11.4 Intentionally Omitted.

Section 11.5 Survival. The agreements, representations and warranties of Landlord and Tenant respectively in this Article 11 shall survive the expiration or early termination of this Lease.

## **ARTICLE 12- ASSIGNMENTS AND TRANSFERS**

Section 12.1 Consent Required. Except as expressly provided herein, Tenant shall not, without the prior written consent of Landlord, assign, transfer or otherwise convey this Lease or any interest herein or in the Premises or the Improvements (a “Transfer”), except insofar as permitted by, and subject to the terms and conditions of, applicable laws and regulations. Any attempted assignment by Tenant without such consents, except for a transfer to Landlord, shall be null and void without further action required by Landlord. Subleases of the residential units in the Improvements to residential is permitted.

Section 12.2 Subsequent Assignment. In cases where Landlord’s consent is required, Landlord’s consent to one Transfer shall not be construed as a waiver of the requirement of its consent to any subsequent assignment.

Section 12.3 Request for Consent. If Tenant requests Landlord’s consent to a specific Transfer, Tenant shall provide to Landlord such information as may reasonably be required by Landlord.

Section 12.4 Transfer by Tenant. It shall be deemed to be a Transfer requiring the approvals set forth in Section 12.1 above in the event of any attempt by Tenant to (a) demolish all or any material portion of the Improvements, or (b) make or permit any voluntary or involuntary, total or partial, sale, lease, assignment, conveyance, mortgage, pledge, hypothecation, encumbrance, or other transfer of any portion or all of the Demised Premises without the prior written consent of Landlord, which Landlord consent shall not be unreasonably conditioned, withheld or delayed. Notwithstanding anything in this Lease to the contrary, by its execution of this Lease, Landlord shall be deemed to have consented to (i) a lease of any unit in the Premises, (ii) the execution, delivery and recordation of the Leasehold Mortgages, and the liens created thereby, (iii) the transfer of Tenant’s leasehold interest in the Demised Premises and fee ownership interest in the Improvements by foreclosure or deed or assignment in lieu thereof (or any leasehold equivalent thereof) pursuant to a mortgage of the Premises that has been approved by Landlord (including the Leasehold Mortgages), and (iv) normal uses associated with the construction and operation of the Premises including but not limited to utility easements.

No transfer, conveyance, or assignment shall be made, without the prior written approval of the Landlord, of (i) any interest of a general partner, managing member or controlling stockholder (any such interest being referred to as a “Controlling Interest”) in Tenant, or (ii) a Controlling Interest in any entity which has a Controlling Interest in Tenant. Tenant may sell its interest in this Agreement to a general partner pursuant to the Option to Purchase Agreement between the Tenant and the Tenant’s general partner (the “GP Purchase Option Agreement”) or otherwise and Tenant may affect transfers that are expressly authorized by the Tenant’s Partnership Agreement, including without limitation, the removal of the general partner of Tenant for cause and the replacement thereof with a substitute general partner selected by the Tax Credit Investor or an affiliate thereof. The execution and delivery of the GP Purchase Option Agreement shall not constitute a default under this Lease. Transfers of the Tax Credit Investor’s interest in Tenant or



of interests in the Tax Credit Investor shall not be restricted by this Lease. For purposes of this Lease, “Non-Controlling Interest” means limited partnership or non-managing member interests in the Tenant and/or interests in the Tax Credit Investor.

Notwithstanding the foregoing, Landlord consent is not required for the transfer of (a) any interest in Tenant to an Affiliate of the General Partner, or (b) any Non-Controlling Interest (in the Tenant (regardless of whether payment in full of all equity contributions has been made to Tenant) provided that the Tenant: (i) provides the Landlord with prior written notice of such transfer (“Notice of Transfer – Non-Controlling Interest”) and (ii) certifies to the Landlord that the new partner, member or stockholder, as appropriate, remains obligated to fund its equity contribution in accordance with the terms of the Landlord-approved organizational documents of the Tenant. In addition, if the equity contributions have not been made to the Tenant in full, the Notice of Transfer – Non-Controlling Interest shall confirm that the transfer does not alter the obligation to contribute equity in accordance with the Limited Partnership Agreement.

Landlord will not unreasonably withhold, delay or condition a request by Tenant for consent to an internal reorganization of the corporate, company or partnership structure of Tenant or any members of Tenant, including the exercise by a partner of its right to remove the general partner and to designate a substitute general partner of tenant under the terms of Tenant’s Limited Partnership Agreement.

Notwithstanding the foregoing, the Landlord agrees that no prior approval is required for the exercise by the Investor or its affiliates of their rights to remove the general partner and to designate a substitute general partner of Tenant under the terms of the Tenant’s Limited Partnership Agreement, provided that the Landlord is given prior written notice of the default under the Limited Partnership Agreement and of the exercise of the removal and appointment right therein (the “Notice”).

The Landlord’s consent is not required for the pledge by the general partner of the Tenant to the Investor Limited Partner and Leasehold Mortgagees, and their successors and assigns, of the general partner’s interest in the Tenant, as security for the performance of all of the general partner’s obligations under the Limited Partnership Agreement and the approved mortgage loan (as and if applicable).

### **ARTICLE 13- LEASEHOLD FINANCING AND TAX CREDIT INVESTOR**

**Section 13.1 Right to Mortgage.** On or about even date herewith, Tenant has granted one or more mortgages of its interest in the Lease to lenders (each mortgage, a Leasehold Mortgage and together Leasehold Mortgages) and, in connection therewith, has collaterally assigned this Lease to such lenders. Future mortgages of the Premises shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In no event shall Landlord ever be required to execute any such mortgage or any note secured thereby or any other obligation securing any such note, or to subordinate Landlord’s fee interest in the Demised Premises or any portion thereof to the lien of any such mortgage. The Leasehold Mortgagee(s) as of the date hereof are listed on Exhibit D attached hereto and incorporated herein by this reference and each such Leasehold Mortgagee is entitled to the benefit of all protections

granted to Leasehold Mortgagees under this Lease. Landlord hereby consents to the Assignments of Leases and Rents to such Leasehold Mortgagees.

Section 13.2 Consent Required for Termination and Amendments.

- (a) No cancellation, termination, surrender or modification of this Lease by agreement between Landlord and Tenant, shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.
- (b) The right of the Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute may not be exercised by the Tenant without the prior written consent of the Leasehold Mortgagee.

Section 13.3 Default Notice. Landlord, upon providing Tenant with any notice of default under this Lease shall at the same time provide a copy of such notice to every Leasehold Mortgagee of whom it has knowledge pursuant to notice from Tenant or pursuant to Exhibit D. From and after the date on which such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall, have the same cure period as Tenant plus an additional sixty (60) days, and shall have the option (but not the obligation) to remedy any default or cause the same to be remedied, as is given Tenant. Landlord shall accept such payment or performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes any and each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose; nevertheless, the parties agree that such entry does not constitute possession of the Premises by a Leasehold Mortgagee. Further, as to any non-monetary default, Leasehold Mortgagee shall have one hundred eighty (180) days after receipt of such written notice from Landlord, and a reasonable time after the expiration of said one hundred eighty (180) days if it shall have commenced cure, foreclosure or other appropriate proceeding in the nature thereof within said one hundred eighty (180) day period and is diligently prosecuting the same, within which to endeavor to cure such default; and notwithstanding any other provision of this Lease, all rights of Landlord to terminate this Lease upon the default by Tenant are and shall continue to be at all times while Tenant is indebted to the Leasehold Mortgagee, subject to and conditioned upon Landlord's first having given Leasehold Mortgagee written notice of such default and Leasehold Mortgagee's failure to cure such default within the time and upon the conditions stated above after receiving such written notice of default.

The Tax Credit Investor shall be deemed a third-party beneficiary of the provisions of this Section 13.3 for the sole and exclusive purpose of entitling the Tax Credit Investor to exercise its rights to notice and cure, as expressly stated in this Section 13.3. The foregoing right of the Tax Credit Investor to be a third-party beneficiary under this Lease shall be the only right of the Tax Credit Investor (express or implied) to be a third-party beneficiary hereunder.

Section 13.4 Notice to Leasehold Mortgagee. Notwithstanding anything to the contrary contained herein, if any default or failure to provide required insurance shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease except in accordance with the provisions of Section 18.3 hereof and this Article 13.

Section 13.5 Assumption of Tenant's Obligations. For purposes of this Article 13, the making of a leasehold mortgage to a Leasehold Mortgagee shall not be deemed to constitute a Transfer of this Lease or Tenant's interest created hereby, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of Tenant's interests under this Lease so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder prior to such Leasehold Mortgagee's actual possession of the Premises, but a Leasehold Mortgagee may become the holder of Tenant's leasehold estate and fee ownership of the Improvements and succeed to Tenant's interest in this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, and any purchaser at any sale of Tenant's interest under this Lease in any proceeding for the foreclosure of any mortgage or the assignee or transferee of Tenant's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any mortgage shall be deemed to be an assignee or transferee approved by Landlord and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder, but only for so long as such purchaser or assignee is the owner of Tenant's interest in this Lease and Tenant's fee ownership interest in the Improvements.

Section 13.6 Non-curable Defaults. Nothing in this Article 13 shall require any Leasehold Mortgagee or its designee as a condition to the exercise of rights provided under this Article 13 to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee. The foregoing shall not be deemed to excuse a Leasehold Mortgagee from performing covenants relating to the condition of the Premises or other similar matters requiring access to and/or control of the Premises from and after such time as such Leasehold Mortgagee acquires Tenant's interest in this Lease and actual possession of the Premises by foreclosure or otherwise.

Section 13.7 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagee(s) shall otherwise expressly consent in writing, the fee title to the Demised Premises and the leasehold estate of Tenant therein shall not merge by operation of law but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by any single owner, other than by termination of this Lease by Landlord in compliance with the provisions of this Article 13.

Section 13.8 Landlord's Fee to Remain Unsubordinated. Landlord and Tenant expressly acknowledge and agree that Landlord shall have no obligation under this Lease or otherwise to subordinate the fee title of Landlord in the Demised Premises or any rights of Landlord in this Lease to the leasehold estate of Tenant created by this Lease or to join any such mortgage or encumbrance or otherwise in any manner that would subordinate the fee title of Landlord in and to the Demised Premises or the interest of Landlord under this Lease.

Section 13.9 Sale, Mortgage or Conveyance of Demised Premises. In the event of any sale, mortgage or conveyance of the fee interest in the Demised Premises by Landlord during the

Term hereof, any such sale or conveyance of all or any part of the fee interest in the Demised Premises shall be subject to this Lease and all of the provisions hereof.

Section 13.10 Notice to Tax Credit Investor. So long as any Tax Credit Investor is an Investor partner of Tenant, Landlord agrees, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to such Tax Credit Investor; provided that a failure on the part of Landlord to give such notice to such Tax Credit Investor at its address set forth in Section 19.10 hereof, shall not affect the validity and effectiveness of the notice to the Tenant. Each Tax Credit Investor will have the same cure period as Tenant, plus thirty (30) days after the giving of the notice aforesaid to such Tax Credit Investor for remedying the default or causing the same to be remedied as is given Tenant after notice to such Tax Credit Investor plus an additional thirty (30) days, and Landlord agrees to accept such performance on the part of such Tax Credit Investor as though the same had been done or performed by Tenant.

Section 13.11 Tax Credit Investor's Opportunity to Replace Tenant's General Partner. Landlord agrees that it will take no action to effect a termination of this Lease by reason of any Event of Default without first giving to each Tax Credit Investor named in Section 19.10 hereof or who has provided Landlord with written notice of such Tax Credit Investor's name and address, reasonable time, not to exceed sixty (60) days to replace Tenant's general partner and cause the new general partner to cure such default, provided, that (a) as a condition of such forbearance, the Landlord receives notice of the substitution of a new general partner of the Tenant within thirty (30) days following notice to the Tax Credit Investor, (b) the Tenant, following such substitution of general partner, shall thereupon proceed with due diligence to cure such Event of Default, and (c) if the Event of Default relates to the completion of construction of the Demised Premises or any part thereof or occupancy thereof, then the extended cure period shall be limited to the period, if any, prior to the date by which the Improvements or parts thereof must be placed in service in order to preserve LIHTCs for the Premises.

Section 13.12 Leasehold Mortgagee's Right to New Lease. In the event of the termination of this Lease prior to this Lease's expiration date (except pursuant to Article 17 hereof), whether due to rejection by Tenant or Tenant's trustee in a bankruptcy proceeding or otherwise, or the occurrence of an incurable Event of Default, Landlord agrees, provided the Event of Default has been cured by the entitled party pursuant to Sections 13.3 or 13.10 above, or Section 13.6 applies, that it will enter into a new lease of the Demised Premises with the curing Leasehold Mortgagee for a period equal to the remainder of the Term, effective as of the date of such termination, at the Base Rent and Additional Rent and upon the covenants, agreements, terms, provisions and limitations herein contained; provided, however, such Leasehold Mortgagee (a) makes written request upon Landlord for such new lease within sixty (60) days from the date of notice of such termination, and (b) pays or causes to be paid to Landlord at the time of the execution and delivery of such new lease any and all sums which at the time of the execution and delivery thereof be actually due under this Lease but for such termination, and pays or causes to be paid any and all expenses including actual and reasonable attorneys' fees, court costs and costs and disbursements incurred by Landlord in connection with the execution and delivery of such new lease. If Landlord receives more than one written request for a new lease in accordance with the provisions of this Section 13.12, then such new lease shall be entered pursuant to the request of the first lien leasehold mortgagee, and the rights hereunder of any leasehold mortgagee whose permitted mortgage is

subordinate to the first lienholder's permitted mortgage shall be subordinated in order of their respective recorded priority.

Any new lease made pursuant to this Section 13.12 shall be and remain an encumbrance on the fee title to the Demised Premises having the same priority thereon as this Lease, and shall without implied limitation be and remain prior to any mortgage or any lien, charge or encumbrance of the fee of the Demised Premises created by Landlord.

Section 13.13 No Personal Liability. No Leasehold Mortgagee, any successor or assignee thereof, or any purchaser at any sale of Tenant's interest under this Lease in any foreclosure proceeding shall ever have any liability under this Lease before it acquires record title to the Tenant's interest in the Lease and only so long as it holds record title.

Section 13.14 Priority of Leasehold Mortgages. If at any time there is more than one Leasehold Mortgage in existence, the following provisions shall govern: (a) the most senior Leasehold Mortgagee may at its option exercise all rights of a Leasehold Mortgagee to the exclusion of any junior Leasehold Mortgagees should there be a conflict between Leasehold Mortgagees as to the exercise of such rights; (b) if the most senior Leasehold Mortgagee declines to exercise the rights granted hereunder or otherwise allows, any other Leasehold Mortgagee may exercise the rights, in order of priority. Any dispute among the Leasehold Mortgagees regarding priority shall be determined by a title insurance company licensed in the state where the Premises are located. Neither the title insurance company nor Landlord shall have any liability to Tenant or to any Leasehold Mortgagee for any such determination.

#### **ARTICLE 14- MAINTENANCE AND REPAIR**

Section 14.1 Tenant's Obligations. Tenant shall, at its sole cost and expense (but nevertheless as a portion of Operating Expenses), maintain the Improvements, reasonable wear and tear excepted, and make repairs, restorations, and replacements to the Improvements, including without limitation, the heating, ventilating, air conditioning, mechanical, electrical, elevator, and plumbing systems, structural, roof, walls, and foundations, and the fixtures and appurtenances to the Improvements as and when needed to preserve them in good working order and condition, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, contractors, and subcontractors. All such repairs, restorations, and replacements will be in quality and class, as elected by Tenant, either equal to the original work or installations, or otherwise consistent with the standard then applicable to residential apartment projects or similar commercial buildings (as applicable) within the geographical area of the Improvements at such time, but in no event of less quality or class than the original work or installations.

#### **ARTICLE 15- ALTERATIONS**

Section 15.1 Non-Structural Alterations. Except for the construction of the Improvements as currently planned, and subject to Section 3.5 hereof, Tenant may make any non-structural alterations, additions, or improvements to the Improvements, without Landlord's consent.

Section 15.2 Structural Alterations. Tenant shall obtain the prior written consent of Landlord, which Landlord consent shall not be unreasonably withheld or delayed, for any structural alterations, additions or improvements to the Improvements having a cost in excess of [\$100,000] (such consent shall not be unreasonably withheld), unless carried out in accordance with the Plans and Specifications.

Section 15.3 No Liens. Except as expressly provided in this Lease, Tenant shall not have any right, authority or power to bind Landlord, the Premises or any other interest of Landlord in the Demised Premises and will pay or cause to be paid all costs and charges for work done by it or caused to be done by it, in or to the Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto. Any lien that is not released or bonded over within ninety (90) days after the filing thereof shall constitute an Event of Default under Section 18.2. Landlord shall have the right to remove any and all such liens against the Premises, and to defend any action against the same, and Tenant shall reimburse Landlord for the cost of such removal, the costs of defending the same, including, but not limited to, attorneys fees in connection therewith.

## **ARTICLE 16- SURRENDER**

Section 16.1 Expiration of Term. At the end of the Term of this Lease (whether upon the expiration or other termination), Tenant shall surrender the Demised Premises, together with the Improvements in their then “as-is” condition, provided that Tenant has maintained the Demised Premises, (including without limitation any required casualty/condemnation restoration) pursuant to the terms of this Lease. At Landlord’s option, Tenant shall execute a deed and a bill of sale for the Improvements at the time of such surrender.

## **ARTICLE 17- CASUALTY: CONDEMNATION**

Section 17.1 Restoration, Casualty, or Condemnation. If any act or occurrence of any kind or nature (including any taking by condemnation, sale in lieu of condemnation or in any other manner for any public or quasi-public purpose (collectively, “Condemnation”)), or the Improvements are damaged or destroyed by fire, earthquake, flood, act of God or other casualty (collectively “Casualty”), shall result in damage to or loss or destruction of the Improvements, in whole or in part, and without diminution of any obligation of the Tenant in respect thereof under the approved Leasehold Mortgages, the Tenant, to the extent that insurance proceeds or condemnation proceeds and other funds, if any, made available (including, without limitation, by further advance pursuant to the approved Leasehold Mortgages) permit, shall promptly cause the restoration, reconstruction, and/or repair of the Improvements as nearly as possible to its value, condition and character immediately prior to such taking or casualty. The First Leasehold Mortgagee shall have the right to participate in adjustment of losses as to Casualty insurance proceeds and all insurance proceeds shall be delivered to the First Leasehold Mortgagee to be applied as provided in the First Leasehold Mortgagee’s loan documents. In the event of a Condemnation, the amount to which Tenant is entitled shall be no less than the total amount of the award reduced by the value of the land and Landlord’s reversionary interest in the Improvements and Tenant’s portion shall be delivered to the First Leasehold Mortgagee to be applied as provided in the First Leasehold Mortgagee’s loan documents. Landlord’s portion shall be limited to the

value of the land and its reversionary interest in the Improvements. The First Leasehold Mortgagee shall have the right to supervise and control the receipt and disbursement of Condemnation awards, and the right to participate in any Condemnation proceedings and settlement discussions. Notwithstanding the foregoing, in the event of any total or substantial loss of the Improvements due to a Casualty that occurs after the initial Compliance Period, Tenant may, with the consent of the First Leasehold Mortgagee, surrender this Lease and pay the balance owing on any mortgage and Tenant shall then receive that portion of the proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, Landlord to be paid the balance of the proceeds.

Landlord shall have no right to terminate this Lease as a result of any Condemnation or Casualty without the written approval of the First Leasehold Mortgagee.

### **ARTICLE 18- DEFAULT; REMEDIES**

#### **Section 18.1 Landlord's Right to Perform.**

- (a) **Landlord's Option.** If Tenant fails to pay when due amounts payable under this Lease or to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after thirty (30) days' prior written notice to Tenant and without waiving any of its rights under this Lease, may (but will not be required to) pay such amount or perform such obligation.
- (b) **Additional Rent.** All amounts so paid by Landlord and all out-of-pocket costs and expenses including actual and reasonable attorney's fees and the costs of Landlord to enforce its rights hereunder, incurred by Landlord in connection with the performance of any such obligations shall be payable by Tenant to Landlord within thirty (30) days after demand therefore and shall constitute "**Additional Rent**" with interest thereon at the rate of twelve percent (12%) per annum from the date of Landlord's having made each such payment or incurred each such cost or expense, and shall be payable by Tenant to Landlord. Landlord shall provide Tenant with invoices and other reasonable evidence of the amounts paid or incurred by Landlord in connection with its exercise of its rights pursuant to this Article.

**Section 18.2 Events of Default.** At the option of Landlord, the occurrence and continuation of any of the following events shall constitute an Event of Default by Tenant:

- (a) Tenant defaults in the due and punctual payment of any Additional Rent, and such default continues for thirty (30) days after written notice from Landlord;
- (b) Tenant abandons the Demised Premises for a period of more than thirty (30) consecutive days;

- (c) This Lease or the Demised Premises or any part of the Demised Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not discharged or bonded within thirty (30) days after its levy;
- (d) Tenant makes any assignment in violation of this Lease which is not cured within thirty (30) days after notice thereof to Tenant;
- (e) Subject to Section 18.4 with respect to any Regulatory Default (as defined herein), the failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant other than those described in subsections (a) through (e) of this Section, if such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that it cannot be cured within such thirty (30) day period, no default shall be deemed to exist if Tenant commences the curing of the default promptly within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The thirty (30) day notice described herein shall be in lieu of and not in addition to, any notice required under law now or hereafter in effect requiring that notice of default be given prior to the commencement of an unlawful detainer or other legal proceeding. Notwithstanding the foregoing, a notice of intent to cancel insurance coverage by an insurer shall be an Event of Default for which there shall be a fifteen (15) day cure period.
- (f) Tenant has filed against it a petition for bankruptcy, insolvency or similar action pursuant to state or federal law, and such petition shall not have been vacated within ninety (90) calendar days after filing; or is adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, either state or federal, and such judgment or decree is not vacated or set aside within ninety (90) calendar days after such determination.
- (g) Tenant makes an assignment for the benefit of creditors or shall submit in writing its inability to pay its debts generally as they become due.
- (h) Any attachment, execution or lien, other than a mortgage preapproved by Landlord, whether voluntary or involuntary, including mechanics liens, is filed against the Leased Premises and is not discharged or dissolved by a bond within ninety (90) calendar days.
- (i) Tenant files a voluntary petition for bankruptcy, insolvency or similar action pursuant to state or federal law; or Tenant consents to, or acquiesces in, the appointment of a receiver, liquidator, or trustee of itself or of the whole or any substantial part of its properties or assets or a court of competent jurisdiction enters an order, judgment or decree appointing a receiver, liquidator or trustee of Tenant, or of the whole or any substantial part of the property or assets of Tenant, and such order, judgment or decree



shall remain unvacated or not set aside or unstayed for ninety (90) calendar days; and

- (j) Tenant fails to comply with the insurance requirements under Article 9.

Section 18.3 Landlord's Right To Terminate Upon Tenant Default. Subject to Leasehold Mortgagee's rights under Article 13 (including the right to notice and cure), in the event any Event of Default by Tenant exists as provided in Section 18.2 above, Landlord shall have the right without further notice or demand to Tenant except as provided in Section 18.2 (Tenant hereby irrevocably waiving all notices and demands except as provided in Section 18.2, statutory or otherwise), to terminate this Lease and Tenant's right to possession of the Demised Premises without terminating Tenant's liabilities under this Lease, in which event ownership of all of the Improvements shall immediately vest in Landlord and Landlord shall be entitled to receive from Tenant such amounts as may be permitted from time to time by applicable law. Notwithstanding anything herein to the contrary, if an Event of Default occurs under this Lease as a result of a bankruptcy filing by or against Tenant, the Landlord hereby agrees to terminate the Tenant's interest in this Lease and the Demised Premises while maintaining the existence of the Lease itself with the applicable Leasehold Mortgagee (at its option) in order of priority acting as tenant.

Landlord agrees not to take any action to terminate this Lease or exercise any other remedy with respect to the Premises at any time during the Compliance Period with respect to any building consisting a part of the Improvements, excluding any action for specific performance, mandatory injunctive relief, or similar equitable remedy to compel compliance by Tenant with the terms of this Lease.

Section 18.4 Regulatory Default. Notwithstanding anything herein to the contrary, the following shall apply to any failure by Tenant to observe or perform any provision of this Lease which would constitute an Event of Default under Article 10 hereof if not cured within the time period specified therein:

- (a) Upon a determination by Landlord that Tenant has materially breached or defaulted on any obligation under Article 10 hereof (a "Regulatory Default"), Landlord shall notify Tenant of (i) the nature of the Regulatory Default, (ii) the actions required to be taken by Tenant in order to cure the Regulatory Default, and (iii) the time (a minimum of thirty (30) days or such additional time period as may be reasonable under the circumstances but in no event more than ninety (90) days), within which Tenant shall respond with reasonable evidence to Landlord that all such required actions have been taken. During any period in which a Leasehold Mortgage is in place, Landlord shall give any and all Leasehold Mortgagee(s) of which Landlord has received notice from Tenant a duplicate copy of any notice described in this subsection in accordance with the provisions of Section 19.10 hereof, and Landlord shall grant to any and all such Leasehold Mortgagee(s) the right to cure the Regulatory Default in accordance with the provisions of this Lease.

- (b) If Tenant, the Management Agent (if applicable), or the Leasehold Mortgagee (if applicable) shall have failed to respond or take the appropriate corrective action with respect to a Regulatory Default to the reasonable satisfaction of Landlord, the First Leasehold Mortgagee and the Tax Credit Investor within the applicable time period, then Landlord shall have the right to seek appropriate equitable remedies (such as specific performance, injunctive relief, or the appointment of a receiver to take over and operate the Property from any court having jurisdiction), in order to cause the Demised Premises to once again be in compliance with Article 10 and Section 18.4.
- (c) In addition to and not in limitation of the foregoing, if Landlord shall determine that a Regulatory Default shall have occurred by reason of a default by Management Agent, and that Tenant (or, as applicable, the Management Agent) and the Leasehold Mortgagee(s) have failed to respond or take corrective action to the reasonable satisfaction of Landlord within the applicable cure period, then Landlord may require Tenant to, and Tenant shall promptly, take such actions as are necessary in order to terminate the appointment of Management Agent pursuant to the terms of its management agreement and to appoint a successor Management Agent of the Demised Premises, subject to any requirements of any Leasehold Mortgagee(s) and the Tax Credit Investor.
- (d) The provisions of this Section 18.4 shall constitute the exclusive remedy of Landlord hereunder in the event of any such Regulatory Default (provided that such Regulatory Default, other than a default under Article 10 of this Lease, does not otherwise constitute a default under this Lease (i.e. Tenant's failure to maintain insurance would otherwise constitute a default hereunder), and provided further that nothing herein shall impair or waive Landlord's rights under separate agreements between the parties). Accordingly, notwithstanding any provision to the contrary contained in this Agreement, the rights and remedies of Landlord by reason of the occurrence of any such Regulatory Default, shall be limited to those expressly set forth in this Section 18.4.

Section 18.5 Force Majeure Event. If the Landlord or Tenant fails to perform one or more of its obligations pursuant to this Agreement, then that party's performance of that term, covenant or act is excused for the period of the delay and the party delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay, if and to the extent that that party proves: (a) that its failure to perform was caused by an impediment beyond its reasonable control; (b) that it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the execution of this Lease; and (c) that it could not reasonably have avoided or overcome the effects of the impediment. The party invoking this clause shall be presumed to have established the conditions described in the preceding paragraph in the case of the occurrence of one or more of the following impediments: war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act

of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party (“Force Majeure Event”). This provision shall become effective only if the party failing to perform notifies the other party within a reasonable time of the extent and nature of the Force Majeure Event, limits delay in performance to that required by the Force Majeure Event, and takes all reasonable steps to minimize damages and resume performance.

Section 18.6 Intentionally Omitted.

## **ARTICLE 19- MISCELLANEOUS**

Section 19.1 No Brokers. Landlord and Tenant represent and warrant to each to the other that neither has dealt with any broker or finder with regard to the Demised Premises or this Lease. Landlord and Tenant will each indemnify, defend and hold the other harmless from and against any loss, liability and expense (including attorneys’ fees and court costs) arising out of claims for fees or commissions in connection with this Lease. This indemnification shall survive termination of this Lease.

Section 19.2 Recordation. Landlord and Tenant shall record a Memorandum of this Lease in the Bureau of Conveyances of the State of Hawaii. At the expiration of the Term, Landlord and Tenant shall execute a quitclaim termination of Tenant’s interest in this Lease.

Section 19.3 Transfer of Landlord’s Interest. Landlord shall not voluntarily transfer all or any portion of its interest in Landlord’s estate if the same would cause a violation or breach of any legal requirement or any agreement or contract to which Landlord is a party by which Landlord is bound.

Section 19.4 No Waiver. No waiver of any condition or agreement in this Lease by either Landlord or Tenant will imply or constitute a further waiver by such party of the same or any other condition or agreement. No act or thing done by Landlord or Landlord’s agents during the Term will be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept such surrender will be valid unless in writing signed by Landlord. No payment by Tenant, nor receipt from Landlord, of a lesser amount than the Additional Rent, or other charges or fees due as stipulated in this Lease will be deemed to be anything other than a payment on account of the same, and to the earliest due of the same. No endorsement or statement on any check, or any letter accompanying any check or payment as Rent, will be deemed an accord and satisfaction. Landlord

will accept such check for payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy available to Landlord. If this Lease is assigned, or if the Demised Premises or any part of the Demised Premises are sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant, or occupant and apply the net amount collected to the Rent reserved in this Lease. No such collection will be deemed a waiver of the covenant in this Lease against assignment and subletting, or the acceptance of the assignee, subtenant, or occupant as Tenant, or a release of Tenant from the complete performance by Tenant of its covenants in this Lease.

Section 19.5 Joint and Several Liability. If Tenant or Landlord is composed of more than one signatory to this Lease, each party will be jointly and severally liable with each other party for payment and performance according to this Lease.

Section 19.6 Captions, Exhibits, Gender, Etc. The captions are inserted in this Lease only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this Lease. The exhibits to this Lease are incorporated into this Lease and are a part hereof. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

Section 19.7 Entire Agreement. This Lease, including all attached exhibits, contains the entire agreement between Landlord and Tenant with respect to its subject matter. Except for those which are specifically set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to one another with respect to this Lease. In the event of any inconsistency between this Lease and the documents executed in connection with any Leasehold Mortgage with Landlord acting as the Leasehold Mortgagee, this Lease shall control.

Section 19.8 Amendment. This Lease may be amended only by a written instrument executed by Landlord and Tenant (subject to the rights of any Leasehold Mortgagee, and/or the Tax Credit Investor, as applicable), the approval of which both Landlord and Tenant mutually agree not to unreasonably withhold, delay or condition.

Section 19.9 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected and shall continue in full force and effect; and in lieu of each provision found to be illegal, invalid, or unenforceable, there will be added to this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible.

Section 19.10 Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Lease shall be in writing and shall be deemed given when received, if (i) delivered by hand, (ii) sent by registered or certified mail, return receipt requested, (iii) sent by recognized overnight delivery service such as Federal Express, or (iv) transmitted by electronic mail, provided such notice is also sent simultaneously in the manner provided for in (i), (ii), or (iii) above, addressed as follows:

|               |   |
|---------------|---|
| If to Tenant: | School Street I, LP<br>c/o HCDC School Street LLC<br>330 West Victoria Street |
|---------------|---|

Gardena, California 90248  
Attn: Mohannad H. Mohanna  
Email: moe.mohanna@hcosta.com

*With copies to:* Settle Meyer Law LLLC  
Pioneer Plaza,  
900 Fort Street Mall, Suite 1800  
Honolulu, Hawai'i 96813  
Attn: Scott W. Settle  
Email: ssettle@settlemyerlaw.com

*And:* Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attn: Christian D. Dubois  
Email: cdubois@coxcastle.com

*If to Landlord:* Hawaii Public Housing Authority  
1002 N. School St.  
P.O. Box 17907  
Honolulu, Hawai'i 96817  
Attn: Executive Director  
Fax: (808) 832-4679

*With copies to:* Department of the Attorney  
General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attn: Deputy Attorney General

*If to Investor Limited  
Partner:* c/o RBC Community Investments, LLC  
600 Superior Avenue  
Suite 2300  
Cleveland, Ohio 44114  
Attn: President and General Counsel

*With a copy to:* Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, California 90071  
Attn: Kyle Arndt, Esq.

*If to Leasehold  
Mortgagee:* As listed in Exhibit D

A party may change its address by giving written notice to the other party as specified herein. Set forth in Exhibit D attached hereto are notice addresses for the Leasehold Mortgagee(s), as of the date hereof.

Section 19.11 Litigation Fees. Tenant shall be liable for the actual legal expenses of Landlord in connection with any collection of Additional Rent or other impositions owed under this Lease, the remedying of any default under this Lease, or any termination of this Lease where such collection, remedying or termination results from an Event of Default. Payment of any litigation cost or expense shall be determined by applicable state and federal law.

Section 19.12 Waiver of Jury Trial. Landlord and Tenant may waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on all matters arising out of this Lease.

Section 19.13 Governing Law and Venue. This Lease will be governed by and construed in accordance with the internal laws of the State of Hawaii, without regard to principles of conflicts of laws. Any lawsuit to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement shall be filed in a Hawaii state court in the City and County of Honolulu.

Section 19.14 Binding Effect. This Lease will inure to the benefit of, and will be binding upon, Landlord's successors and assigns except as otherwise provided in this Lease. This Lease will inure to the benefit of; and will be binding upon, Tenant's successors and assigns so long as the succession or assignment is permitted pursuant to the terms of this Lease. Leasehold Mortgagees and Tax Credit Investor are intended third-party beneficiaries of this Lease.

Section 19.15 Cumulative Rights. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 19.16 Relationship of Parties. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a principal agent relationship exist between them. Nothing contained in any agreement or contract between the parties hereto, nor any act of Landlord or Tenant will be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture or any association or relationship.

Section 19.17 Non-Merger. Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or Tenant's estate created hereunder with the fee estate of the Demised Premises or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (x) this Lease, Tenant's estate created hereunder or any interest in this Lease or Tenant's estate (including the Improvements), and (y) the fee estate in the Demised Premises or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Landlord, having an interest in (1) this Lease or Tenant's estate created hereunder, and (2) the fee estate in the Demised Premises or any part thereof; shall join in a written instrument effecting such merger and shall duly record the same.

Section 19.18 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

Section 19.19 Limited Liability. Tenant shall look solely to Landlord's interest in the Demised Premises for the satisfaction of any claims against Landlord or its employees, agents, or assigns for the satisfaction of any claims arising pursuant to the Lease. No officer, employee, director, shareholder, manager or partner of Tenant or of any affiliate of Tenant shall be personally liable to Landlord, or any successor in interest or person claiming by, through or under Landlord, in the event of any default or breach of this Lease, except as otherwise set forth in a written guaranty agreement.

Section 19.20 Cooperation. Landlord and Tenant agree that they will cooperate with one another in all respects in furtherance of the Demised Premises. From time to time, Tenant may request modifications to the Lease to satisfy the requirements of financing sources, which financing sources include without limitation, private lenders, equity sources, and government agencies. Landlord will use all reasonable efforts to accommodate the requests of such financing sources and will not unreasonably withhold or delay its approval and execution of modifications to this Lease which do not materially and adversely alter the basic terms hereof. Nothing herein shall impose upon Landlord any requirement to approve any modification or amendment to the Lease which would violate or contravene any applicable laws or any contract or agreement to which Landlord is a party or which is binding on Landlord. Landlord agrees that it will, upon request of Tenant, from time to time, but not more frequently than once a year, enter into an amended and restated lease combining into one document the entire Lease and all amendments and modifications theretofore entered into.

Section 19.21 Estoppel Certificate. Each party agrees from time to time, upon no less than twenty (20) days' prior notice from the other or upon request from any Leasehold Mortgagee or any permitted assignee, to execute, acknowledge and deliver to the other or to such Leasehold Mortgagee or assignee a statement certifying to its knowledge that (i) this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Rent has been paid, and that no additional rent or other payments are due under this Lease (or if additional rent or other payments are due, the nature and amount of the same); and (iii) whether there exists any uncured default by the other party, or any defense, offset, or counterclaim against the other party, and, if so, the nature of such default, defense, offset or counterclaim. Any such statement delivered pursuant to this Section 19.21 may be relied upon by any prospective purchaser or holder of a mortgage of the leasehold interest hereunder from Tenant or any prospective assignee of any such holder of a Leasehold Mortgage.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, and intending to be legally bound hereby, Landlord and Tenant have executed this Lease as of the effective date of the Lease set forth above.

Approved as to form:

\_\_\_\_\_  
Linda L. W. Chow  
Deputy Attorney General

**LANDLORD:**  
HAWAII PUBLIC HOUSING AUTHORITY

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**TENANT:**

SCHOOL STREET I, LP,  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its general partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development  
Company, LLC, a Delaware  
limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
Its President



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

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

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Ground Lease is dated \_\_\_\_\_, and contained \_\_\_\_ pages at the time of this acknowledgment/certification in the First Circuit of the State of Hawaii.

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

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

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

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Ground Lease is dated \_\_\_\_\_, and contained \_\_\_\_ pages at the time of this acknowledgment/certification in the First Circuit of the State of Hawaii.

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

EXHIBIT A

LEGAL DESCRIPTION OF DEMISED PREMISES

LOT 2  
HPHA SCHOOL STREET SENIOR AFFORDABLE HOUSING  
REDEVELOPMENT PHASE 1A

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;
10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;

11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being; 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;
26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;

27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

#### EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of thus easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 267° 19' 93" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 81.98 feet along same;
5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 283° 18' 25" 45.50 feet;
6. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being: 301° 57' 23" 45.95 feet;
8. 279° 14' 37" 60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 305° 34' 40" 40.37

10. 331° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 13° 27' 19" 66.98;
12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;
24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;

28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;
29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;
40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;
10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;

15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;
16. 61° 56' 41" 47.84 feet along the remainder of Former Lanakila Emergency Homes;
17. 151° 56' 41" 10.00 feet along the same to the point of beginning containing an Area of 1208 square feet.

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

#### EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;
2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;



9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.

SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

#### EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

#### EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

1. 64° 35' 22.53 feet along the northerly side of Lanakila Avenue

2. 151° 30' 444.95 feet along the remainder of Former Lanakila Emergency Homes;
3. 61° 54' 43" 28.18 feet along same;
4. 331° 30' 496.00 feet along same to the point of beginning and containing an Area of 10,023 square feet,

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

#### EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. 157° 57' 40" 11.21 feet along the northeasterly side of School Street;
2. 241° 56' 41" 70.50 feet along the same;
3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning and containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]

EXHIBIT B

INSURANCE REQUIREMENTS

- A. The Tenant will provide Comprehensive General Liability, Comprehensive Automobile Liability, Employers Liability and Errors and Omissions Liability coverage to protect itself and the Landlord. The State of Hawaii, the Landlord, its employees and representatives must be included as an additional insured on all policies. The policies will provide limits of coverage acceptable to the Landlord and will be provided by highly rated insurance companies acceptable to the Landlord.

Prior to the execution of the Lease, the Tenant shall furnish to the Landlord certificate(s) of insurance as evidence of the existence of the following insurance coverage in amounts not less than the amounts specified. This insurance must be maintained throughout the entire Term.

i. Workers' Compensation

The Tenant shall carry Workers' Compensation insurance in such form and amount to satisfy, the applicable the State Workers' Compensation Law. Workers' Compensation must be issued by an admitted carrier authorized to do business in the State of Hawaii.

ii. Fidelity Bond

The Tenant shall obtain and maintain, at its sole expense during the term of this Contract, a fidelity bond at a minimum of \$500,000.00, or the minimum amount required by the applicable program, which shall cover all officers, employees, and agents of the Tenant and which shall protect the Tenant against loss by reason of, including but not limited to, fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction or misappropriation or any other dishonest criminal or fraudulent act, wherever committed and whether committed directly or with others. The Tenant shall furnish, at no cost or expense to the Landlord, a certificate of such coverage, within thirty days from the award of the Contract.

iii. Errors and Omissions

The Tenant shall cause the Management Agent to obtain and maintain errors and omissions professional liability coverage at its own expense at a minimum of \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate.

iv. Liability Insurance

The Tenant shall maintain the following minimum insurance limits and coverage:

| <u>Coverages</u>   | <u>Limits</u>   |
|--|---|
| Commercial General Liability                                     | \$2,000,000 single limits per occurrence for bodily injury and personal property damage   |
| Personal Injury Liability  | \$1,000,000.00 single limits per occurrence.<br>\$2,000,000.00 for general aggregate  |
| Automobile Insurance   | Bodily injury liability limits of \$1,000,000.00 each person and \$1,000,000.00 per accident and property damage liability limits of \$1,000,000.00 per accident OR \$2,000,000.00 combined single limit  |
| Workers' Compensation as required by laws of the State of Hawaii | Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the Tenant and to all employees of sub-contractors in case any sub-contractor fails to provide adequate similar protection for all its employees |

## EXHIBIT C

### CERTAIN DEFINITIONS

“Environmental Laws” means any applicable present or future federal, state or local law, ordinance, rule, regulation, permit, license or binding determination of any governmental authority relating to, imposing liability or standards concerning, or otherwise addressing the environment, health or safety, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. (“TOSCA”); the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the Clean Water Act, 33 U.S.C. Section 1251 et seq. and any so-called “Superfund” or “Superlien” law; and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. (“OSHA”), and Chapter 343 of the Hawaii Revised Statutes, as each is from time to time amended and hereafter in effect

“Hazardous Materials” means:

- (a) “hazardous substances” as defined by CERCLA;
- (b) “hazardous wastes,” as defined by RCRA;
- (c) any hazardous, dangerous or toxic chemical, waste, pollutant, contaminant or substance (“pollutant”) within the meaning of any Environmental Law prohibiting, limited or otherwise regulating the use~ exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;
- (d) petroleum crude oil or fraction thereof;
- (e) any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 et seq. and amendments thereto and reauthorizations thereof;
- (f) asbestos-containing materials in any form or condition; or
- (g) polychlorinated biphenyls in any form or condition.

EXHIBIT D

LEASEHOLD MORTGAGEES & NOTICE PROVISIONS

**First Leasehold Mortgagee during Construction and Before Conversion to Permanent Financing:**

First Hawaiian Bank  
999 Bishop Street, Suite 1100  
Honolulu, Hawaii 96813  
Attention: Commercial Real Estate Division

With a copy to:

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Transaction and Asset Management Group  
Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

And a copy to:

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

and a copy of any default notice to:

Citicorp USA, Inc.  
388 Greenwich Street, 17th Floor  
New York, New York 10013  
Attention: General Counsel's Office

Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

**1. Junior Leasehold Mortgagee (Construction to Permanent):**

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

**2. First Leasehold Mortgagee After Conversion to Permanent Financing:**

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4<sup>th</sup> Floor  
New York, New York 10013

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And

Citicorp USA, Inc.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And

Citicorp USA, Inc.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And for notices of default only:

Citicorp USA, Inc.  
388 Greenwich Street, 17<sup>th</sup> Floor  
New York, New York 10013  
Attention: General Counsel's Office

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918



EXHIBIT E

ENVIRONMENTAL REPORTS

[To be confirmed]

1. Final Environmental Impact Statement, prepared by PBR Hawaii & Associates Inc., dated April 2018, and accepted and signed by the Governor of the State of Hawaii by letter dated on July 17, 2018.
2. Phase I Environmental Site Assessment Report, prepared by Partner Engineering and Science, Inc. and dated December 12, 2023.
3. Phase II Subsurface Investigation Report, prepared by Partner Engineering and Science, Inc. and dated January 4, 2024.
4. Draft Construction-Environmental Management Plan (C-EMP) dated \_\_\_\_ and submitted to the Hazard Evaluation & Emergency Response Office within the State Department of Health on \_\_\_\_\_.

EXHIBIT F

PERMITTED ENCUMBRANCES

Permitted Encumbrances shall be as set forth in Schedule B to the Owner's Title Policy in the amount of [insert from title policy], File No. [insert from title policy], as issued by Old Republic Title & Escrow of Hawaii.

Exhibit F-1

[Encumbrances existing prior to this closing. Subject to refinement after issuance of title policy.]

1. Quitclaim Deed (Sewer Easement) A-72490859
2. Grant of Easement (Electric Lines) BK 8840, PG 125
3. 201H Agreement A-85000-80
4. Encroachment Agreement A-85570249
5. Affidavit of Surveyor A-87120585

EXHIBIT G

NET CASH FLOW WATERFALL

[Attached]

[Definition of net cash flow and waterfall to be inserted from LPA]

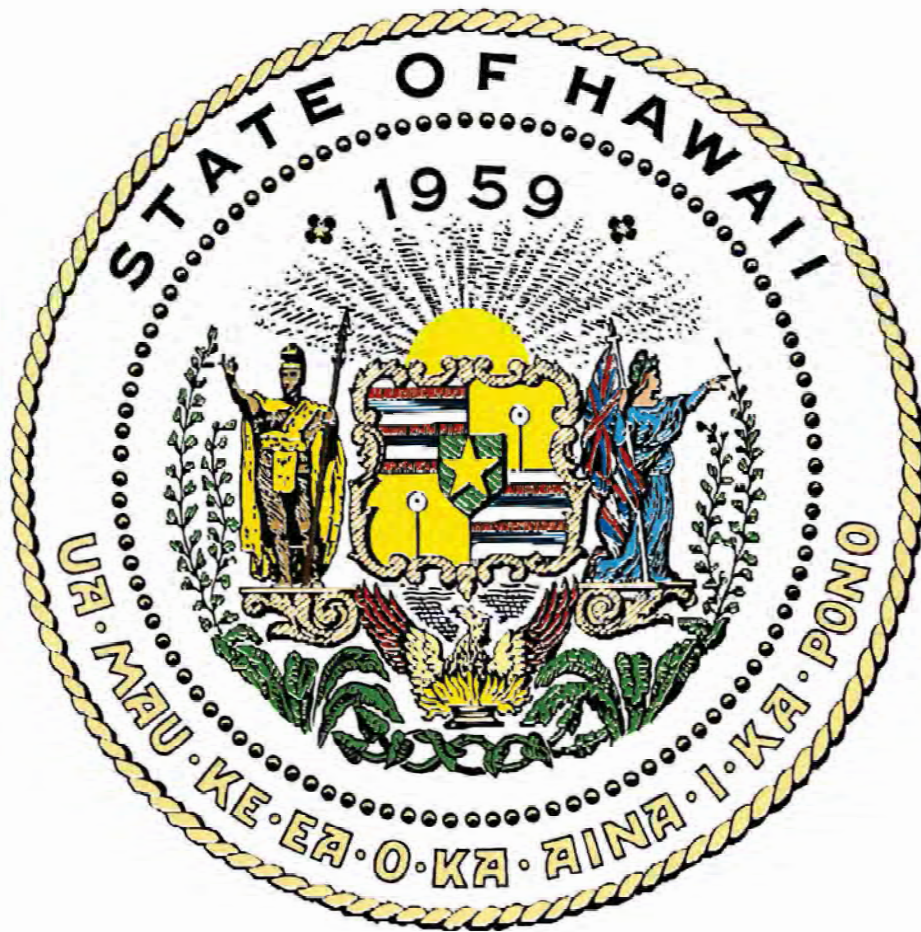
| <b>School Street Apts Phase 1A</b>                           |            |   |  |           |
|--|------------|---|--|-----------|
| <b>Cash Flow Waterfall (draft, subject to HPHA approval)</b> |            |   |  |           |
| <b>3/21/2024</b>   |            |   |  |           |
|  |            |   |  |           |
|  |            |   |  |           |
|  |            | <b>Proposed CF Waterfall</b>  |  |           |
|  |            |   |  |           |
|  | <b>1)</b>  | To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP   |  |           |
|  | <b>2)</b>  | To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)                           |  |           |
|  | <b>3)</b>  | To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis |  |           |
|  | <b>4)</b>  | To replenish the Operating Reserve up to original balance   |  |           |
|  | <b>5)</b>  | To repay the Deferred Developer Fee until paid in full  |  |           |
|  | <b>6)</b>  | To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)  |  |           |
|  | <b>7)</b>  | To repay any GP or Developer Loans  |  |           |
|  | <b>8)</b>  | Of the remaining balance:   |  |           |
|  |            | a) 75% to repay the RHRF Loan until paid in full, and then  |  |           |
|  |            | b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease   |  |           |
|  | <b>9)</b>  | Of the remaining balance:   |  |           |
|  |            | (i) 45% to the GP as Incentive Management Fee   |  |           |
|  |            | (ii) 45% to pay the current and accrued Base Rent due on the Ground Lease   |  |           |
|  | <b>10)</b> | Of the remaining balance:   |  |           |
|  |            | (i) 0.01% to the GP   |  | 0.0100%   |
|  |            | (ii) 0.001% to the Special LP   |  | 0.0010%   |
|  |            | (iii) 1% to the State LP  |  | 1.0000%   |
|  |            | (iv) 98.989% to the Federal LP  |  | 98.9890%  |
|  |            |   |  | 100.0000% |

**EXHIBIT G**

**PROJECT LABOR AGREEMENT**

[attached]

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**PROJECT LABOR AGREEMENT**

For the State of Hawaii

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## **PROJECT LABOR AGREEMENT**

This agreement is entered into by and between the State of Hawaii ("State"), the Hawaii Construction Alliance and its affiliated labor unions, and the Unions that become signatory to this Agreement for any construction project covered by this Agreement (hereinafter referred to as the "Union" or "Unions" individually or collectively, as the context may require).

### **ARTICLE I – Purpose and Findings**

Public works projects involve numerous contractors and employees in different trades, have critical timelines for completion, and require skilled and properly trained workers to successfully complete the work in a safe and timely manner. To avoid delays and additional expense to the State of Hawaii, it is essential that the most critical public works projects proceed without labor disruptions, whether due to external labor relations factors or the frictions that can arise when a large number of contractors and their employees and subcontractors work in proximity to one another on a job site.

As the State grows in size and connects more communities via infrastructure development, the State has an overriding interest in maintaining the continuity of efficient construction work by using skilled and trained labor. In a complex environment such as the State of Hawaii, it is essential to avoid delay in completing critical public works projects so that public funds are utilized prudently and residents and visitors are not adversely impacted by interruption in public services or delay in the use of facilities that are important to the essential operations or infrastructure of the State.

A Project Labor Agreement ("PLA"), is a construction industry collective bargaining agreement applied to a particular public works project or set of projects. PLAs have been used for many years to achieve high-quality construction performance and the economic benefits that result from having a guaranteed source of skilled workers and avoiding work disruptions.

In the private sector, PLAs have been and are being used successfully on a variety of projects, such as the United States Navy's privatized military housing stabilization agreement, and other large and small private developments, including the retrofitting and remodeling of existing buildings and facilities. On public works projects, PLAs have been and are being used successfully by governmental entities, including the Honolulu Authority for Rapid Transportation.

PLAs on public works projects are open to both union and non-union contractors. A public agency awarding a project covered by a PLA may select any qualified bidder for the award, without regard to whether it is otherwise a signatory to a union collective bargaining agreement.

PLAs are effective mechanisms for controlling construction costs, ensuring efficient completion of projects, and establishing fair wages and benefits for all workers.

PLAs also help ensure worker health and safety protections while providing a unique opportunity for workforce development

PLAs on public works projects also promote government efficiency, thus lowering costs, in a number of ways. They prevent labor strikes or slowdowns during the life of the agreement; set work rules, schedules and conditions; build jobsite harmony by placing all contractors and workers on a level playing field; and provide for arbitration procedures to resolve grievances and jurisdictional disputes. They also increase public confidence in government procurement and improve transparency in the competitive bidding process.

The construction crafts needed on public works projects require a supply of new apprentices to perpetuate those crafts into the future. It is essential to train a local pool of skilled labor in the construction sector who will be able to competently and safely construct future public works projects. Through their apprenticeships, local construction unions provide genuine opportunities for long-term, well-paid careers in the construction industry. Entry into and employment through these apprenticeships can be facilitated by a formal understanding between the State and the local construction unions who fund and operate such apprenticeships.

In addition, veterans may be seeking employment on public works projects and training opportunities for entrance into the construction industry. Such training opportunities are available through programs such as "Helmets to Hardhats."

PLAs have proven to be a valuable mechanism across the United States in addressing many of these issues and have been a major factor in producing high quality construction work and projects that are completed on time, within budget, and without labor strife or disruptions. This PLA is intended to promote labor harmony, prevent labor disputes and slowdowns, achieve and promote efficient, high-quality construction that meets strict construction deadlines, improve State services, and ensure a steady local supply of skilled and trained labor on proprietary construction projects.

## **ARTICLE II – Definitions**

As used in this Agreement:

"Agreement To Be Bound" means the acceptance agreement signed by each Contractor, agreeing to be bound by the terms of this PLA, in the form attached hereto as Attachment "A."

"Project Labor Agreement" or "PLA" means this multi-craft collective bargaining agreement between the State, the Hawaii Construction Alliance and its affiliated labor unions, and the Unions signatory to this Agreement, which shall be approved for use on Covered Projects by the Chief Procurement Officers of the State.

"Contractor" means any individual, firm, partnership, corporation, or other business entity (including but not limited to a general contractor, project manager,

construction manager, or primary employer, or combination thereof), including joint ventures, and any successors and assigns of the foregoing, that has entered into a contract to perform, assign, award, or subcontract any part of the construction work on a Covered Project, and all contractors and subcontractors of any tier.

"Covered Work" means on site construction work covered by each respective Master Agreements of the Unions signatory to this Agreement for a Covered Project., including facilities dedicated exclusively to supplying products to Covered Projects.

"Covered Project" means all large-scale public works projects in excess of one million five hundred thousand dollars (\$1,500,000) for the building, erection, installation, or assembly of a structure, building, or facility, or infrastructure, including any such projects receiving funding from a bond issuance of the State, and any other public works project where the State has determined that delay in completing the project may lead to interruption or delay of services or use of facilities that are important to the essential operations or infrastructure of the State; provided, however, that the term does not include the routine operation or maintenance of a structure, building, or facility, or of new infrastructure.

"Maintenance" means the upkeep of a structure, ~~building, or facility~~, or of infrastructure, to preserve the original functional and operational state of the structure, building, facility, or infrastructure, and includes any task that has been traditionally and historically performed by public workers in or upon structures, buildings, facilities, and infrastructure.

"Master Agreement" means the master collective bargaining agreement of each Union signatory to the Project Labor Agreement.

"Operation" means activities related to the normal performance of the functions for which a structure, building, facility, or infrastructure is intended to be used.

"Union" or "Unions" includes the Hawaii Construction Alliance ("HCA"), and their affiliated labor organizations, and the Unions signatory to this Agreement, acting on their own behalf and on behalf of their own respective affiliates and member organizations whose names are subscribed to the Project Labor Agreement. The parties to the Project Labor Agreement may mutually agree, in writing, to amend or modify the list of affiliated labor organizations in the event there is a change in affiliation. Nothing in this article is intended to imply that the state has the authority to approve which local unions may affiliate with the HCA.

"Work Disruption" means any strike, lockout, sympathy strike, slowdown, work stoppage, boycotting, picketing or similar activity that interferes with work on a Covered Project.

### **ARTICLE III – Scope of Agreement**

The State shall require all Contractors to agree to be bound by this PLA by executing an Agreement To Be Bound as a condition of any future request for proposal issued on or after the effective date of this PLA for a Covered Project. The Unions agree that this PLA will be available to, and will fully apply to, any successful bidder for the project work for a Covered Project, without regard to whether the successful bidder performs work at other sites as either a union or non-union Contractor, and without regard to whether employees of such bidder are or are not members of any union.

It is understood that this PLA constitutes a stand-alone agreement, and by virtue of executing an Agreement To Be Bound, Contractor will not be obligated to sign any other collective bargaining agreement as a condition of performing work within the scope of this PLA.

All Contractors on all Covered Projects must execute an Agreement to be Bound by this PLA as a precondition of performing, assigning, awarding, or subcontracting work on the Covered Project.

It is understood that each party to this PLA acts independently of the other, and this PLA does not give rise to any joint and several liability between or amongst the parties. The Unions agree that this PLA does not have the effect of creating any joint employment status between and among the State and any Contractor.

### **ARTICLE IV – Appointment of Administrator**

It is understood that the parties hereto support the active and effective administration and enforcement of the terms of this PLA by all signatory parties to ensure that the benefits envisioned from it flow to all intended parties. In furtherance thereof, the Joint Administrative Committee (as such term is defined in Article XVIII hereof) shall appoint the Director or Deputy Director of the Department of Labor and Industrial Relations, or its Interim Director if appropriate, as the administrator (the “Administrator”), to oversee the parties’ compliance with this PLA and, subject to the provisions of Article XVIII hereof pertaining to the authority of the Joint Administrative Committee, to interpret, monitor and enforce the terms and conditions of this PLA. For such purposes, the Administrator shall be considered a party in interest in all matters related to this PLA, except the resolution of grievances and jurisdictional disputes.

### **ARTICLE V – Union Recognition**

The Contractor recognizes the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on Covered Projects.

There shall be no discrimination against any Employee or applicant for employment because of his or her membership or non-membership in the Union or based upon race, creed, color, sex, age or national origin of such employee or applicant,

or any other factor prohibited by state or federal law.

The Contractor agrees to deduct dues and fees in the amount designated by a particular Union, subject to applicable law, provided that the Employee has executed a written assignment calling for such a deduction, which is provided to the Contractor, and provided further that the form of the written assignment is that form that is used for all operations by the particular Union for its members in the State of Hawaii. The Contractor will remit to the Union the dues and fees deducted in the manner set forth in the applicable Master Agreement. All Employees of Contractor who are not member of any Union shall pay dues and uniform assessments in accordance with the requirements of the applicable Union and applicable law. Such dues and assessments shall be limited to fees necessary for the performance for the Union's representation duties. Any employee failing to meet the above condition of employment shall upon written notice by the Union be discharged by the Contractor within five (5) working days, if permitted by existing law.

This PLA shall not unlawfully deprive, nor shall it be construed to unlawfully deprive, any non-union or union employee of his or her rights under federal and state laws.

Each Union shall have the right to designate a working craft employee as steward for each Contractor employing such craft on the Covered Project. Such designated steward shall be a qualified workman assigned to a crew and shall perform the work of the craft. The steward shall not perform supervisory duties. Under no circumstances shall there be a non-working steward. Stewards shall be permitted a reasonable amount of time during work hours to perform applicable Union duties related to the work being performed by the craft employees of his or her Contractor and not to the work being performed by the other Contractors or their employees.

Authorized representatives of the Union shall have access to the Project, provided that such representatives fully comply with the posted visitor, security, and safety rules and the environmental compliance requirements of the Project, provided they do not unnecessarily interfere with the employees or cause them to neglect their work. The Contractor recognizes the right of access set forth in this Section and such access will not unreasonably be withheld from an authorized representative of the Union.

To the extent this PLA addresses a subject, it represents the complete agreement of the parties on that subject. To the extent the PLA does not address a subject, the terms and conditions of the respective Master Agreement for the appropriate craft shall apply to that subject.

#### **ARTICLE VI – Management Rights of Contractors**

Contractors retain full and exclusive authority for the management of their respective operations except as specifically set forth in this PLA. The Contractors shall have the right to direct its work forces at their sole discretion, including, but not limited to, hiring, promotion, determining competency to perform work, transfer, lay-off, discipline or discharge for just cause; the selection of foreman and general foreman; the

assignment and scheduling of work; the requirement of overtime work; the determination of when work will be done; and the number and identity of employees engaged to perform such work.

The Contractor may, in its sole discretion, utilize the most effective method or techniques of construction, tools, or other labor-saving devices. Except as otherwise expressly stated in this PLA, there shall be no limitation or restriction upon the Contractor's choice of materials or design, nor upon the full use and installation and utilization of equipment, machinery, tools, or other labor-saving devices. If there is any disagreement between the Contractor and a Union concerning the manner or implementation of such device or methods of work, the implementation shall proceed as directed by the Contractor and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article VIII of this PLA.

### **ARTICLE VII -- Hiring Procedures**

Unless otherwise required by this PLA, Contractors shall utilize the job referral system of the appropriate signatory Union to acquire employees to work on the Project. The job referral system will be operated in a non-discriminatory manner and in full compliance with federal, State, and local laws and regulations which require equal employment opportunities and non-discrimination.

A probationary period of ten (10) working days shall be established for all new employees; during such time period such named employees may be summarily discharged and such discharge is not subject to the grievance and arbitration process. Notwithstanding the above, the Contractor may reject any referral for any lawful nondiscriminatory reason provided it complies with this Article. All disputes involving the discipline and/or discharge of an employee working on a Covered Project shall be resolved through the grievance and arbitration provisions. The Contractors shall have the right to reject any applicant referred by a Union, in accordance with the applicable Master Agreement.

In the event a Union is unable to fill a request for qualified employees within forty-eight (48) hours after such request is made by a Contractor (Saturdays, Sundays and Holidays excepted), the Contractor may employ applicants from any other available source. The Contractor shall inform the Union of the name and social security number of any applicant hired from the other sources and shall refer the applicant to the Union for dispatch to the Project within twenty-four (24) hours after hiring.

Except as required by law, the Unions shall not knowingly refer an employee currently employed by any Contractor working under this PLA to any other Contractor. This provision shall not be applicable in any case in which the Covered Employee has given notice to the Contractor- Employer of his or her intent to quit.

The selection of craft foremen and/or general foreman and the number of such foremen and/or general foreman required shall be entirely the responsibility of the Contractor, and Craft foremen shall be designated working foremen at the request of the Contractor and once so designated shall be allowed to perform work on the Project in

their respective crafts.

The parties recognize the State's interest in providing opportunities to participate on the Project to emerging Contractors, as well as other enterprises which may not have previously had a relationship with the Unions signatory to this PLA. To ensure that Contractors will have an opportunity to employ their "core" employees on this Project, all "core" employees must register with the appropriate Union prior to employment. The parties agree that such Contractor may request by name, and the Union will honor, referral of such persons who have registered with the appropriate Union for Project work and who demonstrate the following qualifications:

- (a) possess any license required by State or federal law for the Project work to be performed;
- (b) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
- (c) were on the Contractor's active payroll for at least sixty (60) out of one hundred eighty (180) calendar days prior to the contract award; and
- (d) have the ability to perform safely the basic functions of the applicable trade.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired seven (7) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s), if available. For the duration of the Contractor's work, the ratio shall be maintained and when the Contractor's workforce is reduced, covered Employees shall be reduced in the same ratio of "core" covered Employees to hiring hall referrals as was applied in the initial hiring.

It is understood that Contractors that do not follow this process shall be subject to the Grievance Procedure of the PLA.

#### **ARTICLE VIII – Work Stoppages**

During the term of this PLA, there shall be no strikes, picketing, work stoppages, slow-downs, or other work disruption for any reason by the Union, its applicable Local Union or by an Employee, and there shall be no lockout by the Contractor. Failure of any Union, Local Union, or Employee to cross any picket line established at the Project site is a violation of this Article.

In the case of nonpayment of wages or benefits on a Covered Project, the Union shall give the State and the Contractor three (3) business days' notice should the Union intend to withhold labor from the Contractor's workforce, during which time the



Contractor or its upper tier contractor or the State may take action to correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor who has failed to pay wages or benefits shall not be considered a violation of this Article.

If the State or any Contractor contends that any Union signatory to this Agreement has violated this Article, it will so notify in writing the senior executive of the Union, setting forth the facts alleged to violate this Article. The HCA or the Union in violation of this Article and signatory to this Agreement will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for the unauthorized acts of employees it represents.

### **ARTICLE IX – Grievance Procedure**

This PLA is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Covered Project for the purpose of completing the construction of the project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

It is understood that the Contractors, the Unions, and the Contractors' Employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the project and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Any question or dispute arising out of and during the term of this PLA (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any Contractor's Employee feels he or she is aggrieved by a violation of this PLA, he or she, through his or her local union business representative or job steward, shall, within ten (10) working days after becoming aware of the dispute, but in no event more than thirty (30) business days after the Employee reasonably should have become aware of the event giving rise to the dispute, give notice to the work-site representative of the involved Contractor, stating the provision(s) alleged to have been violated. The business representative of the local Union or the job steward and the work-site representative of the involved Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information

concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the PLA alleged to have been violated.

(b) Should the Local Union(s) or the Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Union Representative, and other representatives as needed, and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to the appropriate Arbitrator from the list of the permanent panel of Arbitrators, as described herein. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

The Contractors and the Unions agree to the following permanent panel of five (5) arbitrators from which an Arbitrator shall be selected to hear and decide disputes arising under this Article. The members of the panel are:

Eden Hifo  
Louis Chang  
Lori Aquino  
Ron Brown  
James Duffy

In the event any panel member is no longer available to serve under this PLA, the State and the Unions collectively shall agree on a substitute panel member within thirty (30) calendar days of notification by the panel member of the member's unavailability to serve. If the parties cannot reach an agreement within the specified time, the remaining panel members shall establish a list of five (5) individuals from which the State and the Unions collectively shall select the substitute panel member by striking an individual from the list in an alternating and equal number of strikes. The remaining individual shall thereafter serve as the new panel member in substitution for the member who is no longer available to serve.

Selection of the Arbitrator from the panel shall be by mutual agreement of the Contractor and the Union(s) involved in the dispute. If an Arbitrator cannot mutually be agreed to by the parties, each party shall have an alternating and equal amount of strikes

from the panel of five (5) and the remaining panel member shall serve in the dispute. The Contractor or Union(s) invoking this procedure shall notify the Arbitrator selected. In the event that the selected Arbitrator is unavailable, the Contractor and Union(s) shall mutually agree upon another Arbitrator.

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

The Project Contractor shall be notified of all actions at Steps 2 and 3.

The time limits in this Article may be extended by mutual written agreement of the parties to the grievance.

Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit trust funds to collect delinquent wages or Trust Fund contributions from Contractors on the Project.

#### **ARTICLE X – Pre-Job Conferences**

The Contractor shall conduct a pre-job conference with the designated representatives for the HCA, and the Unions signatory to this agreement within thirty (30) days after the execution of the Contractor's contract with the State. The Contractor shall provide such representatives with a list of subcontractors seven (7) days prior to the pre-job conference.

#### **ARTICLE XI – Jurisdictional Disputes**

The Contractor performing the work shall be responsible for the assignment of work within the scope of work they will perform.

Should a jurisdictional dispute arise, including based on the assignment of work by the Contractor performing the work, there shall first be an attempt to resolve the dispute at the Project level by the Contractor and the Unions involved in the dispute by no later than seven (7) calendar days from the date a written notice of the dispute was received by the Contractor. If the dispute is not resolved within seven (7) calendar days, it shall be settled and adjudicated according to the following process. The decision rendered in the Plan proceeding described below or arbitration shall be final, binding and conclusive on the Contractor and Unions parties to the Plan proceeding or arbitration. A decision in any Plan proceeding or arbitration proceeding shall not create or be perceived to create a

precedent for future disputes. It is understood that the Joint Administrative Committee has no authority to rule on any issue involved in the jurisdictional dispute. Each signatory union to this PLA agrees to make a good faith effort to avoid jurisdictional disputes.

Jurisdictional disputes between Unions signatory to this Agreement who are members of the Hawaii Building and Construction Trades Council ("HBCTC") may be settled and adjudicated according to the current Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") established by the North America's Building Trades Unions ("NABTU") or any other dispute resolution plan or procedure that may be adopted in the future by the HBCTC if all such unions agree. If there is no mutual agreement, then the dispute shall be resolved as set forth below.

Unions that are not members of the HBCTC, or HBCTC members who are also members of the Hawaii Construction Alliance ("HCA") and decide not to use the procedure set forth in the immediately preceding paragraph or jurisdictional disputes between a member of HBCTC and a member of HCA shall utilize the following procedure. An arbitrator, based upon a review of Hawaii local industry standards and applying the other factors utilized by the National Labor Relations Board to resolve jurisdictional disputes, such as NLRB certification, collective bargaining agreements with the contractor, relative skills and training, past practice of employer, performance of employees, employer performance, and economy and efficiency of operations, shall determine the jurisdictional dispute.

- (a) Either party may request, in writing, that the dispute be submitted to arbitration, before a single arbitrator, in accordance with the Arbitration Rules, Procedures and Protocols of Dispute Prevention & Resolution, Inc. ("DPR"), or its successors, then in effect, a current copy of which is attached hereto as Exhibit A, and the provisions of the Federal Arbitration Act, as amended (collectively, the "Required Arbitration Procedures").
- (b) The arbitrator shall be selected in accordance with the Required Arbitration Procedures.
- (c) The arbitration on the dispute shall be held at a mutually acceptable location in Honolulu, Hawaii. The decision of the arbitrator rendered in any such arbitration shall be final and binding upon the parties and judgment thereon may be entered in any court having jurisdiction thereof. The cost of the arbitration service and the fees of the arbitrator shall be shared equally and paid by the parties to the arbitration. Each party to the arbitration shall bear its own attorneys' fees and costs in the defense or prosecution thereof. Such arbitration award or decision shall not constitute a precedent for any future dispute.

All jurisdictional disputes between Unions signatory to this Agreement shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved by agreement, Plan proceeding or arbitration award covering all employees who are involved. The Arbitrator is not authorized to award back pay or any other damages for a misassignment of work, except that a party may seek back pay or damages for the period of non-compliance with an Arbitrator's decision from any party that fails to comply with such decision within seven (7) business days of the issuance of the Arbitrator's decision.

## **ARTICLE XII – General Work Rules: Obligations of Contractor and Unions**

Slowdowns, standby crews, and featherbedding practices will not be tolerated.

It is understood that the Project Contractor may establish reasonable project rules that will be uniformly applied and adhered to by all Contractors, the Unions, and all employees. These rules will be provided to all Contractors for the Contractor's pre-job conference and made available in writing to their Covered Employees. These rules shall be provided to the Unions.

Security procedures for the control of tools, equipment, and materials are the responsibility of the Contractor. Covered Employees having in their possession without authorization any property of the Contractor or of another employee shall be subject to immediate discharge by the Contractor. The Contractor will be responsible for the establishment of reasonable security measures for the protection of personal, company, and Contractor property.

There shall be no restrictions on the use of any tools by any qualified employee in any emergency situation endangering life, limb, or property; or on the use of any tools or equipment for the performance of work within the Union's jurisdiction, provided the employee can safely use the tools and/or the equipment involved.

The selection of a craft foreman and general foreman and the number of same required shall be entirely the right and responsibility of the Contractor.

The Contractor has the sole and exclusive right to assign specific Covered Employees and/or crews to perform overtime work when such overtime work is necessary to accomplish the job. The overtime work shall be assigned to Covered Employees and/or crew(s), to the extent needed, who performed the work involved during the regular work day or work shift.

The Contractor shall provide a convenient and sanitary supply of drinking water and sanitary drinking cups.

The Contractor shall provide adequate sanitary toilet facilities, water, and clean up facilities to Covered Employees.

The Contractor shall provide a safe and secure place for storage of tools.

All required safety equipment will be provided by the Contractor.

### **ARTICLE XIII – Safety, Environmental and Health**

It shall be the responsibility of the Contractor to ensure safe working conditions and employee compliance with any safety rules herein or established by the Contractor.

Covered Employees shall be bound by the safety, security and site access rules established by the Contractor for the Project. These rules will be published and given to each employee as part of their new-hire orientation, as well as posted throughout the Project.

The Contractor shall conduct safety meetings at least once a week for all Covered Employees. Such mandatory meetings will be conducted on paid time. Attendance at such meetings is mandatory and employees who do not attend may be subject to disciplinary action.

Covered Employees shall use, maintain, and care for personal protective equipment and other health and safety equipment issued or assigned them. Proper use of the equipment is mandatory, and failure to do so may result in disciplinary action up to and including discharge.

To further the health, safety and security of the workplace, the Contractor and Unions agree to implement the policy covering drugs and other controlled substances pursuant to Article XII.

### **ARTICLE XIV – Substance Abuse Policy and Drug and Alcohol Testing Procedure**

The parties to this PLA acknowledge the prohibition of the use, sale, transfer, purchase, and/or possession of a controlled substance, alcohol, and/or firearms while on Project premises. Additionally, all parties to this PLA agree to a “drug free” workplace policy, which prohibits those working on this Project from having a level of alcohol which could indicate impairment, and/or any level of controlled substances (i.e., illegal drugs) in their system. No employee shall be permitted to work on the Project under the influence of intoxicants or drugs and shall be removed from the Project if found under the influence of intoxicants or drugs.

To that end, the parties agree that all employees performing work under this PLA shall be obligated and bound to their employer’s drug and alcohol prevention policies and programs, whether those policies and procedures are contained in separate collective bargaining agreement between the Union and Contractor or policies and procedures of a contractor that has no separate collective bargaining agreement with the union. If a Contractor with no separate collective bargaining agreement with a union has drug and alcohol prevention policies and procedures, those policies and procedures shall be just as

effective in preventing drug and alcohol abuse as the policies and procedures contained in the corresponding collective bargaining agreement with the union, and shall have no lower testing standards than contained in that agreement. The Contractor shall provide a copy of those policies and procedures to the Union upon request. If a Contractor with no separate collective bargaining agreement with a union has no drug and alcohol prevention policies and procedures, those policies and procedures contained in the corresponding collective bargaining agreement with the union shall apply.

#### **ARTICLE XV – Apprenticeship Program**

All apprentices must be indentured in a State-approved apprenticeship program.

Contractors shall employ apprentices in their respective craft to perform work customarily performed by the craft in which they are apprenticed and within their capabilities.

To promote training and employment opportunities for military veterans who are interested in careers in the building and construction trades, the Contractor-Employer and Unions agree, when appropriate, to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment in the Center’s “Helmets for Hardhats” program to serve as a resource for assessment for construction aptitude of the military veterans and for possible referral to apprenticeship programs.

Consistent with any restriction contained in applicable federal and state law and regulations, including those governing equal employment opportunity, prevailing wage and apprenticeship requirements and limitations, the Contractor may employ registered apprentices.

Apprentice pay scales and ratios shall be governed by the appropriate Union’s joint apprenticeship program.

#### **ARTICLE XVI – Wages, Hours, Etc.**

The wages, hours, shift schedules, holidays, and other terms and conditions of employment will be governed by the master agreement of the applicable craft.

#### **ARTICLE XVII – Subcontracting: Obligations of Contractors**

Contractor agrees that it will not subcontract any Covered Work to be performed on a Covered Project, except to an individual firm, partnership, corporation, or any combination thereof or joint venture that signs an Agreement To Be Bound and thereby agrees to become a Contractor subject to this PLA.

#### **ARTICLE XVIII – Joint Administrative Committee**

The parties to this PLA shall establish a four (4) person Joint Administrative Committee (JAC). This JAC shall be comprised of a management party made up of two

(2) representatives selected by the State, including one Contractor who has signed the Agreement To Be Bound during the term of this PLA; and a labor party made up of two (2) representatives from the Unions signatory to this Agreement of which one representative shall be a member in good standing, officer or administrator of the Hawaii Construction Alliance. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this PLA.

The JAC shall not be involved in or rule upon any individual grievances or on any issue involved in a jurisdictional dispute. Outside of the context of an individual grievance or a jurisdictional dispute, the JAC will resolve any interpretations or clarifications of this PLA that may be required by the Unions and/or the Contractor by majority vote with such resolutions to be binding on all signatories of this PLA as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this PLA, shall be referred directly to the JAC for resolution prior to such question being referred to arbitration in the event the JAC is unable to resolve the question. Such resolutions or clarifications shall be reduced to writing, jointly signed by the JAC and distributed to the signatory parties to this PLA. If the JAC fails to resolve any questions regarding the meaning, interpretation, or application of the provisions of this PLA within its authority, the Administrator shall have the authority to resolve such question. Labor and management shall each have one equal vote at JAC meetings regardless of the number of attendees. Labor and management shall jointly chair the JAC. In addition to its charter to rule on interpretations or clarifications to this PLA, the JAC shall annually review the effectiveness of the PLA in meeting the PLA goals of:

- a. No construction Work Disruption on this Project.
- b. Reducing friction that may arise when union and open shop employees are working at a common jobsite.
- c. High quality, cost effective construction work.
- d. Providing training opportunities for local craft workers.
- e. Ensuring compliance with health and safety policies and laws.

#### **ARTICLE XIX – No Discrimination**

The Contractor and Unions shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, ancestry, arrest or court record, or any other protected status pursuant to federal or state law or regulations.

All covered projects shall comply with and be in accordance with the right to organize for the purpose of collective bargaining guaranteed under Article XIII, Sections 1 and 2, of the State Constitution, and the operation and maintenance of facilities that are constructed pursuant to this PLA shall be consistent with the merit principle under Article XVI, Section 1, of the State Constitution.



Contractor agrees that it will not subcontract any Covered Work to be performed on a Covered Project, except to an individual firm, partnership, corporation, or any combination thereof or joint venture that signs an Agreement To Be Bound and thereby agrees to become a Contractor subject to this PLA. Any Contractor working on a Covered Project shall, as a condition to working on said Project, perform all work under the terms of Article XV – Subcontracting: Obligations of Contractors.

#### **ARTICLE XX – Savings Clause**

This document contains the entire agreement of the parties, and no party has made any representations to another party which are not contained herein. This PLA is intended to fully conform to all applicable statutes, regulations, and Executive Orders. Should any provision herein contained be rendered or declared invalid by reason of any existing legislation or by any decree of a court of competent jurisdiction, such invalidation of such part or portion of this PLA shall not invalidate the remaining portions thereof, and they shall remain in full force and effect. The parties shall immediately meet to renegotiate the portion or portions thereof rendered invalid.

#### **ARTICLE XXI – Duration**

The PLA shall become effective upon the execution by the State, the HCA, and the Unions signatory to this Agreement. The PLA shall remain in full force and effect until December 31, 2026 and, unless extended by the parties to the PLA, shall terminate thereafter. Amendments and modifications to the PLA must be made by mutual agreement of all the parties.

The PLA shall apply until the completion of any individual Covered Project regardless of the PLA term.

#### **ARTICLE XXII – Execution in Counterparts**

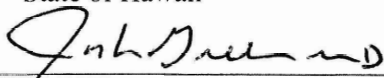
This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

#### **ARTICLE XXIII – Annual Review upon Request**

At each anniversary of the commencement date of the PLA, any signatory union (the “Requesting Party”) may request a review of any issues of concern arising under the PLA to determine whether such issues can be resolved. If the Requesting Party is not satisfied with the outcome of the review process, the Requesting Party shall have the right to terminate its participation in the PLA upon thirty (30) days advance written notice to the Administrator.

This Project Labor Agreement is executed on this 22 day of December, 2023,  
Honolulu, Hawaii.

State of Hawaii



\_\_\_\_\_  
Governor

Hawaii Construction Alliance

\_\_\_\_\_

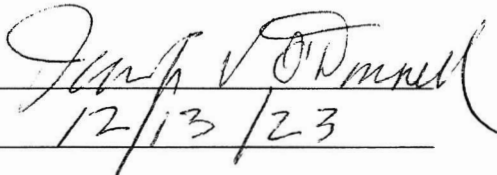
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**UNION SIGNATURES**

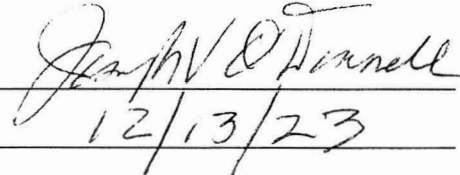
The undersigned Unions hereby agree to comply with all of the terms and conditions of Covered Projects.

It is understood that this signing shall be as binding on the undersigned Unions as though they signed the above-referenced Project Labor Agreement.

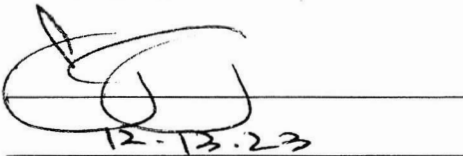
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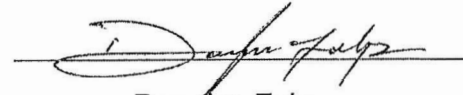
Ironworkers Local 625S

  
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United Union of Roofers,  
Waterproofers & Allied Workers  
Local 221

  
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12-13-23  
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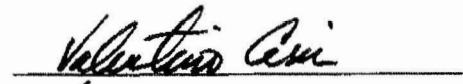
International Union of Heat &  
Frost Insulators & Allied  
Workers Local 132

  
\_\_\_\_\_  
Douglas Fulp  
\_\_\_\_\_  
Date 12/15/2023


IBUAC, AFL-CIO Local 1 Hawaii

  
\_\_\_\_\_  
12 | 13 | 2023  
\_\_\_\_\_  
Date

Plumbers & Fitters UA Local 675

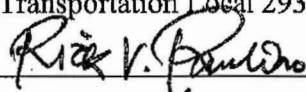
  
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Valentino CERIA  
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Date 12/28/23

International Brotherhood of  
Electrical Workers Local 1186

  
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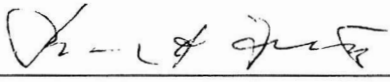
Date 12/13/23

International Association of Sheet  
Metal, Air, Rail &  
Transportation Local 293

  
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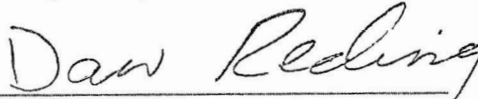
Date  
12/20/2023

Hawaii Regional Council of  
Carpenters

  
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Date  
12/14/23

International Union of  
Operating Engineers Local 3

  
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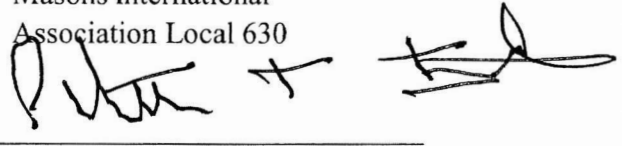
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1/31/2024

Laborers' International Union of  
North America Local 368

  
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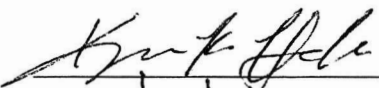
Date  
12/14/23

Operative Plasterer's & Cement  
Masons International  
Association Local 630

  
\_\_\_\_\_

Date

Hawaii Teamsters & Allied  
Workers Local 996

  
\_\_\_\_\_


Date  
12/13/23

International Union of Elevator  
Constructors Local 126

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

Date

International Brotherhood of  
Boilermakers Local 627

  
December 13, 2023

Date

International Brotherhood of  
Electrical Workers Local 1260

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

Date

District Council 50  
International Union of  
Painters & Allied Trades  
Local 1791  
Glaziers, Architectural  
Metal & Glass Workers  
Local 1889 Carpet,  
Linoleum & Soft Tile  
Local 1926  
Drywall, Tapers &  
Finishers Local 1944

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

Date

**ATTACHMENT "A"  
AGREEMENT TO BE  
BOUND**

This is to certify that the undersigned Contractor has examined a copy of the Project Labor Agreement between the State of Hawaii, the Hawaii Construction Alliance, and its Affiliated Labor Unions, and the Unions signatory to this Agreement ("PLA"). The undersigned Contractor hereby agrees to comply with all of the terms and conditions of the PLA on this Covered Project, entitled \_[Name of Project]\_.

It is understood that the signing of this Agreement To Be Bound shall be as binding on the undersigned Contractor as though the Contractor had signed the above-referenced PLA. The Contractor further agrees that all of its subcontractors, of whatever tier, shall execute this Agreement To Be Bound and agree to be bound by the PLA for all work within the scope of this Covered Project, entitled \_[Name of Project]\_.

The Contractor agrees to pay contributions to the bona fide fringe benefit trust funds established by the applicable Master Agreement(s) for each hour worked on the Covered Project, in the amounts designated in the applicable Master Agreement(s). By signing this Agreement To Be Bound, the Contractor adopts and agrees to be bound by the legally established trust agreements governing such trust funds, which may from time to time be amended. The Contractor authorizes the parties to such trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed. The Contractor agrees to execute a separate subscription agreement in the event the trust funds so require.

CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

Contractor State License # or Motor Carrier Permit #: \_\_\_\_\_

Name of Authorized Person (print): \_\_\_\_\_

Signature of Authorized Person: \_\_\_\_\_

Title of Authorized Person: \_\_\_\_\_

Telephone Number of Authorized Person: \_\_\_\_\_

Address of Authorized Person: \_\_\_\_\_

---

**EXHIBIT H**  
**SUSTAINABILITY PLAN**

[attached]

## Sustainability Plan

In addition to meeting all the requirements of the 201H Agreement dated March 13, 2023, the energy-efficiency requirements of the State of Hawaii as well as the City and County of Honolulu, The Developer and The Authority will endeavor to include the following sustainability features in the Project. Both parties acknowledge that this list is subject to change and the final sustainability features will be limited to those included in the final building permit set of plans.

- Building Placement that maximizes prevailing trade winds and natural patterns of the sun, thereby reducing need for air conditioning.
- Natural ventilation
- Buildings that minimize weather infiltration and inhibit intrusion from mold and pests.
- Water use reductions in accordance with the Energy Policy Act and Low Flow Faucets and Fixtures
- Natural lighting to minimize the need for interior lighting and thus reducing electrical use for artificial lighting.
- High efficiency lighting, such as compact fluorescent and LED fixtures and bulbs.
- Building insulation that will reduce need for air conditioning.
- Installation of native and climate-adapted plants for landscaping
- Integrated landscape and site design options that employ low impact storm water management techniques.
- Automated irrigation to prevent overwatering.



**EXHIBIT I**

**HAWAII GENERAL CONDITIONS**

[attached]

# GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

#### 14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the



total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:



- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

**HPHA GROUND LEASE AGREEMENT**

**HPHA School Street Redevelopment Project  
(Phase 1A)**

**LANDLORD:**

Hawaii Public Housing Authority,  
a public body corporate and politic, organized under the laws of the State of Hawaii

**TENANT:**

School Street I, LP,  
a Hawaii limited partnership

as of [insert date of closing]

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**HPHA GROUND LEASE  
BETWEEN THE HAWAII PUBLIC HOUSING AUTHORITY  
AND  
SCHOOL STREET I, LP**

**BASIC LEASE INFORMATION**

**DATE:** AS OF [insert date of closing]

**LANDLORD:** HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic, organized under the laws of the State of Hawaii

**TENANT:** SCHOOL STREET I, LP, a Hawaii limited partnership

**PREMISES:** CERTAIN PREMISES SITUATED IN THE CITY AND COUNTY OF HONOLULU, STATE OF HAWAII, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A"

**ANNUAL BASE RENT:** \$[insert based on appraisal], increasing annually at the rate of \_\_\_\_ percent (\_\_.00%)

**COMMENCEMENT DATE:** [insert date of closing]

**TERM:** 65 years

**LANDLORD'S ADDRESS FOR NOTICES:** Hawaii Public Housing Authority  
1002 N School Street  
Honolulu, Hawaii 96817

**TENANT'S ADDRESS FOR NOTICES:** C/O HIGHRIDGE COSTA DEVELOPMENT COMPANY, LLC  
330 W. VICTORIA STREET  
GARDENA, CA 98445

WITH A COPY TO:

C/O RBC COMMUNITY INVESTMENTS, LLC  
600 SUPERIOR AVENUE  
SUITE 2300  
CLEVELAND, OHIO 44114  
ATTENTION: PRESIDENT AND GENERAL COUNSEL

WITH A COPY TO:

BOCARSLY EMDEN COWAN ESMAIL & ARNDT LLP  
633 WEST FIFTH STREET, SUITE 5880  
LOS ANGELES, CALIFORNIA 90071  
ATTENTION: KYLE ARNDT, ESQ.  
FACSIMILE NO.: (213) 559-0733

The Basic Lease Information is part of the Lease; however, if any of the Basic Lease Information contradicts any provision of the Lease, the provisions of the Lease will prevail.

## HPHA GROUND LEASE AGREEMENT

THIS HPHA GROUND LEASE AGREEMENT (the “Lease”) effective as of \_\_\_\_\_, \_\_\_\_\_ is by and between the HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic organized and existing pursuant to Chapter 356D of the Hawaii Revised Statutes, with a principal place of operation located at 1102 N School Street, Honolulu, HI 96817 (“Landlord”), and SCHOOL STREET I, LP, a Hawaii limited partnership, with a principal place of business located at 330 W. Victoria Street, Gardena, CA 98445 (“Tenant”).

### **ARTICLE 1- RECITALS**

Landlord is the fee simple owner of the land consisting of 83,451 square feet, located at 1002 North School Street, in the City and County of Honolulu, and State of Hawaii, identified as Tax Map Key No. (1) 1-6-009-012 as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Demised Premises”).

Landlord selected Retirement Housing Foundation, a California nonprofit corporation (“RHF”) to undertake the redevelopment of the School Street Redevelopment Project (the “Redevelopment”). Landlord and RHF’s affiliate, RHF Foundation, Inc. (“RHFFI”) entered into that certain Master Development Agreement, effective on or about November 15, 2019 (“Master Development Agreement”), which Master Development Agreement was assigned to HCDC School Street LLC, a Hawaii limited liability company (“HCDC”), an experienced developer of affordable housing projects on January 11, 2024 pursuant to an Assignment and Assumption of Master Development Agreement. Tenant is an affiliate of HCDC.

Phase 1A of the Redevelopment will consist of two hundred fifty (250) residential rental units all as more particularly described and set forth in the Plans and Specifications.

Tenant wishes to ground lease from Landlord, pursuant to this Lease, the Demised Premises, on which Tenant will construct Phase 1A of the Redevelopment.

NOW, THEREFORE, in consideration of these presents, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby enter into this Lease on the terms and conditions set forth herein.

### **ARTICLE 2- DEFINITIONS**

Capitalized terms used in this Lease and not otherwise defined shall have the meanings referred to below.

“Additional Rent” - See Section 18.1.

“AFR”- shall mean the long-term applicable federal rate pursuant to U.S. Internal Revenue Code Section 1274(d) in effect as of the date hereof.

“Assignment of Leases and Rents” - shall mean such assignments of leases and rent executed by the Tenant in favor of any Leasehold Mortgagee, whether the assignment is made in a document titled an “assignment of leases and rents” is contained within a mortgage.



“Base Rent” - See Section 7.1.

“City” - See Section 4.1.

“Commencement Date” - See Basic Lease Information.

“Completion Date” - shall mean [insert date at closing].

“Compliance Period” - shall mean the compliance period as defined in Internal Revenue Code Section 42(i)(1).

“Conversion Date” - shall mean the date upon which the Tenant converts from construction to permanent financing.

“Controlling Interest” - See Section 12.4.

“Demised Premises” - See Article 1.

“Environmental Laws” - See Exhibit C.

“Environmental Report” - See Section 5.1(g) and Exhibit E.

“Event of Default” - See Section 18.2.

“First Leasehold Mortgagee” - shall mean the first leasehold mortgagee during construction and prior to the conversion to permanent financing is First Hawaiian Bank and after conversion to permanent financing the first leasehold mortgagee shall be Citicorp USA, Inc.

“Governmental Authorities” - See Section 4.2.

“Hazardous Materials” - See Exhibit C.

“HPHA Affordability Requirement” - means the Landlord’s requirement as a condition for entering into this Lease that the Premises are used to provide residential housing for households at or below sixty percent (60%) of the U.S. Department of Housing and Urban Development area median income for the City, adjusted for household size (except for the manager’s unit).

“Improvements” - means all buildings, structures and other permanent improvements now or hereafter erected on, over or under the Demised Premises, including all walkway and road improvements, parking areas and facilities, landscaping improvements of whatever nature, utility and sewage lines (to the extent of Tenant’s interest therein) and the appurtenances to all of the foregoing.

“Investor Member” or “Investor Limited Partner(s)” - shall mean the Tax Credit Investor(s), in its capacity as the investor member or partner(s) of tenant, and its successors and assigns.

“Landlord” - See Preamble.

“Lease” - See Preamble.

“Lease Year” - shall mean a calendar year.

“Leasehold Mortgage(s)” - shall mean a mortgage, or other security instrument (a) that encumbers the Leasehold Estate or any interest in the Leasehold Estate; (b) a copy of which is promptly after execution delivered to Landlord and recorded in the Bureau of Conveyances of the State of Hawaii, with a certification by Leasehold Mortgagee that the copy is accurate and stating Leasehold Mortgagee’s name and Notice address; and (c) that is held by a Leasehold Mortgagee subject to the jurisdiction of the courts of the State of Hawai`i.

“Leasehold Mortgagee(s)” - shall mean a holder of a Leasehold Mortgage and its successor and assigns, provided that: (a) it is not an affiliate of Tenant; and (b) Landlord has received notice of its name and address and a copy of its Leasehold Mortgage.

“LIHTC” - shall mean Low Income Housing Tax Credits as provided in Section 42 of the Internal Revenue Code, as amended, or under State law.

“Limited Partnership Agreement” - shall mean that certain Amended and Restated Limited Partnership Agreement of Tenant of substantially even date herewith.

“Management Agent” - shall mean the management agent selected by Tenant and approved by Landlord, and its successors and assigns, which shall select the Property Manager to manage the Premises. The initial Management Agent shall be, and Landlord hereby approves, HCHP Property Management, LP, a California limited partnership (which shall have subcontracted management duties to Michaels Management-Affordable, LLC).

“Operating Expenses” - See Section 8.2

“Permitted Encumbrances - shall mean all mortgages, easements and other encumbrances permitted to exist with regard to the title to the Property, as set forth on Exhibit F, attached hereto and incorporated herein by this reference, or as otherwise jointly agreed to by Landlord and Tenant.

“Plans and Specifications” - shall mean all those plans and specifications for the Improvements to be constructed on the Demised Premises and all associated work, as approved by the Landlord.

“Premises” - shall mean the Demised Premises and the Improvements.

“Property Manager” - shall mean the property manager selected by the Management Agent and approved by Landlord, and its successors and assigns. The initial Property Manager shall be, and Landlord hereby approves, Michaels Management-Affordable, LLC, a New Jersey limited liability company.

“Regulatory Default” - See Article 18.4(a).

“Rent” - shall mean, collectively, Base Rent and Additional Rent.

“State” shall mean the State of Hawaii.

“Tax Credit Investor(s)” - shall mean RBC Community Investments, LLC, an Illinois limited liability company, and its permitted successors and/or assigns (the “Limited Partner”), RBC Community Investments Manager II, Inc., a Delaware corporation, and its permitted successors and/or assigns (the “Special Limited Partner”) and RBC Community Investments, LLC, an Illinois limited liability company, and its permitted successors and/or assigns (the “State Limited Partner”).

“Tax Credit Requirements” - shall mean any and all matters required by Section 42, the Hawaii Housing Finance and Development Corporation (HHFDC) or any agreement with a condition of receipt of tax credits, whether or not such requirement is explicitly stated in Section 42, regulations thereunder, or HHFDC requirements.

“Tax Credit Units” - See Section 4.1

“Tenant”- See Preamble

“Term” - See Section 6.1

“Transfer” - See Section 12.1

### **ARTICLE 3- DEMISE OF LEASEHOLD INTEREST**

**Section 3.1 Lease to Tenant.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Demised Premises, upon the terms and conditions stated herein. The Demised Premises are leased (a) subject only to (i) any state of facts an accurate survey of the Premises would show, (ii) any state of facts a personal inspection would show, (iii) Permitted Encumbrances, (iv) present and future zoning laws, ordinances, resolutions and regulations of any governmental authority and all present and future ordinances, statutes, laws, regulations and orders of all boards, bureaus, departments, agencies, commissions and bodies of any municipal, county, state or federal sovereign, (v) the effect of all present and future municipal, state or federal laws, orders and regulations relating to the Tenant, sub-tenants or occupants of the Demised Premises; and (b) with the right to pass and repass over all permitted existing and future ways and public areas located on, in or appurtenant to the Demised Premises and/or shown on the ALTA/ACSM Land Title Survey Subdivision Map set forth in Exhibit A, and the right to use such other portions of the Demised Premises and all utilities and service conduits and facilities thereon to facilitate the construction of the Improvements pursuant to the Plans and Specifications.

Section 3.2 Services by Landlord. Except as otherwise provided herein, it is expressly agreed that Landlord is not and shall not be required under this Lease to render any services of any kind to Tenant. Nothing herein shall modify the terms of any separate agreement between Tenant and Landlord.

Section 3.3 Quiet Enjoyment. Tenant, upon paying the rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease, including Permitted Exceptions.

## **ARTICLE 4- IMPROVEMENTS**

Section 4.1 Improvements to be Constructed. Tenant shall construct the Improvements or cause the Improvements to be constructed on the Demised Premises, at its sole expense no later than the Completion Date. Upon completion, the Improvements shall, subject to a Force Majeure Event, include a total of two hundred fifty (250) housing units (which includes one manager's unit not subject to income restrictions), which shall be available for rental solely for (a) the period required by the Tax Credit Requirements to households with incomes at or below sixty percent (60%) of the area median income (the "Tax Credit Units") at initial occupancy and (b) the term of this Lease households with incomes at or below sixty percent (60%) of area median income at initial occupancy ("HPHA Affordability Requirement"). Tenant shall take no action to effectuate any material amendments, modifications or any other material alterations to the Plans and Specifications without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

Section 4.1 Compliance with Laws. The Improvements shall be constructed in good and workmanlike manner and in conformance with all applicable laws, ordinances, codes, orders, rules and regulations of all governmental authorities, agencies or departments having jurisdiction over the Improvements (collectively, "Governmental Authorities"), including, insofar as applicable, Landlord, the United States Government, the State, and City and County of Honolulu (the "City").

Section 4.2 Approvals, Permits and Licenses. Tenant shall apply for, assume all costs of and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use, utility easements, operation and occupancy of the Improvements, all in accordance with the Plans and Specifications. Landlord agrees to cooperate with and publicly support Tenant's efforts to obtain such permits and licenses that are substantially in accordance with the Plans and Specifications. If required, Landlord shall consent and allow Tenant to apply for and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use, operation, and occupation of the Improvements, in the name of Landlord, at Tenant's sole cost and expense.

Section 4.3 Ownership of Improvements. Landlord and Tenant acknowledge and agree that during the entire Term, Tenant shall be the owner of the Improvements, and as such, Tenant shall be entitled to all depreciation deductions and low-income housing tax credits or other benefits for income tax purposes relating to the Improvements. At the expiration of the Term or other

termination of this Lease, ownership of the Improvements shall, at the option of the Landlord, remain and become the property of the Landlord.

Section 4.4 Public Improvements. The Demised Premises are currently serviced by School Street which is a public street owned by the City.

## **ARTICLE 5- REPRESENTATIONS AND WARRANTIES**

Section 5.1 Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that:

- (a) Landlord owns fee simple good and marketable title to the Demised Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for the Permitted Encumbrances and the title exceptions listed in Exhibit F-1.
- (b) Landlord has full right, power and authority to make, execute, deliver, and perform its obligations under this Lease. Landlord has obtained all required and necessary consents and approvals to enter into this Lease with Tenant. The entry by Landlord into this Lease with Tenant and the performance of all of the terms, provisions, and conditions contained herein does not and will not violate or cause a breach or default under any agreement or obligation to which Landlord is a party or by which it is bound.
- (c) There are no unpaid special assessments of which Landlord has received notice, or of which Landlord is otherwise aware for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Demised Premises.
- (d) Except for the Purchase Option and Right of First Refusal executed on substantially even date herewith, Landlord is not obligated under any contract, lease, or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Demised Premises.
- (e) Except as disclosed to Tenant in writing, to the best of Landlord's knowledge, there is no action, suit, litigation, or proceeding pending or, to Landlord's knowledge, threatened against Landlord which could prevent or impair Landlord's entry into this Lease and/or performance of its obligations hereunder.
- (f) The person signing this Lease on behalf of Landlord is duly and validly authorized to do so.
- (g) Except as may be referenced in those environmental reports referenced at Exhibit E hereto (the "Environmental Report"), to the best of Landlord's information, knowledge and belief, there are no Hazardous Materials or

underground storage tanks located in, on or under the Premises. Except as may be referenced in the Environmental Report, to the best of Landlord's information, knowledge and belief, no notice from any governmental authority or any person has ever been issued to Landlord, its agents or employees, claiming any violation of any Environmental Law with respect to the Premises.

**Section 5.2** **Tenant's Representations and Warranties.** Tenant hereby warrants and represents to Landlord that:

- (a) Tenant is a duly organized, lawfully existing limited partnership and is in good standing under the laws of the State.
- (b) Tenant has the full right, power and authority to make, execute, deliver and perform its obligations under this Lease.
- (c) Tenant's execution and delivery of this Lease has been authorized by all requisite action on the part of Tenant and its general partner, and the execution and delivery of this Lease by Tenant and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.
- (d) There is no action, suit, litigation, or proceeding pending or, to Tenant's knowledge, threatened against Tenant or any Tenant affiliate which could prevent or impair Tenant's entry into this Lease and/or the full and complete performance of its obligations hereunder.
- (e) The person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

## **ARTICLE 6- TERM**

**Section 6.1** **Term of Lease.** The term of this Lease shall be, unless sooner terminated in accordance with the provisions hereof, for a period of time commencing upon the Commencement Date and ending on [fill in 65 years from date of closing], 2089 (the "**Term**").

## **ARTICLE 7- PAYMENTS BY TENANT**

**Section 7.1** **Base Rent**<sup>1</sup>. As consideration for this Lease and the use of the Demised Premises, the Tenant shall pay to the Landlord the Base Rent, as set forth in this Section 7.1. The term "**Base Rent**" shall mean the annual rent payment due from the Tenant to the Landlord on June 1 of each year of the Term beginning the Lease Year after the date of Conversion Date. The Base Rent shall be (i) in the initial amount of [insert based on appraisal] (\$\_\_\_\_\_), increasing annually at the rate of two percent (2.00%), beginning the Lease Year after the Conversion Date and continuing for \_\_\_\_\_(\_\_\_\_) years and continuing for the remainder of the Term. Notwithstanding

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<sup>1</sup> Base rent amount to be determined by an appraisal. We expect to finalize this section by the HPHA board meeting on April 4, 2024.

the foregoing, prior to [May 1, 2089]<sup>2</sup>, such Base Rent shall be due and payable only to the extent of Net Cash Flow (as defined in Exhibit G) available annually for such purposes pursuant to the priority described in Exhibit G attached hereto. Any Base Rent for which the Parties have agreed there is not sufficient Cash Flow in any given year shall be deferred to the following year, and shall be paid from subsequent years' Cash Flow (in the same priority) until paid in full and shall bear interest at the AFR. All accrued and unpaid Base Rent plus interest (“Accrued Base Rent”), shall be due and payable in full by the Tenant on the earlier of (a) a sale of the Project and (b) [May 20\_\_\_] [and, thereafter, the Base Rent shall be paid currently.] The Landlord and Tenant acknowledge and agree that the Base Rent provided herein constitutes fair market rent for the right to use the Demised Premises and agree to account for payment thereof as an expense for tax and accounting purposes.

Section 7.2    Reserved.

Section 7.3    Payments by Tenant. Unless otherwise expressly set forth in this Lease, all costs, expenses, liabilities, charges, or other deductions whatsoever with respect to the Demised Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, or occupation of the Demised Premises or the Improvements or both, or with respect to any interest of Landlord in the Demised Premises or this Lease, shall be the responsibility of and paid by Tenant.

**ARTICLE 8- TAXES: OPERATING EXPENSES**

Section 8.1    Taxes. Tenant shall pay any and all real property taxes which are assessed against the Premises by any taxing authority and any payments required by any cooperation agreement providing for payments in lieu of taxes which now exist or at any time in the future may be entered into by Tenant with the City or other taxing authorities. Landlord shall pay all other local, state, or federal taxes assessed against Landlord, if any; local, state, or federal capital levy of Landlord, if any; or sales, excise, franchise, gift, estate, succession, inheritance taxes, of Landlord, if any.

Section 8.2    Property Operating Expenses. Tenant shall pay or cause to be paid all costs and expenses attributable to or incurred in connection with the operation, maintenance, and repair of the Demised Premises and the Improvements (collectively, “Operating Expenses”).

Section 8.3    Adjustments. Rents and other revenues, taxes and Operating Expenses, payable with respect to the Premises for the month in which the Commencement Date occurs shall be prorated as of the Commencement Date. Rents and other charges which at the Commencement Date are past due shall not be prorated and Tenant shall retain those amounts, as and when collected by Tenant. The right to receive and collect all rents and profits, delinquent or otherwise, shall be transferred to Tenant as of the Commencement Date.

All other income and Operating Expenses of the Premises, including, without limitation, public utility charges, maintenance, management, and other service charges, and all other normal operating charges shall be prorated as of the Commencement Date based upon the best available information. The obligation of the parties to adjust, Post-Commencement Date, operating

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<sup>2</sup> Subject to refinement based on appraisal. Year to be specified by the HPHA board meeting on April 4, 2024.

expenses as of the closing date, to the extent unknown or not provided for at the execution of this Lease, shall be paid by the party responsible therefor within thirty (30) days after written demand has been made. Such demand shall include a copy of the invoice(s) for which payment or reimbursement is sought.

## ARTICLE 9- INSURANCE

### Section 9.1 Tenant's Insurance.

- (a) Tenant agrees, at its sole expense, to procure and maintain at all times during the term of this Lease the types of insurance specified in Exhibit B hereto, and on the terms specified below, in order to protect Landlord from the liability arising from the negligence of the Tenant, its officers, subcontractors, joint venture, members, partners, agents or employees. The insurance carriers used by Tenant must be authorized to conduct business in the State of Hawaii and shall have a BEST Rating of not less than an "A-" except where noted. The insurance provided shall cover all operations under this Lease, whether performed by Tenant, its agents, or by its subcontractors. In the event of the failure or insolvency of any insurer of Tenant which results in the failure of such insurer to pay for a claim that would otherwise be covered under Tenant's policy of insurance with the same, Tenant shall indemnify and hold Landlord harmless from and against any and all claims, suits, liability and damages which might result therefrom, including but not limited to attorneys' fees and the costs of defending the same.
- (b) Certificates of Insurance. Prior to Closing, Tenant and its subcontractors shall furnish Landlord with satisfactory evidence (subject to approval of Landlord) that Tenant and its subcontractors have the insurance coverage set forth in Exhibit B, and which shall name Landlord and the State of Hawaii as additional named insureds. Tenant will immediately provide written notice to the Landlord should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope or not renewed upon expiration.
- (c) All insurance policies shall contain the following clauses:
  - (i) "The State of Hawaii, the HPHA, its elected and appointed officials, officers, and employees are added as additional insured with respect to operations performed on the Demised Premises."
  - (ii) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

Tenant shall advise all insurers of the contract provisions regarding insurance and other requirements of this Lease. The failure of Tenant to



notify insurers of the contract provisions shall not relieve Tenant from its insurance obligations under this Lease. Nonfulfillment of the insurance provisions shall constitute a breach of this Lease and the Landlord retains the right to stop work until satisfactory evidence of insurance is provided.

- (d) Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Landlord prior to expiration of insurance coverage. At the Landlord's option, following non-compliance and reasonable opportunity to cure (but no less than fifteen (15) days) the Landlord may purchase insurance on behalf of Tenant and will charge back all costs to Tenant. The receipt of any certificate does not constitute agreement by the Landlord that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Lease. The Tenant shall provide thirty (30) days written notice to be given to Landlord in the event coverage is to be substantially changed, canceled or non-renewed.
- (e) If any of the required insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincident with the date of this Lease and the Certificate of Insurance shall state the coverage is "claims made" and also the Retroactive Date. Tenant shall maintain coverage for the duration of this Lease. Any extended reporting period premium (tail coverage) shall be paid by Tenant.
- (f) Not less than annually, Tenant shall provide to Landlord certificate of insurance naming Landlord as an additional insured, and a certified copy of the insurance policies obtained pursuant hereto. It is further agreed that Tenant shall provide Landlord thirty (30) days prior written notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the Retroactive Date, cancellation and/or non-renewal.
- (g) Tenant shall require all subcontractors to carry the insurance required herein or Tenant may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in this Section 9.1. Evidence of such coverage must be submitted to Landlord not later than fifteen (15) days prior to the date on which such subcontractor is to begin work on the Demised Premises.
- (h) Tenant expressly understands and agrees that any insurance or self-insurance programs maintained by Landlord shall be only for the benefit of Landlord and shall apply in excess of and will not contribute with insurance provided by Tenant under this Lease.

Section 9.2 Waiver of Insured Claims. Each of Landlord and Tenant hereby waives right of recovery against the other for loss or injury against which the waiving party is protected by insurance, but only to the extent of such insurance.

**ARTICLE 10- USE OF DEMISED PREMISES: COVENANTS RUNNING WITH THE LAND**

Section 10.1 Permitted Use. Tenant will cause the Demised Premises to be used as residential rental housing consistent with the HPHA Affordability Requirement and in the manner permitted by any and all documents including modifications, renewals, or replacements required by the Tax Credit Requirements including the Extended Low-Income Housing Commitment of substantially even date herewith, which is recorded on the land records of the State, to which reference may be had. Such covenants contained herein are intended to create covenants running with the land and shall also be binding upon Tenant's successors and assigns, including any entity which succeeds to Tenant's interest in the Demised Premises by foreclosure or an instrument in lieu of foreclosure, so long as such covenant remains in effect.

Section 10.2 Compliance with Laws. Tenant shall not use or occupy or suffer or permit any portion of the Premises to be used or occupied in violation of any law, ordinance, order, rule, regulation, certificate of occupancy, or other governmental requirements. Tenant shall comply with applicable laws and all rules, orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any other similar body having jurisdiction over the Premises.

**ARTICLE 11- ENVIRONMENTAL COVENANTS AND INDEMNITIES**

Section 11.1 Tenant's Environmental Covenants. Without limiting any of Tenant's other covenants, agreements and obligations set forth in this Lease, Tenant hereby specifically covenants and agrees to fulfill the obligations set forth below with respect to environmental matters:

- (a) Tenant shall comply with all applicable Environmental Laws (as defined in Exhibit C) applicable to Tenant's use of the Premises. All required governmental permits and licenses issued to Tenant and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Tenant shall comply therewith. All Hazardous Materials present, handled or generated or used by Tenant on the Premises which are removed from the Premises by Tenant shall be transported and disposed of in a lawful manner.
- (b) Tenant shall provide Landlord with copies of all forms, notices and other information received by or on behalf of Tenant concerning any releases, spills or other incidents relating to Hazardous Materials or any violations of Environmental Laws at or relating to the Premises when and as supplied to any government agency.
- (c) Tenant shall not itself, and Tenant shall not permit any other person, including third parties with whom Tenant contracts in regard to this Lease, to bring onto the Premises any Hazardous Materials (other than quantities

or such substances, including gasoline, diesel fuel and the like as are customary and necessary to prosecute construction of the Improvements, and any repair, maintenance or replacement thereof). Tenant shall be responsible for proper removal and lawful disposal, at its sole cost and expense, any Hazardous Materials brought onto the Premises by Tenant, its agents, contractors, subcontractors, servants, employees, or invitees, resulting from a default under this Section and shall be responsible for all costs and expenses associated with the remediation of any such Hazardous Materials on the Premises.

- (d) In the event that Tenant or any contractor or subcontractor encounters any Hazardous Materials on the Premises, Tenant shall immediately notify Landlord in writing and comply with all laws, ordinances, regulations and orders of all governmental, regulatory and other public and quasi-public agencies, authorities and entities having jurisdiction over the same with respect thereto.

Section 11.2 Landlord's Environmental Covenants. Without limitation of any of Landlord's other covenants, agreements and obligations under this Lease, Landlord hereby specifically covenants and agrees to fulfill the responsibilities set forth below with respect to environmental matters:

- (a) Landlord shall not be liable for any Hazardous Materials on the Premises unless the Landlord or its agents, contractors or employees bring such Hazardous Materials on to the Premises after the Commencement Date, or the Landlord had actual knowledge of such Hazardous Materials and failed to disclose the same to Tenant in writing before the Commencement Date, or such Hazardous Materials are brought onto the Premises by the Landlord or any of its agents, contractors or employees after the Commencement Date.
- (b) Landlord shall comply with all Environmental Laws applicable to Landlord relative to the Premises. All required governmental permits and licenses issued to Landlord and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Landlord shall comply therewith.
- (c) Landlord shall provide Tenant with copies of all forms, notices and other information received by or on behalf of Landlord concerning any releases, spills or other incidents relating to Hazardous Materials or any violations of Environmental Laws at or relating to the Premises when and as supplied by any governmental agency.
- (d) Without limiting any responsibilities of the Landlord and Tenant under this Lease, to the extent there are any unforeseen remediation costs with respect

to the Premises, Landlord will work in good faith with the Tenant to identify third-party funding sources to pay for such unforeseen remediation costs.

Section 11.3 Tenant's Environmental Indemnity Tenant covenants and agrees to and shall indemnify, defend, and hold Landlord free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses (including attorneys' fees and expenses) which may at any time be imposed upon, reasonably incurred by or asserted or awarded against Landlord in connection with or arising from:

- (a) any Hazardous Materials which are first placed on, in, or under all or any portion of the Premises by Tenant, its agents, contractors, subcontractors, servants, employees, or invitees during the period defined herein as the Term; or
- (b) any violation of any Environmental Laws by Tenant, or its employees, agents, contractors or subcontractors at or relating to the Premises.
- (c) Tenant shall indemnify and hold harmless Landlord, its officers, employees, agents, contractors, and directors from all claims, actions, demands, costs, expenses and attorneys' fees arising out of, attributable to or otherwise occasioned, in whole or in part, by an act or omission of Tenant or its agents, contractors, subcontractors, servants, employees, or invitees, which shall constitute a breach of the Tenant's obligations under this Lease. If any party performing work for the Tenant on the Premises shall assert any claim against the Landlord on account of any damage alleged to have been caused by reason of the negligent acts or intentional misconduct of the Tenant, its agents, servants, employees, invitees or contractors (including, without limitation, its construction contractor), Tenant shall defend at its own expense any suit based upon such claim, and if any judgment or claim against Landlord shall be allowed, Tenant shall immediately pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith. The obligations, indemnities, and liabilities of Tenant under this Section 11.3 shall not extend to any liability caused by (i) the negligence or willful misconduct of Landlord, or its employees, contractors or agents, (ii) Hazardous Materials with respect to which the Landlord had actual knowledge but did not disclose in writing to Tenant or (iii) pre-existing conditions existing prior to the Effective Date and discovered after the Effective Date and not previously disclosed to the Tenant. Tenant's liability hereunder shall not be limited to any provisions or limits of insurance set forth in this Lease. Tenant shall not be liable for any claims that result from the action or inaction of Landlord or its contractors, agents or employees with respect to their obligations under this Lease.

Section 11.4 Intentionally Omitted.

Section 11.5 Survival. The agreements, representations and warranties of Landlord and Tenant respectively in this Article 11 shall survive the expiration or early termination of this Lease.

## **ARTICLE 12- ASSIGNMENTS AND TRANSFERS**

Section 12.1 Consent Required. Except as expressly provided herein, Tenant shall not, without the prior written consent of Landlord, assign, transfer or otherwise convey this Lease or any interest herein or in the Premises or the Improvements (a “Transfer”), except insofar as permitted by, and subject to the terms and conditions of, applicable laws and regulations. Any attempted assignment by Tenant without such consents, except for a transfer to Landlord, shall be null and void without further action required by Landlord. Subleases of the residential units in the Improvements to residential is permitted.

Section 12.2 Subsequent Assignment. In cases where Landlord’s consent is required, Landlord’s consent to one Transfer shall not be construed as a waiver of the requirement of its consent to any subsequent assignment.

Section 12.3 Request for Consent. If Tenant requests Landlord’s consent to a specific Transfer, Tenant shall provide to Landlord such information as may reasonably be required by Landlord.

Section 12.4 Transfer by Tenant. It shall be deemed to be a Transfer requiring the approvals set forth in Section 12.1 above in the event of any attempt by Tenant to (a) demolish all or any material portion of the Improvements, or (b) make or permit any voluntary or involuntary, total or partial, sale, lease, assignment, conveyance, mortgage, pledge, hypothecation, encumbrance, or other transfer of any portion or all of the Demised Premises without the prior written consent of Landlord, which Landlord consent shall not be unreasonably conditioned, withheld or delayed. Notwithstanding anything in this Lease to the contrary, by its execution of this Lease, Landlord shall be deemed to have consented to (i) a lease of any unit in the Premises, (ii) the execution, delivery and recordation of the Leasehold Mortgages, and the liens created thereby, (iii) the transfer of Tenant’s leasehold interest in the Demised Premises and fee ownership interest in the Improvements by foreclosure or deed or assignment in lieu thereof (or any leasehold equivalent thereof) pursuant to a mortgage of the Premises that has been approved by Landlord (including the Leasehold Mortgages), and (iv) normal uses associated with the construction and operation of the Premises including but not limited to utility easements.

No transfer, conveyance, or assignment shall be made, without the prior written approval of the Landlord, of (i) any interest of a general partner, managing member or controlling stockholder (any such interest being referred to as a “Controlling Interest”) in Tenant, or (ii) a Controlling Interest in any entity which has a Controlling Interest in Tenant. Tenant may sell its interest in this Agreement to a general partner pursuant to the Option to Purchase Agreement between the Tenant and the Tenant’s general partner (the “GP Purchase Option Agreement”) or otherwise and Tenant may affect transfers that are expressly authorized by the Tenant’s Partnership Agreement, including without limitation, the removal of the general partner of Tenant for cause and the replacement thereof with a substitute general partner selected by the Tax Credit Investor or an affiliate thereof. The execution and delivery of the GP Purchase Option Agreement shall not constitute a default under this Lease. Transfers of the Tax Credit Investor’s interest in Tenant or

of interests in the Tax Credit Investor shall not be restricted by this Lease. For purposes of this Lease, “Non-Controlling Interest” means limited partnership or non-managing member interests in the Tenant and/or interests in the Tax Credit Investor.

Notwithstanding the foregoing, Landlord consent is not required for the transfer of (a) any interest in Tenant to an Affiliate of the General Partner, or (b) any Non-Controlling Interest (in the Tenant (regardless of whether payment in full of all equity contributions has been made to Tenant) provided that the Tenant: (i) provides the Landlord with prior written notice of such transfer (“Notice of Transfer – Non-Controlling Interest”) and (ii) certifies to the Landlord that the new partner, member or stockholder, as appropriate, remains obligated to fund its equity contribution in accordance with the terms of the Landlord-approved organizational documents of the Tenant. In addition, if the equity contributions have not been made to the Tenant in full, the Notice of Transfer – Non-Controlling Interest shall confirm that the transfer does not alter the obligation to contribute equity in accordance with the Limited Partnership Agreement.

Landlord will not unreasonably withhold, delay or condition a request by Tenant for consent to an internal reorganization of the corporate, company or partnership structure of Tenant or any members of Tenant, including the exercise by a partner of its right to remove the general partner and to designate a substitute general partner of tenant under the terms of Tenant’s Limited Partnership Agreement.

Notwithstanding the foregoing, the Landlord agrees that no prior approval is required for the exercise by the Investor or its affiliates of their rights to remove the general partner and to designate a substitute general partner of Tenant under the terms of the Tenant’s Limited Partnership Agreement, provided that the Landlord is given prior written notice of the default under the Limited Partnership Agreement and of the exercise of the removal and appointment right therein (the “Notice”).

The Landlord’s consent is not required for the pledge by the general partner of the Tenant to the Investor Limited Partner and Leasehold Mortgagees, and their successors and assigns, of the general partner’s interest in the Tenant, as security for the performance of all of the general partner’s obligations under the Limited Partnership Agreement and the approved mortgage loan (as and if applicable).

### **ARTICLE 13- LEASEHOLD FINANCING AND TAX CREDIT INVESTOR**

**Section 13.1 Right to Mortgage.** On or about even date herewith, Tenant has granted one or more mortgages of its interest in the Lease to lenders (each mortgage, a Leasehold Mortgage and together Leasehold Mortgages) and, in connection therewith, has collaterally assigned this Lease to such lenders. Future mortgages of the Premises shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In no event shall Landlord ever be required to execute any such mortgage or any note secured thereby or any other obligation securing any such note, or to subordinate Landlord’s fee interest in the Demised Premises or any portion thereof to the lien of any such mortgage. The Leasehold Mortgagee(s) as of the date hereof are listed on Exhibit D attached hereto and incorporated herein by this reference and each such Leasehold Mortgagee is entitled to the benefit of all protections

granted to Leasehold Mortgagees under this Lease. Landlord hereby consents to the Assignments of Leases and Rents to such Leasehold Mortgagees.

Section 13.2 Consent Required for Termination and Amendments.

- (a) No cancellation, termination, surrender or modification of this Lease by agreement between Landlord and Tenant, shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.
- (b) The right of the Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute may not be exercised by the Tenant without the prior written consent of the Leasehold Mortgagee.

Section 13.3 Default Notice. Landlord, upon providing Tenant with any notice of default under this Lease shall at the same time provide a copy of such notice to every Leasehold Mortgagee of whom it has knowledge pursuant to notice from Tenant or pursuant to Exhibit D. From and after the date on which such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall, have the same cure period as Tenant plus an additional sixty (60) days, and shall have the option (but not the obligation) to remedy any default or cause the same to be remedied, as is given Tenant. Landlord shall accept such payment or performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes any and each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose; nevertheless, the parties agree that such entry does not constitute possession of the Premises by a Leasehold Mortgagee. Further, as to any non-monetary default, Leasehold Mortgagee shall have one hundred eighty (180) days after receipt of such written notice from Landlord, and a reasonable time after the expiration of said one hundred eighty (180) days if it shall have commenced cure, foreclosure or other appropriate proceeding in the nature thereof within said one hundred eighty (180) day period and is diligently prosecuting the same, within which to endeavor to cure such default; and notwithstanding any other provision of this Lease, all rights of Landlord to terminate this Lease upon the default by Tenant are and shall continue to be at all times while Tenant is indebted to the Leasehold Mortgagee, subject to and conditioned upon Landlord's first having given Leasehold Mortgagee written notice of such default and Leasehold Mortgagee's failure to cure such default within the time and upon the conditions stated above after receiving such written notice of default.

The Tax Credit Investor shall be deemed a third-party beneficiary of the provisions of this Section 13.3 for the sole and exclusive purpose of entitling the Tax Credit Investor to exercise its rights to notice and cure, as expressly stated in this Section 13.3. The foregoing right of the Tax Credit Investor to be a third-party beneficiary under this Lease shall be the only right of the Tax Credit Investor (express or implied) to be a third-party beneficiary hereunder.

Section 13.4 Notice to Leasehold Mortgagee. Notwithstanding anything to the contrary contained herein, if any default or failure to provide required insurance shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease except in accordance with the provisions of Section 18.3 hereof and this Article 13.

Section 13.5 Assumption of Tenant's Obligations. For purposes of this Article 13, the making of a leasehold mortgage to a Leasehold Mortgagee shall not be deemed to constitute a Transfer of this Lease or Tenant's interest created hereby, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of Tenant's interests under this Lease so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder prior to such Leasehold Mortgagee's actual possession of the Premises, but a Leasehold Mortgagee may become the holder of Tenant's leasehold estate and fee ownership of the Improvements and succeed to Tenant's interest in this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, and any purchaser at any sale of Tenant's interest under this Lease in any proceeding for the foreclosure of any mortgage or the assignee or transferee of Tenant's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any mortgage shall be deemed to be an assignee or transferee approved by Landlord and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder, but only for so long as such purchaser or assignee is the owner of Tenant's interest in this Lease and Tenant's fee ownership interest in the Improvements.

Section 13.6 Non-curable Defaults. Nothing in this Article 13 shall require any Leasehold Mortgagee or its designee as a condition to the exercise of rights provided under this Article 13 to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee. The foregoing shall not be deemed to excuse a Leasehold Mortgagee from performing covenants relating to the condition of the Premises or other similar matters requiring access to and/or control of the Premises from and after such time as such Leasehold Mortgagee acquires Tenant's interest in this Lease and actual possession of the Premises by foreclosure or otherwise.

Section 13.7 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagee(s) shall otherwise expressly consent in writing, the fee title to the Demised Premises and the leasehold estate of Tenant therein shall not merge by operation of law but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by any single owner, other than by termination of this Lease by Landlord in compliance with the provisions of this Article 13.

Section 13.8 Landlord's Fee to Remain Unsubordinated. Landlord and Tenant expressly acknowledge and agree that Landlord shall have no obligation under this Lease or otherwise to subordinate the fee title of Landlord in the Demised Premises or any rights of Landlord in this Lease to the leasehold estate of Tenant created by this Lease or to join any such mortgage or encumbrance or otherwise in any manner that would subordinate the fee title of Landlord in and to the Demised Premises or the interest of Landlord under this Lease.

Section 13.9 Sale, Mortgage or Conveyance of Demised Premises. In the event of any sale, mortgage or conveyance of the fee interest in the Demised Premises by Landlord during the



Term hereof, any such sale or conveyance of all or any part of the fee interest in the Demised Premises shall be subject to this Lease and all of the provisions hereof.

Section 13.10 Notice to Tax Credit Investor. So long as any Tax Credit Investor is an Investor partner of Tenant, Landlord agrees, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to such Tax Credit Investor; provided that a failure on the part of Landlord to give such notice to such Tax Credit Investor at its address set forth in Section 19.10 hereof, shall not affect the validity and effectiveness of the notice to the Tenant. Each Tax Credit Investor will have the same cure period as Tenant, plus thirty (30) days after the giving of the notice aforesaid to such Tax Credit Investor for remedying the default or causing the same to be remedied as is given Tenant after notice to such Tax Credit Investor plus an additional thirty (30) days, and Landlord agrees to accept such performance on the part of such Tax Credit Investor as though the same had been done or performed by Tenant.

Section 13.11 Tax Credit Investor's Opportunity to Replace Tenant's General Partner. Landlord agrees that it will take no action to effect a termination of this Lease by reason of any Event of Default without first giving to each Tax Credit Investor named in Section 19.10 hereof or who has provided Landlord with written notice of such Tax Credit Investor's name and address, reasonable time, not to exceed sixty (60) days to replace Tenant's general partner and cause the new general partner to cure such default, provided, that (a) as a condition of such forbearance, the Landlord receives notice of the substitution of a new general partner of the Tenant within thirty (30) days following notice to the Tax Credit Investor, (b) the Tenant, following such substitution of general partner, shall thereupon proceed with due diligence to cure such Event of Default, and (c) if the Event of Default relates to the completion of construction of the Demised Premises or any part thereof or occupancy thereof, then the extended cure period shall be limited to the period, if any, prior to the date by which the Improvements or parts thereof must be placed in service in order to preserve LIHTCs for the Premises.

Section 13.12 Leasehold Mortgagee's Right to New Lease. In the event of the termination of this Lease prior to this Lease's expiration date (except pursuant to Article 17 hereof), whether due to rejection by Tenant or Tenant's trustee in a bankruptcy proceeding or otherwise, or the occurrence of an incurable Event of Default, Landlord agrees, provided the Event of Default has been cured by the entitled party pursuant to Sections 13.3 or 13.10 above, or Section 13.6 applies, that it will enter into a new lease of the Demised Premises with the curing Leasehold Mortgagee for a period equal to the remainder of the Term, effective as of the date of such termination, at the Base Rent and Additional Rent and upon the covenants, agreements, terms, provisions and limitations herein contained; provided, however, such Leasehold Mortgagee (a) makes written request upon Landlord for such new lease within sixty (60) days from the date of notice of such termination, and (b) pays or causes to be paid to Landlord at the time of the execution and delivery of such new lease any and all sums which at the time of the execution and delivery thereof be actually due under this Lease but for such termination, and pays or causes to be paid any and all expenses including actual and reasonable attorneys' fees, court costs and costs and disbursements incurred by Landlord in connection with the execution and delivery of such new lease. If Landlord receives more than one written request for a new lease in accordance with the provisions of this Section 13.12, then such new lease shall be entered pursuant to the request of the first lien leasehold mortgagee, and the rights hereunder of any leasehold mortgagee whose permitted mortgage is

subordinate to the first lienholder's permitted mortgage shall be subordinated in order of their respective recorded priority.

Any new lease made pursuant to this Section 13.12 shall be and remain an encumbrance on the fee title to the Demised Premises having the same priority thereon as this Lease, and shall without implied limitation be and remain prior to any mortgage or any lien, charge or encumbrance of the fee of the Demised Premises created by Landlord.

Section 13.13 No Personal Liability. No Leasehold Mortgagee, any successor or assignee thereof, or any purchaser at any sale of Tenant's interest under this Lease in any foreclosure proceeding shall ever have any liability under this Lease before it acquires record title to the Tenant's interest in the Lease and only so long as it holds record title.

Section 13.14 Priority of Leasehold Mortgages. If at any time there is more than one Leasehold Mortgage in existence, the following provisions shall govern: (a) the most senior Leasehold Mortgagee may at its option exercise all rights of a Leasehold Mortgagee to the exclusion of any junior Leasehold Mortgagees should there be a conflict between Leasehold Mortgagees as to the exercise of such rights; (b) if the most senior Leasehold Mortgagee declines to exercise the rights granted hereunder or otherwise allows, any other Leasehold Mortgagee may exercise the rights, in order of priority. Any dispute among the Leasehold Mortgagees regarding priority shall be determined by a title insurance company licensed in the state where the Premises are located. Neither the title insurance company nor Landlord shall have any liability to Tenant or to any Leasehold Mortgagee for any such determination.

#### **ARTICLE 14- MAINTENANCE AND REPAIR**

Section 14.1 Tenant's Obligations. Tenant shall, at its sole cost and expense (but nevertheless as a portion of Operating Expenses), maintain the Improvements, reasonable wear and tear excepted, and make repairs, restorations, and replacements to the Improvements, including without limitation, the heating, ventilating, air conditioning, mechanical, electrical, elevator, and plumbing systems, structural, roof, walls, and foundations, and the fixtures and appurtenances to the Improvements as and when needed to preserve them in good working order and condition, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, contractors, and subcontractors. All such repairs, restorations, and replacements will be in quality and class, as elected by Tenant, either equal to the original work or installations, or otherwise consistent with the standard then applicable to residential apartment projects or similar commercial buildings (as applicable) within the geographical area of the Improvements at such time, but in no event of less quality or class than the original work or installations.

#### **ARTICLE 15- ALTERATIONS**

Section 15.1 Non-Structural Alterations. Except for the construction of the Improvements as currently planned, and subject to Section 3.5 hereof, Tenant may make any non-structural alterations, additions, or improvements to the Improvements, without Landlord's consent.

Section 15.2 Structural Alterations. Tenant shall obtain the prior written consent of Landlord, which Landlord consent shall not be unreasonably withheld or delayed, for any structural alterations, additions or improvements to the Improvements having a cost in excess of [\$100,000] (such consent shall not be unreasonably withheld), unless carried out in accordance with the Plans and Specifications.

Section 15.3 No Liens. Except as expressly provided in this Lease, Tenant shall not have any right, authority or power to bind Landlord, the Premises or any other interest of Landlord in the Demised Premises and will pay or cause to be paid all costs and charges for work done by it or caused to be done by it, in or to the Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto. Any lien that is not released or bonded over within ninety (90) days after the filing thereof shall constitute an Event of Default under Section 18.2. Landlord shall have the right to remove any and all such liens against the Premises, and to defend any action against the same, and Tenant shall reimburse Landlord for the cost of such removal, the costs of defending the same, including, but not limited to, attorneys fees in connection therewith.

## **ARTICLE 16- SURRENDER**

Section 16.1 Expiration of Term. At the end of the Term of this Lease (whether upon the expiration or other termination), Tenant shall surrender the Demised Premises, together with the Improvements in their then “as-is” condition, provided that Tenant has maintained the Demised Premises, (including without limitation any required casualty/condemnation restoration) pursuant to the terms of this Lease. At Landlord’s option, Tenant shall execute a deed and a bill of sale for the Improvements at the time of such surrender.

## **ARTICLE 17- CASUALTY: CONDEMNATION**

Section 17.1 Restoration, Casualty, or Condemnation. If any act or occurrence of any kind or nature (including any taking by condemnation, sale in lieu of condemnation or in any other manner for any public or quasi-public purpose (collectively, “Condemnation”)), or the Improvements are damaged or destroyed by fire, earthquake, flood, act of God or other casualty (collectively “Casualty”), shall result in damage to or loss or destruction of the Improvements, in whole or in part, and without diminution of any obligation of the Tenant in respect thereof under the approved Leasehold Mortgages, the Tenant, to the extent that insurance proceeds or condemnation proceeds and other funds, if any, made available (including, without limitation, by further advance pursuant to the approved Leasehold Mortgages) permit, shall promptly cause the restoration, reconstruction, and/or repair of the Improvements as nearly as possible to its value, condition and character immediately prior to such taking or casualty. The First Leasehold Mortgagee shall have the right to participate in adjustment of losses as to Casualty insurance proceeds and all insurance proceeds shall be delivered to the First Leasehold Mortgagee to be applied as provided in the First Leasehold Mortgagee’s loan documents. In the event of a Condemnation, the amount to which Tenant is entitled shall be no less than the total amount of the award reduced by the value of the land and Landlord’s reversionary interest in the Improvements and Tenant’s portion shall be delivered to the First Leasehold Mortgagee to be applied as provided in the First Leasehold Mortgagee’s loan documents. Landlord’s portion shall be limited to the

value of the land and its reversionary interest in the Improvements. The First Leasehold Mortgagee shall have the right to supervise and control the receipt and disbursement of Condemnation awards, and the right to participate in any Condemnation proceedings and settlement discussions. Notwithstanding the foregoing, in the event of any total or substantial loss of the Improvements due to a Casualty that occurs after the initial Compliance Period, Tenant may, with the consent of the First Leasehold Mortgagee, surrender this Lease and pay the balance owing on any mortgage and Tenant shall then receive that portion of the proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, Landlord to be paid the balance of the proceeds.

Landlord shall have no right to terminate this Lease as a result of any Condemnation or Casualty without the written approval of the First Leasehold Mortgagee.

### **ARTICLE 18- DEFAULT; REMEDIES**

#### **Section 18.1 Landlord's Right to Perform.**

- (a) **Landlord's Option.** If Tenant fails to pay when due amounts payable under this Lease or to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after thirty (30) days' prior written notice to Tenant and without waiving any of its rights under this Lease, may (but will not be required to) pay such amount or perform such obligation.
- (b) **Additional Rent.** All amounts so paid by Landlord and all out-of-pocket costs and expenses including actual and reasonable attorney's fees and the costs of Landlord to enforce its rights hereunder, incurred by Landlord in connection with the performance of any such obligations shall be payable by Tenant to Landlord within thirty (30) days after demand therefore and shall constitute "**Additional Rent**" with interest thereon at the rate of twelve percent (12%) per annum from the date of Landlord's having made each such payment or incurred each such cost or expense, and shall be payable by Tenant to Landlord. Landlord shall provide Tenant with invoices and other reasonable evidence of the amounts paid or incurred by Landlord in connection with its exercise of its rights pursuant to this Article.

**Section 18.2 Events of Default.** At the option of Landlord, the occurrence and continuation of any of the following events shall constitute an Event of Default by Tenant:

- (a) Tenant defaults in the due and punctual payment of any Additional Rent, and such default continues for thirty (30) days after written notice from Landlord;
- (b) Tenant abandons the Demised Premises for a period of more than thirty (30) consecutive days;

- (c) This Lease or the Demised Premises or any part of the Demised Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not discharged or bonded within thirty (30) days after its levy;
- (d) Tenant makes any assignment in violation of this Lease which is not cured within thirty (30) days after notice thereof to Tenant;
- (e) Subject to Section 18.4 with respect to any Regulatory Default (as defined herein), the failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant other than those described in subsections (a) through (e) of this Section, if such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that it cannot be cured within such thirty (30) day period, no default shall be deemed to exist if Tenant commences the curing of the default promptly within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The thirty (30) day notice described herein shall be in lieu of and not in addition to, any notice required under law now or hereafter in effect requiring that notice of default be given prior to the commencement of an unlawful detainer or other legal proceeding. Notwithstanding the foregoing, a notice of intent to cancel insurance coverage by an insurer shall be an Event of Default for which there shall be a fifteen (15) day cure period.
- (f) Tenant has filed against it a petition for bankruptcy, insolvency or similar action pursuant to state or federal law, and such petition shall not have been vacated within ninety (90) calendar days after filing; or is adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, either state or federal, and such judgment or decree is not vacated or set aside within ninety (90) calendar days after such determination.
- (g) Tenant makes an assignment for the benefit of creditors or shall submit in writing its inability to pay its debts generally as they become due.
- (h) Any attachment, execution or lien, other than a mortgage preapproved by Landlord, whether voluntary or involuntary, including mechanics liens, is filed against the Leased Premises and is not discharged or dissolved by a bond within ninety (90) calendar days.
- (i) Tenant files a voluntary petition for bankruptcy, insolvency or similar action pursuant to state or federal law; or Tenant consents to, or acquiesces in, the appointment of a receiver, liquidator, or trustee of itself or of the whole or any substantial part of its properties or assets or a court of competent jurisdiction enters an order, judgment or decree appointing a receiver, liquidator or trustee of Tenant, or of the whole or any substantial part of the property or assets of Tenant, and such order, judgment or decree

shall remain unvacated or not set aside or unstayed for ninety (90) calendar days; and

- (j) Tenant fails to comply with the insurance requirements under Article 9.

Section 18.3 Landlord's Right To Terminate Upon Tenant Default. Subject to Leasehold Mortgagee's rights under Article 13 (including the right to notice and cure), in the event any Event of Default by Tenant exists as provided in Section 18.2 above, Landlord shall have the right without further notice or demand to Tenant except as provided in Section 18.2 (Tenant hereby irrevocably waiving all notices and demands except as provided in Section 18.2, statutory or otherwise), to terminate this Lease and Tenant's right to possession of the Demised Premises without terminating Tenant's liabilities under this Lease, in which event ownership of all of the Improvements shall immediately vest in Landlord and Landlord shall be entitled to receive from Tenant such amounts as may be permitted from time to time by applicable law. Notwithstanding anything herein to the contrary, if an Event of Default occurs under this Lease as a result of a bankruptcy filing by or against Tenant, the Landlord hereby agrees to terminate the Tenant's interest in this Lease and the Demised Premises while maintaining the existence of the Lease itself with the applicable Leasehold Mortgagee (at its option) in order of priority acting as tenant.

Landlord agrees not to take any action to terminate this Lease or exercise any other remedy with respect to the Premises at any time during the Compliance Period with respect to any building consisting a part of the Improvements, excluding any action for specific performance, mandatory injunctive relief, or similar equitable remedy to compel compliance by Tenant with the terms of this Lease.

Section 18.4 Regulatory Default. Notwithstanding anything herein to the contrary, the following shall apply to any failure by Tenant to observe or perform any provision of this Lease which would constitute an Event of Default under Article 10 hereof if not cured within the time period specified therein:

- (a) Upon a determination by Landlord that Tenant has materially breached or defaulted on any obligation under Article 10 hereof (a "Regulatory Default"), Landlord shall notify Tenant of (i) the nature of the Regulatory Default, (ii) the actions required to be taken by Tenant in order to cure the Regulatory Default, and (iii) the time (a minimum of thirty (30) days or such additional time period as may be reasonable under the circumstances but in no event more than ninety (90) days), within which Tenant shall respond with reasonable evidence to Landlord that all such required actions have been taken. During any period in which a Leasehold Mortgage is in place, Landlord shall give any and all Leasehold Mortgagee(s) of which Landlord has received notice from Tenant a duplicate copy of any notice described in this subsection in accordance with the provisions of Section 19.10 hereof, and Landlord shall grant to any and all such Leasehold Mortgagee(s) the right to cure the Regulatory Default in accordance with the provisions of this Lease.

- (b) If Tenant, the Management Agent (if applicable), or the Leasehold Mortgagee (if applicable) shall have failed to respond or take the appropriate corrective action with respect to a Regulatory Default to the reasonable satisfaction of Landlord, the First Leasehold Mortgagee and the Tax Credit Investor within the applicable time period, then Landlord shall have the right to seek appropriate equitable remedies (such as specific performance, injunctive relief, or the appointment of a receiver to take over and operate the Property from any court having jurisdiction), in order to cause the Demised Premises to once again be in compliance with Article 10 and Section 18.4.
- (c) In addition to and not in limitation of the foregoing, if Landlord shall determine that a Regulatory Default shall have occurred by reason of a default by Management Agent, and that Tenant (or, as applicable, the Management Agent) and the Leasehold Mortgagee(s) have failed to respond or take corrective action to the reasonable satisfaction of Landlord within the applicable cure period, then Landlord may require Tenant to, and Tenant shall promptly, take such actions as are necessary in order to terminate the appointment of Management Agent pursuant to the terms of its management agreement and to appoint a successor Management Agent of the Demised Premises, subject to any requirements of any Leasehold Mortgagee(s) and the Tax Credit Investor.
- (d) The provisions of this Section 18.4 shall constitute the exclusive remedy of Landlord hereunder in the event of any such Regulatory Default (provided that such Regulatory Default, other than a default under Article 10 of this Lease, does not otherwise constitute a default under this Lease (i.e. Tenant's failure to maintain insurance would otherwise constitute a default hereunder), and provided further that nothing herein shall impair or waive Landlord's rights under separate agreements between the parties). Accordingly, notwithstanding any provision to the contrary contained in this Agreement, the rights and remedies of Landlord by reason of the occurrence of any such Regulatory Default, shall be limited to those expressly set forth in this Section 18.4.

Section 18.5 Force Majeure Event. If the Landlord or Tenant fails to perform one or more of its obligations pursuant to this Agreement, then that party's performance of that term, covenant or act is excused for the period of the delay and the party delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay, if and to the extent that that party proves: (a) that its failure to perform was caused by an impediment beyond its reasonable control; (b) that it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the execution of this Lease; and (c) that it could not reasonably have avoided or overcome the effects of the impediment. The party invoking this clause shall be presumed to have established the conditions described in the preceding paragraph in the case of the occurrence of one or more of the following impediments: war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act

of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party (“Force Majeure Event”). This provision shall become effective only if the party failing to perform notifies the other party within a reasonable time of the extent and nature of the Force Majeure Event, limits delay in performance to that required by the Force Majeure Event, and takes all reasonable steps to minimize damages and resume performance.

Section 18.6 Intentionally Omitted.

## **ARTICLE 19- MISCELLANEOUS**

Section 19.1 No Brokers. Landlord and Tenant represent and warrant to each to the other that neither has dealt with any broker or finder with regard to the Demised Premises or this Lease. Landlord and Tenant will each indemnify, defend and hold the other harmless from and against any loss, liability and expense (including attorneys’ fees and court costs) arising out of claims for fees or commissions in connection with this Lease. This indemnification shall survive termination of this Lease.

Section 19.2 Recordation. Landlord and Tenant shall record a Memorandum of this Lease in the Bureau of Conveyances of the State of Hawaii. At the expiration of the Term, Landlord and Tenant shall execute a quitclaim termination of Tenant’s interest in this Lease.

Section 19.3 Transfer of Landlord’s Interest. Landlord shall not voluntarily transfer all or any portion of its interest in Landlord’s estate if the same would cause a violation or breach of any legal requirement or any agreement or contract to which Landlord is a party by which Landlord is bound.

Section 19.4 No Waiver. No waiver of any condition or agreement in this Lease by either Landlord or Tenant will imply or constitute a further waiver by such party of the same or any other condition or agreement. No act or thing done by Landlord or Landlord’s agents during the Term will be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept such surrender will be valid unless in writing signed by Landlord. No payment by Tenant, nor receipt from Landlord, of a lesser amount than the Additional Rent, or other charges or fees due as stipulated in this Lease will be deemed to be anything other than a payment on account of the same, and to the earliest due of the same. No endorsement or statement on any check, or any letter accompanying any check or payment as Rent, will be deemed an accord and satisfaction. Landlord



will accept such check for payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy available to Landlord. If this Lease is assigned, or if the Demised Premises or any part of the Demised Premises are sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant, or occupant and apply the net amount collected to the Rent reserved in this Lease. No such collection will be deemed a waiver of the covenant in this Lease against assignment and subletting, or the acceptance of the assignee, subtenant, or occupant as Tenant, or a release of Tenant from the complete performance by Tenant of its covenants in this Lease.

Section 19.5 Joint and Several Liability. If Tenant or Landlord is composed of more than one signatory to this Lease, each party will be jointly and severally liable with each other party for payment and performance according to this Lease.

Section 19.6 Captions, Exhibits, Gender, Etc. The captions are inserted in this Lease only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this Lease. The exhibits to this Lease are incorporated into this Lease and are a part hereof. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

Section 19.7 Entire Agreement. This Lease, including all attached exhibits, contains the entire agreement between Landlord and Tenant with respect to its subject matter. Except for those which are specifically set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to one another with respect to this Lease. In the event of any inconsistency between this Lease and the documents executed in connection with any Leasehold Mortgage with Landlord acting as the Leasehold Mortgagee, this Lease shall control.

Section 19.8 Amendment. This Lease may be amended only by a written instrument executed by Landlord and Tenant (subject to the rights of any Leasehold Mortgagee, and/or the Tax Credit Investor, as applicable), the approval of which both Landlord and Tenant mutually agree not to unreasonably withhold, delay or condition.

Section 19.9 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected and shall continue in full force and effect; and in lieu of each provision found to be illegal, invalid, or unenforceable, there will be added to this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible.

Section 19.10 Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Lease shall be in writing and shall be deemed given when received, if (i) delivered by hand, (ii) sent by registered or certified mail, return receipt requested, (iii) sent by recognized overnight delivery service such as Federal Express, or (iv) transmitted by electronic mail, provided such notice is also sent simultaneously in the manner provided for in (i), (ii), or (iii) above, addressed as follows:

|               |   |
|---------------|---|
| If to Tenant: | School Street I, LP<br>c/o HCDC School Street LLC<br>330 West Victoria Street |
|---------------|---|

Gardena, California 90248  
Attn: Mohannad H. Mohanna  
Email: moe.mohanna@hcosta.com

*With copies to:*

Settle Meyer Law LLLC  
Pioneer Plaza,  
900 Fort Street Mall, Suite 1800  
Honolulu, Hawai'i 96813  
Attn: Scott W. Settle  
Email: ssettle@settlemeyerlaw.com

*And:*

Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attn: Christian D. Dubois  
Email: cdubois@coxcastle.com

If to Landlord:

Hawaii Public Housing Authority  
1002 N. School St.  
P.O. Box 17907  
Honolulu, Hawai'i 96817  
Attn: Executive Director  
Fax: (808) 832-4679

*With copies to:*

Department of the Attorney  
General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attn: Deputy Attorney General

If to Investor Limited  
Partner:

c/o RBC Community Investments, LLC  
600 Superior Avenue  
Suite 2300  
Cleveland, Ohio 44114  
Attn: President and General Counsel

*With a copy to:*

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, California 90071  
Attn: Kyle Arndt, Esq.

If to Leasehold  
Mortgagee:

As listed in Exhibit D

A party may change its address by giving written notice to the other party as specified herein. Set forth in Exhibit D attached hereto are notice addresses for the Leasehold Mortgagee(s), as of the date hereof.

Section 19.11 Litigation Fees. Tenant shall be liable for the actual legal expenses of Landlord in connection with any collection of Additional Rent or other impositions owed under this Lease, the remedying of any default under this Lease, or any termination of this Lease where such collection, remedying or termination results from an Event of Default. Payment of any litigation cost or expense shall be determined by applicable state and federal law.

Section 19.12 Waiver of Jury Trial. Landlord and Tenant may waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on all matters arising out of this Lease.

Section 19.13 Governing Law and Venue. This Lease will be governed by and construed in accordance with the internal laws of the State of Hawaii, without regard to principles of conflicts of laws. Any lawsuit to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement shall be filed in a Hawaii state court in the City and County of Honolulu.

Section 19.14 Binding Effect. This Lease will inure to the benefit of, and will be binding upon, Landlord's successors and assigns except as otherwise provided in this Lease. This Lease will inure to the benefit of; and will be binding upon, Tenant's successors and assigns so long as the succession or assignment is permitted pursuant to the terms of this Lease. Leasehold Mortgagees and Tax Credit Investor are intended third-party beneficiaries of this Lease.

Section 19.15 Cumulative Rights. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 19.16 Relationship of Parties. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a principal agent relationship exist between them. Nothing contained in any agreement or contract between the parties hereto, nor any act of Landlord or Tenant will be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture or any association or relationship.

Section 19.17 Non-Merger. Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or Tenant's estate created hereunder with the fee estate of the Demised Premises or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (x) this Lease, Tenant's estate created hereunder or any interest in this Lease or Tenant's estate (including the Improvements), and (y) the fee estate in the Demised Premises or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Landlord, having an interest in (1) this Lease or Tenant's estate created hereunder, and (2) the fee estate in the Demised Premises or any part thereof; shall join in a written instrument effecting such merger and shall duly record the same.

Section 19.18 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

Section 19.19 Limited Liability. Tenant shall look solely to Landlord's interest in the Demised Premises for the satisfaction of any claims against Landlord or its employees, agents, or assigns for the satisfaction of any claims arising pursuant to the Lease. No officer, employee, director, shareholder, manager or partner of Tenant or of any affiliate of Tenant shall be personally liable to Landlord, or any successor in interest or person claiming by, through or under Landlord, in the event of any default or breach of this Lease, except as otherwise set forth in a written guaranty agreement.

Section 19.20 Cooperation. Landlord and Tenant agree that they will cooperate with one another in all respects in furtherance of the Demised Premises. From time to time, Tenant may request modifications to the Lease to satisfy the requirements of financing sources, which financing sources include without limitation, private lenders, equity sources, and government agencies. Landlord will use all reasonable efforts to accommodate the requests of such financing sources and will not unreasonably withhold or delay its approval and execution of modifications to this Lease which do not materially and adversely alter the basic terms hereof. Nothing herein shall impose upon Landlord any requirement to approve any modification or amendment to the Lease which would violate or contravene any applicable laws or any contract or agreement to which Landlord is a party or which is binding on Landlord. Landlord agrees that it will, upon request of Tenant, from time to time, but not more frequently than once a year, enter into an amended and restated lease combining into one document the entire Lease and all amendments and modifications theretofore entered into.

Section 19.21 Estoppel Certificate. Each party agrees from time to time, upon no less than twenty (20) days' prior notice from the other or upon request from any Leasehold Mortgagee or any permitted assignee, to execute, acknowledge and deliver to the other or to such Leasehold Mortgagee or assignee a statement certifying to its knowledge that (i) this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Rent has been paid, and that no additional rent or other payments are due under this Lease (or if additional rent or other payments are due, the nature and amount of the same); and (iii) whether there exists any uncured default by the other party, or any defense, offset, or counterclaim against the other party, and, if so, the nature of such default, defense, offset or counterclaim. Any such statement delivered pursuant to this Section 19.21 may be relied upon by any prospective purchaser or holder of a mortgage of the leasehold interest hereunder from Tenant or any prospective assignee of any such holder of a Leasehold Mortgage.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, and intending to be legally bound hereby, Landlord and Tenant have executed this Lease as of the effective date of the Lease set forth above.

Approved as to form:

\_\_\_\_\_  
Linda L. W. Chow  
Deputy Attorney General

**LANDLORD:**  
HAWAII PUBLIC HOUSING AUTHORITY

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**TENANT:**

SCHOOL STREET I, LP,  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its general partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development  
Company, LLC, a Delaware  
limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
Its President

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

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

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Ground Lease is dated \_\_\_\_\_, and contained \_\_\_\_ pages at the time of this acknowledgment/certification in the First Circuit of the State of Hawaii.

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

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

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

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Ground Lease is dated \_\_\_\_\_, and contained \_\_\_\_ pages at the time of this acknowledgment/certification in the First Circuit of the State of Hawaii.

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

EXHIBIT A

LEGAL DESCRIPTION OF DEMISED PREMISES

LOT 2  
HPHA SCHOOL STREET SENIOR AFFORDABLE HOUSING  
REDEVELOPMENT PHASE 1A

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;
10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;

11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being; 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;
26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;



27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

#### EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of thus easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 267° 19' 93" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 81.98 feet along same;
5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 283° 18' 25" 45.50 feet;
6. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being: 301° 57' 23" 45.95 feet;
8. 279° 14' 37" 60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 305° 34' 40" 40.37

10. 331° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 13° 27' 19" 66.98;
12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;
24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;

28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;
29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;
40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;
10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;

15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;
16. 61° 56' 41" 47.84 feet along the remainder of Former Lanakila Emergency Homes;
17. 151° 56' 41" 10.00 feet along the same to the point of beginning containing an Area of 1208 square feet.

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

#### EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;
2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;

9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.

SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

#### EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

#### EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

1. 64° 35' 22.53 feet along the northerly side of Lanakila Avenue

2. 151° 30' 444.95 feet along the remainder of Former Lanakila Emergency Homes;
3. 61° 54' 43" 28.18 feet along same;
4. 331° 30' 496.00 feet along same to the point of beginning and containing an Area of 10,023 square feet,

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

#### EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. 157° 57' 40" 11.21 feet along the northeasterly side of School Street;
2. 241° 56' 41" 70.50 feet along the same;
3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning and containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]



EXHIBIT B

INSURANCE REQUIREMENTS

- A. The Tenant will provide Comprehensive General Liability, Comprehensive Automobile Liability, Employers Liability and Errors and Omissions Liability coverage to protect itself and the Landlord. The State of Hawaii, the Landlord, its employees and representatives must be included as an additional insured on all policies. The policies will provide limits of coverage acceptable to the Landlord and will be provided by highly rated insurance companies acceptable to the Landlord.

Prior to the execution of the Lease, the Tenant shall furnish to the Landlord certificate(s) of insurance as evidence of the existence of the following insurance coverage in amounts not less than the amounts specified. This insurance must be maintained throughout the entire Term.

i. Workers' Compensation

The Tenant shall carry Workers' Compensation insurance in such form and amount to satisfy, the applicable the State Workers' Compensation Law. Workers' Compensation must be issued by an admitted carrier authorized to do business in the State of Hawaii.

ii. Fidelity Bond

The Tenant shall obtain and maintain, at its sole expense during the term of this Contract, a fidelity bond at a minimum of \$500,000.00, or the minimum amount required by the applicable program, which shall cover all officers, employees, and agents of the Tenant and which shall protect the Tenant against loss by reason of, including but not limited to, fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction or misappropriation or any other dishonest criminal or fraudulent act, wherever committed and whether committed directly or with others. The Tenant shall furnish, at no cost or expense to the Landlord, a certificate of such coverage, within thirty days from the award of the Contract.

iii. Errors and Omissions

The Tenant shall cause the Management Agent to obtain and maintain errors and omissions professional liability coverage at its own expense at a minimum of \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate.

iv. Liability Insurance

The Tenant shall maintain the following minimum insurance limits and coverage:

| <u>Coverages</u>   | <u>Limits</u>   |
|--|---|
| Commercial General Liability                                     | \$2,000,000 single limits per occurrence for bodily injury and personal property damage   |
| Personal Injury Liability  | \$1,000,000.00 single limits per occurrence.<br>\$2,000,000.00 for general aggregate  |
| Automobile Insurance   | Bodily injury liability limits of \$1,000,000.00 each person and \$1,000,000.00 per accident and property damage liability limits of \$1,000,000.00 per accident OR \$2,000,000.00 combined single limit  |
| Workers' Compensation as required by laws of the State of Hawaii | Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the Tenant and to all employees of sub-contractors in case any sub-contractor fails to provide adequate similar protection for all its employees |

## EXHIBIT C

### CERTAIN DEFINITIONS

“Environmental Laws” means any applicable present or future federal, state or local law, ordinance, rule, regulation, permit, license or binding determination of any governmental authority relating to, imposing liability or standards concerning, or otherwise addressing the environment, health or safety, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. (“TOSCA”); the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the Clean Water Act, 33 U.S.C. Section 1251 et seq. and any so-called “Superfund” or “Superlien” law; and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. (“OSHA”), and Chapter 343 of the Hawaii Revised Statutes, as each is from time to time amended and hereafter in effect

“Hazardous Materials” means:

- (a) “hazardous substances” as defined by CERCLA;
- (b) “hazardous wastes,” as defined by RCRA;
- (c) any hazardous, dangerous or toxic chemical, waste, pollutant, contaminant or substance (“pollutant”) within the meaning of any Environmental Law prohibiting, limited or otherwise regulating the use~ exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;
- (d) petroleum crude oil or fraction thereof;
- (e) any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 et seq. and amendments thereto and reauthorizations thereof;
- (f) asbestos-containing materials in any form or condition; or
- (g) polychlorinated biphenyls in any form or condition.

EXHIBIT D

LEASEHOLD MORTGAGEES & NOTICE PROVISIONS

**First Leasehold Mortgagee during Construction and Before Conversion to Permanent Financing:**

First Hawaiian Bank  
999 Bishop Street, Suite 1100  
Honolulu, Hawaii 96813  
Attention: Commercial Real Estate Division

With a copy to:

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Transaction and Asset Management Group  
Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

And a copy to:

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

and a copy of any default notice to:

Citicorp USA, Inc.  
388 Greenwich Street, 17th Floor  
New York, New York 10013  
Attention: General Counsel's Office

Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

**1. Junior Leasehold Mortgagee (Construction to Permanent):**

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

**2. First Leasehold Mortgagee After Conversion to Permanent Financing:**

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4<sup>th</sup> Floor  
New York, New York 10013

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And

Citicorp USA, Inc.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And

Citicorp USA, Inc.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And for notices of default only:

Citicorp USA, Inc.  
388 Greenwich Street, 17<sup>th</sup> Floor  
New York, New York 10013  
Attention: General Counsel's Office

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

EXHIBIT E

ENVIRONMENTAL REPORTS

[To be confirmed]

1. Final Environmental Impact Statement, prepared by PBR Hawaii & Associates Inc., dated April 2018, and accepted and signed by the Governor of the State of Hawaii by letter dated on July 17, 2018.
2. Phase I Environmental Site Assessment Report, prepared by Partner Engineering and Science, Inc. and dated December 12, 2023.
3. Phase II Subsurface Investigation Report, prepared by Partner Engineering and Science, Inc. and dated January 4, 2024.
4. Draft Construction-Environmental Management Plan (C-EMP) dated \_\_\_\_ and submitted to the Hazard Evaluation & Emergency Response Office within the State Department of Health on \_\_\_\_\_.

EXHIBIT F

PERMITTED ENCUMBRANCES

Permitted Encumbrances shall be as set forth in Schedule B to the Owner's Title Policy in the amount of [insert from title policy], File No. [insert from title policy], as issued by Old Republic Title & Escrow of Hawaii.

Exhibit F-1

[Encumbrances existing prior to this closing. Subject to refinement after issuance of title policy.]

1. Quitclaim Deed (Sewer Easement) A-72490859
2. Grant of Easement (Electric Lines) BK 8840, PG 125
3. 201H Agreement A-85000-80
4. Encroachment Agreement A-85570249
5. Affidavit of Surveyor A-87120585



EXHIBIT G

NET CASH FLOW WATERFALL

[Attached]

[Definition of net cash flow and waterfall to be inserted from LPA]

| <b>School Street Apts Phase 1A</b>                           |            |   |  |           |
|--|------------|---|--|-----------|
| <b>Cash Flow Waterfall (draft, subject to HPHA approval)</b> |            |   |  |           |
| <b>3/21/2024</b>   |            |   |  |           |
|  |            |   |  |           |
|  |            |   |  |           |
|  |            | <b>Proposed CF Waterfall</b>  |  |           |
|  |            |   |  |           |
|  | <b>1)</b>  | To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP   |  |           |
|  | <b>2)</b>  | To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)                           |  |           |
|  | <b>3)</b>  | To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis |  |           |
|  | <b>4)</b>  | To replenish the Operating Reserve up to original balance   |  |           |
|  | <b>5)</b>  | To repay the Deferred Developer Fee until paid in full  |  |           |
|  | <b>6)</b>  | To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)  |  |           |
|  | <b>7)</b>  | To repay any GP or Developer Loans  |  |           |
|  | <b>8)</b>  | Of the remaining balance:   |  |           |
|  |            | a) 75% to repay the RHRF Loan until paid in full, and then  |  |           |
|  |            | b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease   |  |           |
|  | <b>9)</b>  | Of the remaining balance:   |  |           |
|  |            | (i) 45% to the GP as Incentive Management Fee   |  |           |
|  |            | (ii) 45% to pay the current and accrued Base Rent due on the Ground Lease   |  |           |
|  | <b>10)</b> | Of the remaining balance:   |  |           |
|  |            | (i) 0.01% to the GP   |  | 0.0100%   |
|  |            | (ii) 0.001% to the Special LP   |  | 0.0010%   |
|  |            | (iii) 1% to the State LP  |  | 1.0000%   |
|  |            | (iv) 98.989% to the Federal LP  |  | 98.9890%  |
|  |            |   |  | 100.0000% |

After Recordation, Return By Mail ( ) Pick Up ( )

Department of the Attorney  
General, State of Hawai`i  
425 Queen Street  
Honolulu, Hawai`i 96813  
Attention: Linda L.W. Chow

Tax Map Key No.: (1) 1-6-009-012

Total Pages: 12

**Title of Document: Memorandum of Ground Lease**

**Parties to Document:**

**Landlord:** **Hawaii Public Housing Authority**, a public body and a body corporate and politic of the State of Hawaii, with an address at 1002 N. School St., Honolulu, Hawaii 96817

**Tenant:** **School Street I, LP**, a Hawaii limited partnership with an address at 330 W. Victoria Street, Gardena, California 90248

**MEMORANDUM OF GROUND LEASE**

**HPHA School Street Redevelopment Phase 1A**

THIS MEMORANDUM OF GROUND LEASE is made as of \_\_\_\_\_, 2024 between HAWAII PUBLIC HOUSING AUTHORITY, a public body and a body corporate and politic of the State of Hawaii (“**Landlord**”), with an address at 1002 N. School St., P.O. Box 17907, Honolulu, Hawaii and **School Street I, LP**, a Hawaii limited partnership (“**Tenant**”), with an address at 330 W. Victoria Street, Gardena, California 90248.

**BACKGROUND**

WHEREAS, Landlord and Tenant entered into the HPHA Ground Lease Agreement, dated as of [insert date of closing] (the “**Lease**”), pursuant to which Landlord has leased to Tenant the parcel of real property in the City and County of Honolulu more particularly described on Exhibit A attached hereto and made a part hereof, together with the improvements, rights, easements, licenses, privileges and appurtenances thereunto attached or in any way belonging thereto; and

WHEREAS, the parties hereto desire to enter into this Memorandum of Lease in order to provide public record notice of the Lease and certain provisions, rights and obligations pertaining to the Demised Premises.

NOW, THEREFORE, for and in consideration of the foregoing premises, the sum of Ten and No/100 Dollars \$10.00 the covenants, representations, warranties and agreements set forth in the Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree that the information as contained in the Lease is as follows:

1. All capitalized terms used and not otherwise defined herein are used herein with the same meaning ascribed to such terms in the Lease.
2. The name of the Landlord in the Lease is Hawaii Public Housing Authority.
3. The name of the Tenant in the Lease is School Street I, LP.
4. The addresses of the parties set forth in the Lease are:  
  
Landlord:           1002 N. School Street  
                          P.O. Box 17907  
                          Honolulu, Hawaii 96817  
  
Tenant:             330 W. Victoria Street  
                          Gardena, California 90248
5. The Lease is dated as of [insert date of closing].
6. The Demised Premises are described in the Lease as set forth in Exhibit A.

7. The Lease shall commence on [insert date of closing] (the “**Commencement Date**”).
8. The term of the Lease shall end on the date which is [sixty-five (65) years] after the Commencement Date, unless soon terminated as provided in the Lease.
9. As set forth in Article 12 of the Lease, except as expressly provided in the Lease, Tenant shall not, without the prior written consent of Landlord, assign, transfer or otherwise convey the Lease or any interest therein or in the Premises or the Improvements (a “**Transfer**”). Any attempted assignment by Tenant without such consents, except for a transfer to Landlord, shall be null and void without further action required by Landlord. Subleases of the residential units in the Improvements to residential tenants, is permitted.
10. This Memorandum may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All of such counterparts together shall constitute one and the same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this document, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

(SIGNATURE PAGES TO FOLLOW)

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Ground Lease as of the date and year first above mentioned.

**LANDLORD:**

Approved as to Form:

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body and a body corporate and politic  
of the State of Hawaii

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**TENANT:**

**SCHOOL STREET I, LP,**  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company, its General Partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company, its Manager

By: Highridge Costa Development Company, LLC,  
a Delaware limited liability company, its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
Its President

*[NOTARY BLOCKS ON NEXT PAGE]*

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

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me appeared Hakim Ouansafi, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Memorandum of Ground Lease is dated \_\_\_\_ and contained \_\_\_\_ pages at the time of this acknowledgement/certification in the First Circuit of the State of Hawaii.

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
CITY AND COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me appeared Mohannad H. Mohanna, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Memorandum of Ground Lease is dated \_\_\_\_ and contained \_\_\_\_ pages at the time of this acknowledgement/certification in the \_\_\_\_\_ Circuit of the State of \_\_\_\_\_.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**Legal Description**

LOT 2  
HPHA SCHOOL STREET SENIOR AFFORDABLE HOUSING  
REDEVELOPMENT PHASE 1A

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;
10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;



12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;
26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;
27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

## EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being:  $267^{\circ} 19' 93''$  12.94 feet;
2.  $241^{\circ} 56' 41''$  35.07 feet along the remainder of Former Lanakila Emergency Homes;
3.  $247^{\circ} 38' 38''$  20.14 feet along same;
4.  $241^{\circ} 56' 41''$  81.98 feet along same;
5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being:  $283^{\circ} 18' 25''$  45.50 feet;
6.  $324^{\circ} 40' 09''$  64.58 feet along the remainder of Former Lanakila Emergency Homes;
7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being:  $301^{\circ} 57' 23''$  45.95 feet;
8.  $279^{\circ} 14' 37''$  60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being:  $305^{\circ} 34' 40''$  40.37
10.  $331^{\circ} 54' 43''$  42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being:  $13^{\circ} 27' 19''$  66.98;

12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;
24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;
28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;
29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;

31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;
40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;

3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;
10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;
16. 61° 56' 41" 47.84 feet along the remainder of Former Lanakila Emergency Homes;
17. 151° 56' 41" 10.00 feet along the same to the point of beginning containing an Area of 1208 square feet.

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

## EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;
2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;
9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.

SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

## EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

#### EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

1. 64° 35' 22.53 feet along the northerly side of Lanakila Avenue
2. 151° 30' 444.95 feet along the remainder of Former Lanakila Emergency Homes;
3. 61° 54' 43" 28.18 feet along same;
4. 331° 30' 496.00 feet along same to the point of beginning and containing an Area of 10,023 square feet,

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

#### EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. 157° 57' 40" 11.21 feet along the northeasterly side of School Street;
2. 241° 56' 41" 70.50 feet along the same;
3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning an containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]



**PURCHASE OPTION AND**  
**RIGHT OF FIRST REFUSAL AGREEMENT**  
**(Hawaii Public Housing Authority – HPHA School Street Redevelopment Phase 1A)**

This Purchase Option and Right of First Refusal Agreement (this “**Purchase Agreement**”), is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by School Street I, LP limited partnership, a Hawaii limited partnership (the "**Partnership**"), and HCDC School Street LLC, a Hawaii limited liability company (the "**General Partner**"), and the Hawaii Public Housing Authority, a public body corporate and politic, existing under the laws of the State of Hawaii (the “**Grantee**” and/or “**HPHA**”) and is consented to hereinbelow by RBC Community Investments, LLC, an Illinois limited liability company, in its capacity as the limited partner, and its successors and/or assigns (“**Consenting Limited Partner**”) and RBC Community Investments Manager II, Inc., a Delaware corporation and its successors and/or assigns (“**Consenting Special Limited Partner**”) and RBC Community Investments, LLC, an Illinois limited liability company, in its capacity as the state limited partner, and its successors and/or assigns (the “**Consenting State Limited Partner**” together with the Consenting Limited Partner and the Consenting Special Limited Partner the "**Consenting Limited Partners**"). The General Partner and the Consenting Limited Partners shall be referred to together herein as the “**Partners.**”

Whereas, the General Partner and one or more other parties, concurrently with the execution and delivery of this Purchase Agreement, are entering into that certain Amended and Restated Agreement of Limited Partnership dated as of the date hereof (the "**Partnership Agreement**") continuing the Partnership by amending and restating a prior partnership agreement; and

Whereas, the Project is or will be subject to one or more governmental agency regulatory agreements (collectively, the "**Regulatory Agreements**") and the ground lease between the HPHA and the Partnership restricting its use to low-income housing (the Regulatory Agreements and the Ground Lease referred to collectively herein as the "**Use Restrictions**"); and

Whereas, the Grantee and the General Partner desire to provide for the continuation of the Project as low-income housing upon termination of the Partnership by Grantee purchasing the Project at the applicable price determined under this Purchase Agreement and operating the Project in accordance with the Use Restrictions; and

Whereas, as a condition precedent to the formation or continuation of the Partnership pursuant to the Partnership Agreement, the Grantee and the General Partner have negotiated and required that the Partnership shall execute and deliver this Purchase Agreement in order to provide for such low-income housing, and the Consenting Limited Partners have consented to this Purchase Agreement in order to induce the General Partner to execute and deliver this Purchase Agreement and to induce the Grantee to execute the Ground Lease;

Now, therefore, in consideration of the execution and delivery of the Partnership Agreement and the payment by the Grantee to the Partnership of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Option.** The Partnership hereby grants to Grantee an option to either (a) purchase the Project, including any and all real estate, improvements, fixtures, and personal property comprising the Project or associated with the physical operation thereof, located on the property described in the Ground Lease and owned by the Partnership at the time of purchase (collectively, the “**Property**”) (the “**Project Option**”), or (b) purchase the Consenting Limited Partner’s, the Consenting Special Limited Partner’s, and the Consenting State Limited Partner’s interests in the Partnership (collectively, the “**Limited Partner Partnership Interests**”) or should the Grantee desire to purchase the General Partner’s interest in the Partnership, such purchase will be coupled with the purchase of the Consenting Limited Partner’s, the Consenting Special Limited Partners, and the Consenting State Limited Partner’s interests in the Partnership (collectively, the “**Partner Partnership Interests**”) (each the “**Interest Option**”) (the Project Option and Interest Option shall collectively be known as the “**HPHA Option**”) after the close of the fifteen (15) year compliance period for the low-income housing tax credit for the Project (the “**Compliance Period**”) as determined under Section 42(i)(1) of the Internal Revenue Code of 1986, as amended (the “**Code**”) and continuing until the date that is two years after the close of the Compliance Period (“**Compliance Option Period**”), on the terms and conditions set forth in this Purchase Agreement and subject to the conditions precedent to exercise of the HPHA Option specified herein. The Project real estate is legally described in Exhibit A attached hereto and made a part hereof. The Regulatory Agreements are listed in Exhibit B. Notwithstanding any provisions to the contrary set forth elsewhere herein, this Purchase Agreement and the rights of the Grantee hereunder shall be subject and subordinate to (i) the lien, security interest and rights of Leasehold Mortgagee, (ii) all advances or charges made or accruing under the Leasehold Mortgagee loan documents, and (iii) any extensions, modifications or renewals of the indebtedness secured by the Leasehold Mortgagee loan documents. Reference is made to a separate Purchase Option Agreement between the Partnership, the General Partner, and the Consenting Limited Partner dated as of even date herewith (“**GP Purchase Option**”), which provides the General Partner with an option to purchase the same interests upon different terms. The GP Purchase Option of the Property and the Consenting Limited Partner and Consenting Special Limited Partner interests begins prior to the end of the Compliance Period and continues for an eighteen month period after the end of the Compliance Period. For purposes of this Purchase Agreement, the eighteen months following the end of the Compliance Period will be referred to as the “**Overlap Period.**” The General Partner agrees that, upon the end of the Compliance Period and during the Overlap Period, its GP Purchase Option is subordinate to the HPHA Option and that the General Partner cannot exercise the GP Purchase Option without first obtaining the written consent of the HPHA.

2. **Grant of Refusal Right.** For a period of three (3) years after the close of the Compliance Period (the “**ROFR Period**”), in the event that the Partnership elects, in its sole discretion, to market the Property and receives an offer to purchase the Project from a bona fide third party purchaser that it intends to accept, Grantee shall have a right of first refusal to purchase

the Property (the "**Refusal Right**") on the terms and conditions set forth in this Purchase Agreement and subject to the conditions precedent to exercise of the Refusal Right specified herein. Notwithstanding anything to the contrary herein, the period in which Grantee must exercise its Refusal Right shall be extended for a reasonable period if there is a delay obtaining consents from the State Agency and/or Project Lenders. In addition to all other applicable conditions set forth in this Purchase Agreement, (a) the foregoing grant of the Refusal Right shall be effective only if Grantee is currently a government agency or a qualified nonprofit organization, as defined in Section 42(h)(5)(C) of the Code, until the earlier of (i) the Refusal Right has been exercised and the resulting purchase and sale has been closed, (ii) the Refusal Right has been assigned to a Permitted Assignee described in Section 10 hereof, or (iii) the end of the ROFR Period, and (b) any assignment of the Refusal Right permitted under this Purchase Agreement and the Refusal Right so assigned shall be effective only if the assignee is at the time of the assignment and remains at all times thereafter, until the Refusal Right has been exercised and the resulting purchase and sale has been closed, a Permitted Assignee described in Section 10 hereof meeting the requirements of Section 42(i)(7)(A) of the Code as determined in its judgment by tax counsel to the Consenting Limited Partners. In the event the Partnership elects to market the Project and receives an offer, the Partnership shall notify Grantee, the General Partner, and the Consenting Limited Partners of such offer and deliver to each of them a copy thereof. The Partnership shall not accept any such offer unless and until the Refusal Right has expired without exercise by Grantee under Section 6 hereof. An offer made on commercially reasonable terms from a third-party who does not bear a relationship to the Grantee that would be deemed a related party within the meaning of Section 267 or 707 of the Code and with resources (or access to resources from governmental agencies, lenders or investors) to complete the purchase pursuant to such offer shall constitute an "offer" for purposes of this Section 2 notwithstanding the fact that the offeror knows that the Grantee has (and is likely to exercise) the Refusal Right.

### **3. Purchase Price Under Project Option.**

- a. The purchase price for the Property pursuant to the Project Option shall be the greater of the following amounts:
  - i. **Debt and Taxes.** An amount sufficient (i) to pay all debts (including partner loans) and liabilities of the Partnership upon its termination and liquidation as projected to occur immediately following a sale pursuant to the HPHA Option, (ii) the Developer Reimbursement (as defined below) and (iii) to distribute to the Partners, after payments under [Section 11.04(a) through (d) of the Partnership Agreement], cash proceeds equal to all taxes projected to be imposed on the Partners of the Partnership as a result of the sale pursuant to the Project Option, [all as more fully stated in Section 11.04 of the Partnership Agreement], including without limitation any taxes on tax gross up, which is hereby incorporated herein by reference; or
  - ii. **Fair Market Value.** The Developer Reimbursement, plus, the fair market value of the Property, appraised as low-income housing to the extent continuation of such use is required under the Use Restrictions, any such appraisal to be made by a licensed appraiser, selected by pursuant to Section

12 of this Purchase Agreement, who is a member of the Master Appraiser Institute and who has experience in the geographic area in which the Project is located.

- b. The purchase price for the Limited Partner Partnership Interests or the Partner Partnership Interests pursuant to the Interest Option shall be the greater of the following amounts:

i. **Debt and Taxes.** An amount sufficient (i) to distribute to the Partners cash proceeds equal to all taxes projected to be imposed on the Partners of the Partnership as a result of the sale pursuant to the Interest Option, including without limitation any taxes on tax gross up; and (ii) the Developer Reimbursement (as defined below); and (iii) to pay any Unpaid Tax Credit Shortfall (as defined in the Partnership Agreement), any outstanding General Partner and/or Limited Partner Loans, and any other amounts due and owing to the General Partner, Consenting Limited Partners and/or Special Limited Partner pursuant to the Partnership Agreement; or

ii. **Fair Market Value.** The Developer Reimbursement, plus, the fair market value of the Limited Partner Partnership Interests or the Partner Partnership Interests, which amount, subject to the last sentence in this Section 3(b)(ii), shall be determined by a licensed appraiser selected in accordance with Section 12 of this Purchase Agreement. When determining the fair market value of the Limited Partner Partnership Interests or the Partner Partnership Interests pursuant to this section, the Partners acknowledge the appraiser may, in its professional judgment, consider such factors that the appraiser may deem relevant to properly determine the fair market value. In no event shall the fair market value Limited Partner Partnership Interests or the Partner Partnership Interests be appraised at less than the amount which would be payable and/or distributable to the General Partner, Consenting Limited Partners or Special Limited Partner, as applicable, following any sale of the Project under the Project Option at the purchase price set forth in Section 3(a)(ii) above and assuming for all purposes such distributions are made in accordance with [Sections 11.04 (a) - (f) of the Partnership Agreement but without regard to Section 12.02(b)].

“Developer Reimbursement” means an amount equal to fifty percent (50%) of all taxes projected to be imposed and/or previously imposed on Developer (as defined in the Partnership Agreement) with respect to any portion of Development Fee (as defined in the Partnership Agreement) paid from the proceeds of any capital contributions made by the General Partner to the Partnership, including without limitation any taxes on tax gross up. Any Developer Reimbursement payable under this Purchase Agreement shall, at General Partner’s option, be paid directly to General Partner or Developer.

**4. Purchase Price Under Refusal Right.** The purchase price for the Property pursuant to the Refusal Right shall be equal to the sum of (a) an amount sufficient to pay all debts

(including partner loans) and liabilities of the Partnership upon its termination and liquidation as projected to occur immediately following the sale pursuant to the Refusal Right, (b) the Developer Reimbursement and (c) an amount sufficient to distribute to the Partners, after payments under [Section 11.04(a) through (d) of the Partnership Agreement], cash proceeds equal (on an after-Federal and after-State income tax basis) to the taxes projected to be imposed on the Partners of the Partnership as a result of the sale pursuant to the Refusal Right, all as more fully stated in [Section 11.04 of the Partnership Agreement], which is hereby incorporated herein by reference.

**5. Conditions Precedent.** Notwithstanding anything in this Purchase Agreement to the contrary, the HPHA Option and the Refusal Right granted hereunder shall be contingent on the Regulatory Agreements being entered into and remaining in full force and effect, and those Use Restrictions to be contained therein, as heretofore approved in writing by the General Partner and Consenting Limited Partners, shall have remained unmodified without its prior written consent, or if the Use Restrictions are no longer in effect due to reasons other than a default thereunder by the Partnership, such Use Restrictions, as so approved and unmodified, shall have remained in effect by other means and shall continue in effect by filing a replacement covenant that runs with the land enforcing substantially the same restrictions. If the conditions precedent have not been met, the HPHA Option and the Refusal Right shall not be exercisable.

**6. Exercise of Option or Refusal Right.** The HPHA Option and the Refusal Right may be exercised by the Grantee, by (a) giving prior written notice of its intent to exercise the HPHA Option or the Refusal Right to the Partnership and each of its partners in the manner provided in Section 11 herein and in compliance with the requirements of this Section 6, and (b) complying with the contract and closing requirements of Section 8 hereof. Any such notice of intent to exercise the HPHA Option shall be given during the Compliance Option Period. Any such notice of intent to exercise the Refusal Right shall be given within 120 days after Grantee has received the Partnership's notice of a bona fide offer pursuant to Section 2 hereof. In either case, the notice of intent shall specify a closing date within 120 days of the date of exercise. If the foregoing requirements (including those of Section 9 hereof) are not met as and when provided herein, the HPHA Option or the Refusal Right shall expire and be of no further force or effect. Upon notice by Grantee of its intent to exercise the HPHA Option or the Refusal Right, all rights under the other shall be subordinate to the rights then being so exercised unless and until such exercise is withdrawn or discontinued, and upon the closing of any sale of the Property pursuant to such notice shall expire and be of no further force or effect, provided that in the event that the HPHA Option and the Refusal Right are hereafter held by different parties by reason of any permitted assignment or otherwise, Grantee in its assignment(s) or such parties by written agreement may specify any other order of priority consistent with the other terms and conditions of this Purchase Agreement.

**7. Determination of Price.** Upon notice by the Grantee of its intent to exercise the HPHA Option or the Refusal Right, the Partnership and the General Partner or Grantee shall exercise best efforts in good faith to agree on the purchase price for the Property or the Partnership Interests (as the case may be). Any such agreement shall be subject to the prior written consent of the General Partner and Consenting Limited Partners, which shall not be withheld as to any purchase price determined properly in accordance with this Purchase Agreement.

**8. Contract and Closing.** Upon determination of the purchase price, the Partnership and the Grantee shall enter into a written contract for the purchase and sale of the Property or the Limited Partner Partnership Interests or the Partner Partnership Interests (as the case may be) in accordance with this Purchase Agreement and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area which the Project is located, providing for a closing not later than the date specified in the Grantee's notice of intent to exercise of the HPHA Option or the Refusal Right as applicable or 30 days after the purchase price has been determined, whichever is later. In the absence of any such contract, this Purchase Agreement shall be specifically enforceable upon the exercise of the HPHA Option or the Refusal Right, as applicable. The purchase and sale hereunder shall be closed through a deed-and-money escrow with the title insurer for the Project or another mutually acceptable title company.

**9. Use Restrictions.** In consideration of the HPHA Option and the Refusal Right granted hereunder at the price specified herein, the Grantee hereby agrees that the documents of sale to the Grantee shall contain a leasehold covenant restricting use of the Project to low-income housing to the extent required by those Use Restrictions contained in the Regulatory Agreements, as approved in writing by the Consenting Limited Partners and unmodified without its prior written consent. In the event that neither the HPHA Option nor the Refusal Right is exercised, or the sale pursuant thereto is not consummated, then upon conveyance of the Project to anyone other than Grantee or its permitted assignee hereunder, the foregoing paragraph shall terminate and have no further force or effect.

**10. Assignment.** Grantee may assign all or any of its rights under this Purchase Agreement to (a) a qualified nonprofit organization, as defined in Section 42(h)(5)(C) of the Code, (b) a government agency, or (c) a tenant organization (in cooperative form or otherwise) or resident management corporation of the Project (each a "Permitted Assignee") that demonstrates its ability and willingness to maintain the Project as low-income housing in accordance with the Use Restrictions, in any case subject to the prior written consent of the Consenting Limited Partners, which shall not be unreasonably withheld if the proposed grantee demonstrates that it is reputable and creditworthy and is a capable, experienced owner and operator of residential rental property, and subject in any event to the conditions precedent to the Refusal Right grant and the Option price set forth in Sections 2, 3 and 4 hereof. Prior to any assignment or proposed assignment of its rights hereunder, Grantee shall give written notice thereof to the Partnership, the General Partner, and the Consenting Limited Partners. Upon any permitted assignment hereunder, references in this Purchase Agreement to Grantee shall mean the permitted Assignee where the context so requires, subject to all applicable conditions to the effectiveness of the rights granted under this Purchase Agreement and so assigned. No assignment of Grantee's rights hereunder shall be effective unless and until the permitted Assignee enters into a written agreement accepting the assignment and assuming all of Grantee's obligations under this Purchase Agreement and copies of such written agreement are delivered to the Partnership, the General Partner and the Consenting Limited Partners. Except as specifically permitted herein, Grantee's rights hereunder shall not be assignable.

**11. Notices.**

Notice shall be provided by hand delivery or U.S. mail, first class postage prepaid, and delivered to the following addresses:

If to the Partnership:  
or General Partner HCDC School Street, LLC  
330 West Victoria Street  
Gardena, California 90248  
Attn: Mohannad H. Mohanna, President

With a copy to: Settle Meyer Law LLC  
Pioneer Plaza  
900 Fort Street Mall, Suite 1800  
Honolulu, Hawaii 96813  
Attn: Scott W. Settle, Esq.

and

Cox Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attn: Christian D. Dubois, Esq.

If to Grantee: Hawaii Public Housing Authority  
1002 North School Street  
Honolulu, Hawaii 96817  
Attn: Hakim Ouansafi, Executive Director

With a copy to: Department of the Attorney General  
of the State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813  
Attn: Linda L.W. Chow

If to Consenting:  
Limited Partners c/o RBC Community Investments, LLC  
600 Superior Avenue, Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel

*With a copy to:* Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, California 90071  
Attention: Kyle Arndt, Esq.

**12. Selection of Appraisers.** The Grantee and the Partners shall select a mutually acceptable independent appraiser. If the parties are unable to agree upon an independent appraiser within fifteen (15) business days following the date of delivery of HPHA's intent to exercise the HPHA Option, the Grantee and the Partners each shall select, and each pay their respective costs for, an independent appraiser within the next succeeding five (5) business days. If either party fails to select an independent appraiser within such time period, the determination of the other independent appraiser shall control. If the difference between the fair market values set forth in the two appraisals is not more than ten percent (10%) of the fair market value set forth in the lower of the two appraisals, the fair market value for purposes of Section 3(a)(ii) and 3(b)(ii) of this Purchase Agreement shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two independent appraisers shall jointly select a third independent appraiser whose determination of fair market value shall be deemed to be binding on all parties as long as the third determination is between the other two determinations. If the third determination is either lower or higher than both of the other two appraisers determinations, then the average of all three appraisals shall be the fair market value for purposes of Sections 3(a)(ii) and 3(b)(ii) of this Purchase Agreement. The Grantee and the Partners shall each pay one-half of the fees and costs of the third independent appraiser selected pursuant to this Section. All appraisers selected pursuant to this Section must be (a) members of the Master Appraiser Institute, (b) have experience in the geographic area in which the Project is located, and (c) licensed or certified in the State of Hawaii pursuant to Hawaii Revised Statutes Chapter 466K or successor laws governing real estate appraisers in Hawaii.

**13. Miscellaneous.** This Purchase Agreement shall be governed by the laws of the State of Hawaii. This Purchase Agreement may be executed in counterparts or counterpart signature pages, which together shall constitute a single agreement.

*(signature pages follow)*



In Witness Whereof, the parties have executed this Purchase Agreement as of the date first set forth hereinabove.

**Partnership:**

**SCHOOL STREET I, LP,**  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its General Partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company, LLC,  
a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Mohannad H. Mohanna  
Title: President

**General Partner:**

**HCDC SCHOOL STREET LLC,**  
a Hawaii limited liability company

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company, LLC,  
a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Mohannad H. Mohanna  
Title: President

Approved as to Form

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

**Grantee:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic, existing  
under the laws of the State of Hawaii

By: \_\_\_\_\_  
Hakim Ouansafi  
Its Executive Director

The undersigned hereby consents to the foregoing Purchase Agreement as of the date first set forth hereinabove.

**Consenting Limited Partner:**

**RBC COMMUNITY INVESTMENTS, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: Kenneth L. Lohiser  
Title: Managing Director

**Consenting Special Limited Partner:**

**RBC COMMUNITY INVESTMENTS MANAGER II, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: Kenneth L. Lohiser  
Title: Managing Director

**Consenting State Limited Partner:**

**RBC COMMUNITY INVESTMENTS, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: Kenneth Lohiser  
Title: Director

**Exhibit A**

**Legal Description of Project Real Estate**

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;
10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;

12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;
26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;
27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 267° 19' 93" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 81.98 feet along same;
5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 283° 18' 25" 45.50 feet;
6. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being: 301° 57' 23" 45.95 feet;
8. 279° 14' 37" 60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 305° 34' 40" 40.37
10. 331° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;

11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 13° 27' 19" 66.98;
12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;
24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;
28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;



29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;
40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;
10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;

- |     |      |     |     |       |   |
|-----|------|-----|-----|-------|---|
| 16. | 61°  | 56' | 41" | 47.84 | feet along the remainder of Former Lanakila Emergency Homes;                          |
| 17. | 151° | 56' | 41" | 10.00 | feet along the same to the point of beginning containing an Area of 1208 square feet. |

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;
2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;
9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.

SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

1. 64° 35' 22.53 feet along the northerly side of Lanakila Avenue
2. 151° 30' 444.95 feet along the remainder of Former Lanakila Emergency Homes;

3. 61° 54' 43" 28.18 feet along same;
4. 331° 30' 496.00 feet along same to the point of beginning and containing an Area of 10,023 square feet,

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

#### EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. 157° 57' 40" 11.21 feet along the northeasterly side of School Street;
2. 241° 56' 41" 70.50 feet along the same;
3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning an containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]

**Exhibit B**

**Regulatory Agreements**

201H Agreement between the City and County of Honolulu and RHF Foundation, Inc. dated March 13, 2023 and binding on its successors and assigns.

Bond Regulatory Agreement between School Street I, LP and Hawaii Housing Finance and Development Corporation (HHFDC) dated \_\_\_\_\_

Declaration of Land Use Restrictive Covenants in favor of HHFDC dated \_\_\_\_\_

**SUBDEVELOPMENT FEE AGREEMENT**  
**(HPHA School Street Redevelopment Phase 1A – Hawaii Public Housing Authority)**

THIS SUBDEVELOPMENT FEE AGREEMENT (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2024, by and between HCDC School Street LLC, a Hawaii limited liability company (the “**Developer**”) and the Hawaii Public Housing Authority, a public body, corporate and politic duly organized and existing under the laws of the State of Hawaii (the “**Subdeveloper**” or the “**HPHA**”).

WHEREAS, School Street I, LP, a Hawaii limited partnership (the “**Owner**”) has been formed pursuant to that certain Agreement of Limited Partnership dated as of December 14, 2023, which shall be amended and restated by that certain Amended and Restated Agreement of Limited Partnership of the Owner dated the date hereof (as amended and restated, the “**Partnership Agreement**”) to develop, rehabilitate, own, maintain and operate a 250-unit residential rental development to be known as HPHA School Street Redevelopment Phase 1A and located in Honolulu, Hawaii (the “**Project**”); and

WHEREAS, the Owner is ground leasing the Project from the HPHA pursuant to a long-term lease, notice of which is to be recorded with the Bureau of Conveyances of the State of Hawaii herewith; and

WHEREAS, the Owner entered into a Development Services Agreement with Developer of even date herewith (the “**Development Agreement**”) pursuant to which Developer will receive a development fee (“**Development Fee**”); and

WHEREAS, the Developer desires to subcontract to the Subdeveloper certain services with respect to the Project;

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

(1) Subcontract. The Developer hereby engages the Subdeveloper to assist the Developer in performing the following obligations established pursuant to the Development Agreement:

- (a) Assisting the Developer in assembling the construction loan financing for the Project;
- (b) Assisting the Developer in securing support for certain portions of the Project from the City and County of Honolulu (the “**City**”) and the State of Hawaii; and
- (c) Assisting the Developer in obtaining permits and zoning approvals for the Project, including but not limited to the 201H process, preparing for and attending

necessary meetings, preparing and submitting necessary forms and applications and responding to requests for additional information.

(2) Subdevelopment Fee. For services performed and to be performed under Section 1 of this Agreement, the Developer agrees to pay Subdeveloper a fee (the “**Subdevelopment Fee**”) equal to fifty percent (50%) of the Development Fee, less fifty percent (50%) of the GP Funded Portion (as defined below), which Development Fee is currently projected at [fifteen million dollars (\$15,000,000)]. Developer shall pay Subdeveloper the Subdevelopment Fee promptly upon the Owner’s payment to Developer of the Development Fee in accordance with the Development Agreement and Partnership Agreement, such that for each payment of Development Fee that the Developer receives pursuant to the Development Agreement and Partnership Agreement, the Subdeveloper shall receive fifty percent (50%) of such payment until the Subdevelopment Fee is paid in full. Payments of the Subdevelopment Fee due under this Agreement, but not made within ten (10) business days of Developer’s receipt of or entitlement to any payment of the Development Fee from the Owner, shall bear interest at the Prime Rate, which shall mean the rate of interest reported from time to time as the prime rate in the “Money Rates” section of The Wall Street Journal.

(3) Limitations on and Adjustments to Payment Obligations. Notwithstanding anything to the contrary set forth in this Agreement, Developer shall only pay the Subdevelopment Fee to the extent Developer receives payments under the Development Agreement or the Partnership Agreement and no Subdevelopment Fee shall be payable from any portion of Development Fee received by Developer that is funded from a capital contribution to the Owner by HCDC School Street LLC (the “**GP Funded Portion**”). Upon the expiration of the initial fifteen-year “compliance period” as defined in and determined in accordance with Section 42(i) of the Code, any portion of Subdeveloper Fee owed to Subdeveloper that must be paid with a General Partner Capital Contribution or General Partner loan, will be simultaneously assigned to Developer.

(4) Successors and Assigns. This Agreement may not be assigned without the written consent of all parties and the limited partners of the Owner.

(5) Defined Terms. Capitalized terms used in this Agreement and not specifically defined herein shall have the meanings assigned to them in the Partnership Agreement.

(6) Separability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

(7) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one



agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

(8) No Continuing Waiver. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

(9) Applicable Law/Forum. This Agreement shall be construed and enforced in accordance with the laws of the State of Hawaii. The parties hereto irrevocably submit to the jurisdiction of any state court sitting in Honolulu, Hawaii to resolve any dispute under this Agreement.

(10) Notice. Notice shall be provided by hand delivery or U.S. mail, first class postage prepaid, and delivered to the following addresses:

If to Developer: HCDC School Street LLC  
330 West Victoria Street  
Gardena, CA 90248  
Attn: Mohannad H. Mohanna, President

With a copy to: Settle Meyer Law LLLC  
Pioneer Plaza  
900 Fort Street Mall, Suite 1800  
Honolulu, HI 96813  
Attn: Scott W. Settle

And to:

Cox Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attention: Stephen C. Ryan, Esq.  
Telephone: (415) 262-5150  
Email: sryan@coxcastle.com

If to Subdeveloper: Hawaii Public Housing Authority  
1002 North School Street  
Honolulu, HI 96817  
Attn: Hakim Ouansafi, Executive Director

With a copy to: Department of the Attorney General  
of the State of Hawaii  
425 Queen Street  
Honolulu, HI 96813

Attn: Linda L.W. Chow

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have caused this Subdevelopment Fee Agreement to be duly executed as of the date first written above.

**DEVELOPER:**

**HCDC SCHOOL STREET LLC,**  
a Hawaii limited liability company,

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company,  
LLC, a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
President

**SUBDEVELOPER:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

[Signature Page – Subdevelopment Fee Agreement]

## HPHA ASSET MANAGEMENT FEE AGREEMENT

THIS HPHA MANAGEMENT FEE AGREEMENT (the "HPHA Fee Agreement") made as of \_\_\_\_\_, 2024, by and between School Street I, LP, a Hawaii limited partnership (the "Partnership") and the Hawaii Public Housing Authority, a public body corporate and politic of the State of Hawaii (the "HPHA").

### Recitals

WHEREAS, the Partnership has been formed to develop, construct, own, maintain and operate a 250-unit apartment complex intended for rental to low-income seniors, to be known as HPHA School Street Redevelopment Phase 1A, and to be located in Honolulu, Hawaii (the "Project") on land ground leased to the Partnership from the HPHA; and

WHEREAS, the Partnership desires that the HPHA provide certain services with respect to, among other things, overseeing and monitoring certain aspects of the management and administration of the Project for the period commencing as of the date hereof and continuing throughout the term of the Partnership.

**NOW, THEREFORE**, in consideration of the recitals, covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

1. Obligations of HPHA. HPHA shall have the following duties, obligations, and responsibilities:

- (i) to monitor the General Partner's reporting on the Project in the periodic reports required by lenders and investors to the Project;
- (ii) perform an annual review and physical inspection of the Project and to provide a report detailing any issues or concerns about the physical condition of the Project within sixty (60) days of such inspection;
- (iii) to review the occupancy/rental reports for the Project; and
- (iv) to review all other information related to the operation and management of the Project available to the Partnership reasonably requested by HPHA with respect to the Project.

2. Fees. For services to be performed under this HPHA Fee Agreement, the Partnership shall pay an annual HPHA Fee to the HPHA in the amount of seven thousand five hundred dollars (\$7,500). The HPHA Fee will be paid in accordance with the priority for Net Cashflow Distributions attached hereto in Exhibit A. The HPHA Fee will increase by three percent (3%) on an annual basis, will be cumulative, and will start to accrue annually concurrent with the permanent loan conversion.

3. HPHA Not an Insurer. The Partnership acknowledges and agrees that, while HPHA shall act responsibly and faithfully in performing its responsibilities pursuant to this HPHA Fee Agreement, HPHA does not insure or guarantee the success of the Project or the Partnership, economically or otherwise. No act or failure to act by HPHA under this HPHA Fee Agreement shall

diminish the liabilities and obligations of the Partnership under other agreements executed with respect to the Project.

4. Successors and Assigns. This HPHA Fee Agreement shall be binding on the parties hereto, their heirs, successors and assigns. This HPHA Fee Agreement may not be assigned by any of the parties hereto without the written consent of the other party.

5. Separability of Provisions. Each provision of this HPHA Fee Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this HPHA Fee Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this HPHA Fee Agreement which are valid.

6. Counterparts. This HPHA Fee Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

7. No Continuing Waiver. The waiver of any party of any breach of this HPHA Fee Agreement shall not operate or be construed to be a waiver of any subsequent breach.

8. Applicable Law. This HPHA Agreement shall be construed and enforced in accordance with the laws of the State of Hawaii.

9. Third Party Beneficiary. RBC Community Investments, LLC, an Illinois limited liability company in its capacity as the limited partner and the state limited partner in the Partnership and RBC Community Investments Manager II, Inc., a Delaware corporation in its capacity as the special limited partner in the Partnership and their respective successors and/or assigns (collectively, the "Investor Limited Partner") is a third-party beneficiary of this HPHA Fee Agreement, and the Partnership and the HPHA hereby expressly agree that any amendment to this HPHA Fee Agreement shall not be effective unless and until the same is consented to by the Investor Limited Partner. All correspondence between HPHA and the Partnership in regards to this HPHA Fee Agreement must be disclosed to the Investor Limited Partner at the notice address below.

c/o RBC Community Investments, LLC  
600 Superior Avenue  
Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel

with a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, California 90071  
Attention: Kyle Arndt, Esq.  
Facsimile No.: (213) 559-0733

*(signature page follows)*

IN WITNESS WHEREOF, the parties have caused this HPHA Fee Agreement to be duly executed as of the date as first written above.

**PARTNERSHIP:**

**SCHOOL STREET I, LP,**  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its General Partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development  
Company, LLC, a Delaware limited  
liability company, its Manager

By: \_\_\_\_\_  
Name: Mohannad H. Mohanna  
Title: President

Approved as to Form

**HPHA:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic,  
existing under the laws of the State of Hawaii

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

EXHIBIT A  
Distributions of Net Cash Flow

[attached]

## School Street Apts Phase 1A

Cash Flow Waterfall (draft, subject to HPHA approval)

3/21/2024

### Proposed CF Waterfall

- 1) To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP
  - 2) To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)
  - 3)
    - To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis
  - 4) To replenish the Operating Reserve up to original balance
  - 5) To repay the Deferred Developer Fee until paid in full
  - 6) To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)
  - 7) To repay any GP or Developer Loans
  - 8) Of the remaining balance:
    - a) 75% to repay the RHRF Loan until paid in full, and then
    - b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease
  - 9) Of the remaining balance:
    - (i) 45% to the GP as Incentive Management Fee
    - (ii) 45% to pay the current and accrued Base Rent due on the Ground Lease
  - 10) Of the remaining balance:
    - (i) 0.01% to the GP 0.0100%
    - (ii) 0.001% to the Special LP 0.0010%
    - (iii) 1% to the State LP 1.0000%
    - (iv) 98.989% to the Federal LP 98.9890%
- 100.0000%



## HPHA PROPERTY MANAGEMENT FEE AGREEMENT

THIS HPHA PROPERTY MANAGEMENT FEE AGREEMENT (the "**HPHA Property Management Fee Agreement**") made as of \_\_\_\_\_, 2024, by HCDC School Street LLC, a Hawaii limited liability company, which is a general partner (the "**General Partner**") in the School Street I, LP (the "**Partnership**") and the Hawaii Public Housing Authority, a public body corporate and politic of the State of Hawaii (the "**HPHA**").

### Recitals

WHEREAS, the Partnership has been formed to develop, construct, own, maintain and operate a 250-unit apartment complex intended for rental to low-income seniors, to be known as HPHA School Street Redevelopment Phase 1A, and to be located in Honolulu, Hawaii (the "**Project**") on land ground leased to the Partnership from the HPHA; and

WHEREAS, the General Partner is a party to a Property Management Oversight Fee Agreement with the Partnership pursuant to which the General Partner will receive an annual fee in the amount of two percent (2%) of effective gross income ("**GP PM Oversight Fee**") on a non-cumulative basis;

WHEREAS, the Partnership has retained HCHP Property Management, LP ("**Related Property Manager**") and Michaels Management-Affordable, LLC ("**Unrelated Property Manager**") which are referred to in the Limited Partnership Agreement of substantially even date herewith ("**Limited Partnership Agreement**"), together, as the "**Initial Management Agent**."

WHEREAS, the General Partner desires that the HPHA provide certain services with respect to, among other things, overseeing and monitoring aspects of the management and administration of the Project for the period commencing as of the date hereof and continuing throughout the term of the ground lease entered into as of substantially even date herewith ("**Ground Lease**").

**NOW, THEREFORE**, in consideration of the recitals, covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

1. Obligations of HPHA. HPHA shall have the following duties, obligations, and responsibilities:

- (i) Review and approve the Management Plan in its entirety and any subsequent suggested modifications;
- (ii) Approve legal counsel designated for enforcement of leases; to monitor grievance procedures and be made aware of any lease termination efforts and approve all lease forms and necessary changes;
- (iii) Monitor maintenance and repair and conditions or limitations established by the Partnership;
- (iv) Review and approve any capital expenditure;
- (v) Be informed of any emergency repairs involving manifest danger to persons or property;

- (vi) Review and approve proposed annual operating budgets, budgeted withdrawals from replacement reserves, and capital expenditures prior to implementation and review and approve any expected (prior to incurring the cost) annual increases that would exceed the annual Consumer's Price Index;
- (vii) Review and verify that the Project's property insurance is in force at all times and that the Project is in compliance with insurance requirements specified in the Partnership Agreement and Ground Lease;
- (viii) Review and comment on the quarterly report on monitoring and oversight of property manager issued by the General Partner in its day-to-day authority over the routine operations of the property;
- (ix) Review and approve any Partnership or property manager or management agent media statements;
- (x) Review and comment on annual audit and monitor compliance with governmental orders and licenses;
- (xi) Request the removal the Related Property Manager for material violations of the property management oversight agreement, subject to notice and opportunities to cure and the rights of lenders and investors and applicable government agencies; and
- (xii) Recommend the removal of the Unrelated Property Manager for material violations of the property management agreement, subject to notice and opportunity to cure and the rights of lenders and investors and applicable government agencies.

HPHA agrees to review materials submitted for its review and comment or review and approval promptly and to provide comments or approvals required hereunder no later than thirty (30) days from receipt unless a longer period of review is required to adequately conduct the due diligence required to support an informed review and approval.

2. Fees. For services to be performed under this HPHA Property Management Fee Agreement, the General Partner shall pay an annual HPHA Property Management Fee to the HPHA in the amount equal to fifty percent (50%) of the GP PM Oversight Fee. The HPHA Property Management Fee will be paid in accordance with the priority for Net Cashflow Distributions attached hereto in Exhibit A and due to the HPHA upon the General Partner's receipt of the GP PM Oversight Management Fee. The HPHA Property Management Fee will be non-cumulative.

3. HPHA Not an Insurer. The General Partner acknowledges and agrees that, while HPHA shall act responsibly and faithfully in performing its responsibilities pursuant to this HPHA Property Management Fee Agreement, HPHA does not insure or guarantee the success of the Project or the General Partner, economically or otherwise. No act or failure to act by HPHA under this HPHA Property Management Fee Agreement shall diminish the liabilities and obligations of the General Partner under other agreements executed with respect to the Project.

4. Successors and Assigns. This HPHA Property Management Fee Agreement shall be binding on the parties hereto, their heirs, successors and assigns. This HPHA Property Management Fee Agreement may not be assigned by any of the parties hereto without the written consent of the other party.

5. Separability of Provisions. Each provision of this HPHA Property Management Fee Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this HPHA Property Management Fee Agreement is

determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this HPHA Property Management Fee Agreement which are valid.

6. Counterparts. This HPHA Property Management Fee Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

7. No Continuing Waiver. The waiver of any party of any breach of this HPHA Property Management Fee Agreement shall not operate or be construed to be a waiver of any subsequent breach.

8. Applicable Law. This HPHA Agreement shall be construed and enforced in accordance with the laws of the State of Hawaii.

9. Third Party Beneficiary. RBC Community Investments, LLC, and their successors and/or assigns as a limited partner in the Partnership (the “**Limited Partner**”) is a third-party beneficiary of this HPHA Property Management Fee Agreement, and the General Partner and the HPHA hereby expressly agree that any amendment to this HPHA Property Management Fee Agreement shall not be effective unless and until the same is consented to by the Limited Partner.

*(signature page follows)*

IN WITNESS WHEREOF, the parties have caused this HPHA Property Management Fee Agreement to be duly executed as of the date as first written above.

**HCDC:**

**HCDC SCHOOL STREET LLC,**  
a Hawaii limited liability company,

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company,  
LLC, a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
President

**HPHA:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic, existing under  
the laws of the State of Hawaii

Approved as to Form

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**EXHIBIT A**

Distribution of Net Cash Flow

[attached]

# School Street Apts Phase 1A

Cash Flow Waterfall (draft, subject to HPHA approval)

3/21/2024

|                              |
|------------------------------|
| <b>Proposed CF Waterfall</b> |
|------------------------------|

- 1) To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP
  - 2) To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)
  - 3) To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis
  - 4) To replenish the Operating Reserve up to original balance
  - 5) To repay the Deferred Developer Fee until paid in full
  - 6) To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)
  - 7) To repay any GP or Developer Loans
  - 8) Of the remaining balance:
    - a) 75% to repay the RHRF Loan until paid in full, and then
    - b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease
  - 9) Of the remaining balance:
    - (i) 45% to the GP as Incentive Management Fee
    - (ii) 45% to pay the current and accrued Base Rent due on the Ground Lease
  - 10) Of the remaining balance:
    - (i) 0.01% to the GP 0.0100%
    - (ii) 0.001% to the Special LP 0.0010%
    - (iii) 1% to the State LP 1.0000%
    - (iv) 98.989% to the Federal LP 98.9890%
- 100.0000%

## PERFORMANCE AND COMPLETION GUARANTY

This **PERFORMANCE AND COMPLETION GUARANTY** (this “**Guaranty**”) is entered into as of \_\_\_\_\_, 2024, by **HIGHRIDGE COSTA DEVELOPMENT COMPANY, LLC**, a Delaware limited liability company (“**Guarantor**”), for the benefit of Hawaii Public Housing Authority, a public body corporate and politic, organized under the laws of the State of Hawaii (“**HPHA**”).

### **RECITALS:**

A. **SCHOOL STREET I, LP**, a Hawaii limited partnership, (“**Tenant**”) has entered into that certain HPHA Ground Lease Agreement for the HPHA School Street Redevelopment Project Phase 1A with the HPHA dated as of substantially even date herewith (“**Ground Lease**”), which obligates the Tenant to, among other things, complete construction of a 250-unit affordable housing development.

B. As a condition to entering into the Ground Lease, HPHA requires that Guarantor execute this Guaranty.

C. Guarantor will directly or indirectly derive a material financial benefit from the Tenant entering into the Ground Lease.

NOW, THEREFORE, in order to induce HPHA to enter into the Ground Lease, and in consideration thereof, Guarantor agrees as follows:

1. **Defined Terms.** Capitalized terms used but not defined in this Guaranty shall have the meanings assigned to them in the Ground Lease.

2. **Scope of Guaranty.** Guarantor represents to HPHA that Guarantor has a direct or indirect ownership interest in Tenant and/or will otherwise derive a material financial benefit from the Tenant entering into the Ground Lease. Guarantor hereby does jointly, severally and unconditionally guaranty to HPHA the following (collectively, the “**Guaranteed Obligations**”):

(a) that Tenant will complete the Improvements in accordance with the Plans and Specifications;

(b) that in the event that the sum of the proceeds of the loans secured by the Leasehold Mortgagees available for disbursement, the equity contributions available for disbursement from the Tax Credit Investor, and the net cash flow available from the Premises are, or at any time become, in the judgment of the HPHA, insufficient to pay all costs for the completion of the Improvements, then the Tenant will pay such costs;

(c) that Tenant will pay and discharge, or otherwise release, all mechanic’s and materialmen’s liens or claims therefor imposed or alleged against the Premises to the end that there shall be no mechanic’s, materialmen’s or other like liens or claims outstanding against the Premises;

(d) that Tenant shall cause the construction of the Improvements at all times to comply with all applicable existing building, zoning, use and environmental protection laws and ordinances as may be necessary to enable the use and occupancy of the Premises for its intended purposes

3. If Tenant shall fail to duly and punctually perform and observe any of the Guaranteed Obligations, then upon written demand by the HPHA or its designee, Guarantor forthwith will itself, at its own expense, do, promptly perform and observe such Guaranteed Obligations provided, however, (a) to the extent that the Guarantor's ability to continue and complete construction of the Improvements is impacted by the First Hawaiian Bank's ("Construction Lender") failure to advance funds to the Guarantor under the Tenant's loan agreement with the Construction Lender, the HPHA agrees to delay enforcement of this Guaranty for up to 180 days to allow the Guarantor to obtain replacement financing, and (b) obligations imposed on the Guarantor under this Guaranty are limited to the extent that Guarantor certifies to HPHA, and HPHA confirms the basis for such certification (such confirmation not to be unreasonably withheld, conditioned or delayed), that the cost to complete the Improvements, when combined with financing costs and the construction costs (including all costs incurred as of the date of such determination and the projected costs to complete the Improvements) (collectively, "**Total Construction Costs**"), exceeds one hundred and twenty percent (125%) of the budget approved by HPHA, Leasehold Mortgagees, and the Tax Credit Investor at Closing ("**Guaranty Limit**"). If the Guaranty Limit is reached this Guaranty shall terminate in accordance with Section 16 of this Guaranty.

4. In the case of any payment to be made by Guarantor, such payment shall be made within five (5) days following written demand therefor, and any amounts not paid within such time shall accrue interest at the long term applicable federal rate from the earlier of the date of demand therefor or such other date as may be provided under the Ground Lease.

5. **[Reserved]**

6. **Guaranty of Payment and Performance.** Guarantor's obligations under this Guaranty constitute an unconditional and continuing guaranty of payment and performance and not merely a guaranty of collection. Guarantor hereby irrevocably and unconditionally covenants and agrees that Guarantor is liable for the Guaranteed Obligations as a primary obligor.

7. **Unconditional Guaranty.** The obligations of Guarantor under this Guaranty shall be performed without demand by HPHA and shall be unconditional irrespective of the genuineness, validity, regularity or enforceability, in whole or in part, of the Ground Lease, and without regard to any other circumstance which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a mortgagor. Guarantor hereby waives the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty and agrees that Guarantor's obligations shall not be affected by any circumstances, whether or not referred to in this Guaranty, which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a



mortgagor. Guarantor hereby waives the benefits of any right of discharge under any and all statutes or other laws relating to a guarantor, a surety, a borrower or a mortgagor, and any other rights of a guarantor, a surety, a borrower or a mortgagor, thereunder. Without limiting the generality of the foregoing, Guarantor hereby waives, to the fullest extent permitted by law, presentment, demand for payment, protest, all notices with respect to this Guaranty which may be required by statute, rule of law or otherwise to preserve HPHA's rights against Guarantor under this Guaranty, including, but not limited to, notice of acceptance, notice of any amendment of the Ground Lease, notice of the occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, and notice of the incurring by Tenant of any obligation or indebtedness. Guarantor also waives, to the fullest extent permitted by law, all rights to require HPHA to (a) proceed against the Tenant or any other guarantor of Tenant's payment or performance with respect to the Indebtedness (an "**Other Guarantor**"), (b) if the Tenant or any Other Guarantor is a partnership, proceed against any general partner of the Tenant or the Other Guarantor, or (c) pursue any other remedy it may now or hereafter have against the Tenant, or, if the Tenant is a partnership, any general partner of Tenant. Guarantor further waives, to the fullest extent permitted by applicable law, (a) any defenses that could arise with respect to an amendment or modification of the Guaranteed Obligations by operation of law, action of any court or the amendment of any of the Ground Lease, (b) any defense that HPHA has waived any Guaranteed Obligation by failing to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy and (c) any other event or circumstance that may constitute a defense of Guarantor to payment of the Guaranteed Obligations.

8. **Joint and Several Liability.** If more than one person executes this Guaranty, the obligations of those persons under this Guaranty and any Other Guarantor shall be joint and several. HPHA, in its sole and absolute discretion, may (a) bring suit against Guarantor, or any one or more of the persons constituting Guarantor, and any Other Guarantor, jointly and severally, or against any one or more of them; (b) compromise or settle with any one or more of the persons constituting Guarantor or any Other Guarantor for such consideration as HPHA may deem proper; (c) release one or more of the persons constituting Guarantor, or any Other Guarantor, from liability; and/or (d) otherwise deal with Guarantor and any Other Guarantor, or any one or more of them, in any manner, and no such action shall impair the rights of HPHA to collect from Guarantor any amount guaranteed by Guarantor under this Guaranty. Nothing contained in this paragraph shall in any way affect or impair the rights or obligations of Guarantor with respect to any Other Guarantor.

9. **[Reserved]**

10. **[Reserved]**

11. **Preference.** If any payment by the Tenant is held to constitute a preference under any applicable bankruptcy, insolvency, or similar laws, or if for any other reason HPHA is required to refund any sums to Guarantor, such refund shall not constitute a release of any liability of Guarantor under this Guaranty. It is the intention of HPHA and Guarantor that Guarantor's obligations under this Guaranty shall not be discharged except by Guarantor's performance of such obligations and then only to the extent of such performance.

12. **Reinstatement.** If at any time any payment of any amounts due under this Guaranty is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of Guarantor or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment has been due but not made at such time.

13. **Guarantor's Financial Condition.**

(a) Guarantor hereby represents and warrants to HPHA that as of the date hereof and throughout the term of this Guaranty, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is and will be solvent and has and will have (i) assets which, fairly valued, exceed its obligations, liabilities and debts (excluding contingent liabilities), and (ii) property and assets sufficient to satisfy and repay its obligations and liabilities. Guarantor hereby covenants and agrees that during the term of this Guaranty, except for the payment of employee salaries and benefits, distributions and dividends in the ordinary course of business, it shall not sell, pledge, mortgage or otherwise transfer any of its assets, or any interest therein, which, when taken in the aggregate are on terms materially less favorable than would be obtained in an arms-length transaction for fair consideration.

(b) Guarantor hereby represents and warrants to HPHA that all financial statements and other financial data previously delivered to HPHA in connection with this Guaranty relating to the Guarantor are true, correct and complete in all material respects. Such financial statements fairly present the financial positions of all Persons who are the subjects thereof as of the respective dates thereof. Guarantor further represents and warrants to HPHA that, except as previously disclosed to HPHA in writing, no material adverse change has occurred as of the date hereof in such financial position, or in the business, operations, assets, management, ownership or condition (financial or otherwise) of Guarantor, since the respective dates of such financial statements and financial data. Except as otherwise previously disclosed to HPHA in writing, Guarantor has no knowledge of any material contractual obligations of Guarantor which might have a material adverse effect upon the ability of Guarantor to perform Guarantor's obligations under this Guaranty.

(c) Guarantor shall furnish or cause to be furnished to HPHA: as soon as available and in any event within one hundred eighty (180) days after the end of each fiscal year of Guarantor, copies of the following financial statements of Guarantor for such fiscal year, prepared and audited by an independent certified public accountant acceptable to HPHA in accordance with generally accepted accounting principles: (A) a balance sheet as of the end of such fiscal year (including supporting schedules), and (B) a statement of income and capital accounts for such fiscal year. Notwithstanding the foregoing, the financial statements of any individual Guarantor, if any, are not required to be audited by an independent certified public accountant.

(d) Guarantor shall from time to time, upon written request by HPHA, deliver to HPHA Lender such other financial statements as HPHA may reasonably require.

14. **Marital and Residency Status.** N/A

15. **Financial Covenants.** N/A

16. **Term of Guaranty.** Subject to the provisions of Section 10 (Preference) and Section 11 (Reinstatement), this Guaranty shall automatically terminate on the earlier to occur of (a) the Completion Date or (b) date the Guarantor provides a certification to the HPHA that Total Construction Costs exceed the Guaranty Limit, and HPHA has confirmed the basis for such certification (such confirmation not to be unreasonably conditioned, withheld or delayed) or (c) termination of the Ground Lease.

17. **Determinations by HPHA.** Except to the extent expressly set forth in this Guaranty to the contrary, in any instance where the consent or approval of HPHA may be given or is required, or where any determination, judgment or decision is to be rendered by HPHA under this Guaranty, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by HPHA, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

18. **Governing Law.** This Guaranty shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

19. **Consent to Jurisdiction and Venue.** Guarantor agrees that any controversy arising under or in relation to this Guaranty shall be litigated exclusively in the Property Jurisdiction. The state courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Guaranty. Guarantor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit HPHA's right to bring any suit, action or proceeding relating to matters arising under this Guaranty against Guarantor or any of Guarantor's assets in any court of any other jurisdiction.

20. **Successors and Assigns.** This Guaranty shall be binding upon Guarantor and its heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, and shall inure to the benefit of the HPHA and its respective successors, successors-in-interest and assigns. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities. Guarantor acknowledges and agrees that any HPHA, at its option, may assign its respective rights and interests under this Guaranty and the Ground Lease in whole or in part and upon such assignment all the terms and provisions of this Guaranty or the Ground Lease shall inure to the benefit of such assignee to the extent so assigned. Guarantor may not assign or delegate its rights, interests or obligations under this Guaranty without first obtaining HPHA's prior written consent.

21. **Severability.** The invalidity, illegality or unenforceability of any provision of this Guaranty shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

22. **Expenses.** Guarantor shall pay to HPHA, upon demand, the amount of any and all expenses, including, without limitation, reasonable attorneys' fees (including reasonable time charges of attorneys who may be employees of HPHA), which HPHA may incur in connection with (a) the exercise or enforcement of any of its rights hereunder, (b) the failure by Guarantor to perform or observe any of the provisions hereof, or (c) the breach by Guarantor of any representation or warranty of Guarantor set forth herein. Guarantor shall also pay to HPHA any such expenses, interest on such expenses computed at the long term applicable federal rate of interest.

23. **Remedies Cumulative.** In the event of Guarantor's default under this Guaranty, HPHA may exercise all or any one or more of its rights and remedies available under this Guaranty, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent HPHA from exercising any other right or remedy available to HPHA. HPHA may exercise any such remedies from time to time as often as may be deemed necessary by HPHA.

24. **No Agency or Partnership.** Nothing contained in this Guaranty shall constitute HPHA as a joint venturer, partner or agent of Guarantor, or render HPHA liable for any debts, obligations, acts, omissions, representations or contracts of Guarantor.

25. **Entire Agreement; Amendment and Waiver.** This Guaranty contains the complete and entire understanding of the parties with respect to the matters covered herein. Guarantor acknowledges that Guarantor has received a copy of the Ground Lease. This Guaranty may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Guaranty shall be considered as a general waiver.

26. **Further Assurances.** Guarantor shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that HPHA may reasonably request, in order to protect any right or interest granted by this Guaranty or to enable HPHA to exercise and enforce its rights and remedies under this Guaranty.

27. **Notices; Change of Guarantor's Address.** All notices, requests, demands, consents, and other communications required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been duly given if mailed, certified first class mail, postage prepaid, return receipt requested, or by Federal Express or other receipted courier service, or hand delivered, to the party to whom the same is so given or made, at the address of such party as set forth below, which address may be changed by notice to the other parties hereto duly given pursuant hereto. Notice by overnight courier service or hand delivery shall be deemed to have been given

and received upon delivery. Notice by first class certified or registered mail shall be deemed to have been given and received two (2) business days after being sent. A party may change its address by giving written notice to the other party as specified herein.

**If to Guarantor:**

Highridge Costa Development Company, LLC  
330 W. Victoria Street  
Gardena, California 90248  
Attn: Mohannad H. Mohanna

With a copy to:

Settle Meyer Law LLLC  
900 Fort Street Mall, Suite 1800  
Honolulu, Hawaii 96813  
Attn: Scott W. Settle, Esq.

**If to HPHA:**

Hawaii Public Housing Authority  
1002 N. School St.  
P.O. Box 17907  
Honolulu, Hawai'i 96817  
Attn: Executive Director

With a copy to:

Department of the Attorney  
General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attn: Deputy Attorney General

28. **Counterparts.** To the extent Guarantor consists of more than one party, this Guaranty may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

29. **Captions.** The captions of the sections of this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

30. **[Reserved]**

31. **[Reserved]**

32. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF GUARANTOR AND HPHA (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS GUARANTY OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

33. **Time of the Essence.** Time is of the essence with respect to this Guaranty.

34. **Limitation on Recourse.** All obligations of Guarantor under this Guaranty shall be recourse obligations of such Guarantor only, payable solely and only from the assets of the Guarantor. No member, manager, shareholder, owner, trust, director, officer, agent, employee, attorney or consultant of Guarantor, including any person executing this Guaranty on behalf of

Guarantor, shall be liable personally under this Guaranty.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Performance and Completion Guaranty or caused this Performance and Completion Guaranty to be duly executed and delivered by its authorized representative as of the date first set forth above.

**GUARANTOR:**

**HIGHRIDGE COSTA DEVELOPMENT  
COMPANY, LLC**, a Delaware limited liability  
company

By: \_\_\_\_\_  
Mohannad H. Mohanna  
Its President

## FOR ACTION

- MOTION:** To **(1)** Adopt Proposed Changes to the Hawaii Public Housing Authority's (HPHA) Administrative Plan, Chapters 4 and 11 to Align Them With the Proposed Amendments to Chapter 17-2031, Hawaii Administrative Rules (HAR), Which:
- (a) Eliminate the Local Preference Priority Tiers and Categories, but Retain the Local Preference for Persons Who Experienced or are Experiencing Homelessness; and
  - (b) Allow for the Admission of Families with Special Preferences, Without Consideration of the Waiting List Status and Provided There is Adequate Voucher Assistance Available. Families Qualifying for a Special Preference Include:
    - (i) Federal Public Housing Families That Are Involuntarily Displaced for Reasons Such As (1) Public Housing Modernization Activities; or (2) an Emergency Where the Conditions of a Dwelling Unit, Building, or Project Pose an Immediate, Verifiable Threat to the Lives, Health, or Safety of the Family, and There Are No Public Housing Dwelling Units Available That Suit Their Needs;
    - (ii) Federal Public Housing Families That Are Approved for a Transfer as a Reasonable Accommodation to a Dwelling Unit with Special Accessibility Features, but the Authority Does Not Have an Appropriate Dwelling Unit Within Its Inventory That Meets the Family's Needs, and the Family Has Waited Over One Year;
    - (iii) Federal Public Housing Families That Include a Member Who Is a Victim of Domestic Violence, Dating Violence, Sexual Assault, Stalking, Reprisal, or a Hate Crime and Who Cannot Be Transferred Safely to Another Public Housing Dwelling Unit; and
    - (iv) A Family That Was Previously Issued a Special Purpose Voucher and Experienced a Loss of Rental Assistance Because of Insufficient Funding or the Eligible Member of the Family Exceeded the Maximum Allowable Age for the Applicable Special Purpose Voucher; and
- (2)** Authorize the Executive Director to Take All Actions Necessary to Implement the Proposed Amendments, Including Distributing Information to the Resident Advisory Board and Residents Participating in the Housing Choice Voucher Program



## I. FACTS

- A. The Hawaii Public Housing Authority's (HPHA) Housing Choice Voucher (HCV) Program is governed by a variety of federal, state, and agency statutes and rules, such as the United States Code; the Code of Federal Regulations (CFR); Chapter 356D, Hawaii Revised Statutes (HRS); and Chapter 17-2031, Hawaii Administrative Rules (HAR). The HCV Program is also governed by Board-adopted policies set forth in the Administrative Plan.
- B. On January 18, 2024, the Board of Directors approved the Amended MTW Supplement for Fiscal Year 2024 which requests HUD's approval of MTW Waiver 3.b. which would allow the HPHA to perform biennial reexaminations for HCV Program participants. A public hearing on the Amended MTW Supplement was held on March 4, 2024. Following the public review process and discussions with the Resident Advisory Board, no substantive changes were made. The Amended MTW Supplement was submitted to the HUD Honolulu Field Office on March 12, 2024, and is pending final approval.
- C. On March 21, 2024, the Board of Directors approved the final draft of the Annual Public Housing Agency (PHA) Plan for Fiscal Year 2025 which expressed the HPHA's intent to make various changes to discretionary policies within the HCV Program, including the simplification of the local preference categories used during admission and the adoption of "special preferences" for certain federal public housing families and former participants with Special Purpose Vouchers (SPV). The Annual PHA Plan for Fiscal Year 2025 was submitted to the HUD Honolulu Field Office on March 29, 2024, and is pending final approval.
- D. On April 4, 2024, the HPHA will submit a separate For Action for the Board of Directors' approval to amend Chapter 17-2031, HAR. The proposed amendments will establish the same policies regarding local preferences, special preferences, and biennial reexaminations within the Administrative Rules.

## II. DISCUSSION

- A. The HPHA is proposing the following revisions to the Administrative Plan:
  - 1. Amend the Section 4-III.C. of Chapter 4 to:
    - a. Eliminate the local preference tiers and the majority of preference categories, but retain a preference for applicants

who experienced homelessness at any time within the last twelve months preceding their application date.

b. Allow for the admission of certain families into the HCV Program without consideration of the status of the waiting list and provided there is adequate voucher funding. Families that qualify for a special preference include:

1. Federal public housing families that are involuntarily displaced for reasons such as (1) public housing modernization activities; or (2) an emergency where the conditions of a dwelling unit, building, or project pose an immediate, verifiable threat to the lives, health, or safety of the family, and there are no public housing dwelling units available that suit their needs;
2. Federal public housing families that are approved for a transfer as a reasonable accommodation to a dwelling unit with special accessibility features, but the HPHA does not have an appropriate dwelling unit within its inventory that meets the family's needs, and the family has waited over one year;
3. Federal public housing families that include a member who is a victim of domestic violence, dating violence, sexual assault, stalking reprisal, or a hate crime and who cannot be transferred safely to another public housing dwelling unit;
4. Federal public housing families that are under-housed, and the authority does not have an appropriately sized federal public housing dwelling unit available or within its inventory; and
5. A family that was previously issued a SPV and experienced a loss of rental assistance because of insufficient funding or because the eligible member of the family exceeded the maximum allowable age for the applicable SPV.

2. Amend Chapter 11 to replace all references to "annual reexaminations" with "biennial reexaminations."

B. Upon the adoption of the amendments to the Administrative Plan and to Chapter 17-2031, HAR, the HPHA shall issue a written notice to all HCV


Program participants of the changes to be made to their reexamination schedules.

### III. RECOMMENDATION

That the Board of Directors **(1)** Adopt Proposed Changes to the Hawaii Public Housing Authority's (HPHA) Administrative Plan, Chapters 4 and 11 to Align Them With the Proposed Amendments to Chapter 17-2031, Hawaii Administrative Rules (HAR), Which:

- (a) Eliminate the Local Preference Priority Tiers and Categories, but Retain the Local Preference for Persons Who Experienced or are Experiencing Homelessness; and
  - (b) Allow for the Admission of Families with Special Preferences, Without Consideration of the Waiting List Status and Provided There is Adequate Voucher Assistance Available. Families Qualifying for a Special Preference Include:
    - (i) Federal Public Housing Families That Are Involuntarily Displaced for Reasons Such As (1) Public Housing Modernization Activities; or (2) an Emergency Where the Conditions of a Dwelling Unit, Building, or Project Pose an Immediate, Verifiable Threat to the Lives, Health, or Safety of the Family, and There Are No Public Housing Dwelling Units Available That Suit Their Needs;
    - (ii) Federal Public Housing Families That Are Approved for a Transfer as a Reasonable Accommodation to a Dwelling Unit with Special Accessibility Features, but the Authority Does Not Have an Appropriate Dwelling Unit Within Its Inventory That Meets the Family's Needs, and the Family Has Waited Over One Year;
    - (iii) Federal Public Housing Families That Include a Member Who Is a Victim of Domestic Violence, Dating Violence, Sexual Assault, Stalking, Reprisal, or a Hate Crime and Who Cannot Be Transferred Safely to Another Public Housing Dwelling Unit; and
    - (iv) A Family That Was Previously Issued a Special Purpose Voucher and Experienced a Loss of Rental Assistance Because of Insufficient Funding or the Eligible Member of the Family Exceeded the Maximum Allowable Age for the Applicable Special Purpose Voucher; and
- (2)** Authorize the Executive Director to Take All Actions Necessary to Implement the Proposed Amendments, Including Distributing Information to the Resident Advisory Board and Residents Participating in the Housing Choice Voucher Program.

Attachment A: Proposed amendments to Chapter 4, Administrative Plan  
Attachment B: Proposed amendments to Chapter 11, Administrative Plan

Prepared by: Benjamin Park, Branch Chief 

Approved by the Board of Directors  
on the date set forth above  
 As Presented [ ] As Amended



Robert J. Hall  
Chairperson

## Chapter 4

### APPLICATIONS, WAITING LIST AND TENANT SELECTION INTRODUCTION

#### INTRODUCTION

When a family wishes to receive Section 8 HCV assistance, the family must submit an application that provides the PHA with the information needed to determine the family's eligibility. HUD requires the PHA to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the PHA must select families from the waiting list in accordance with HUD requirements and PHA policies as stated in the administrative plan and the annual plan.

The PHA is required to adopt a clear approach to accepting applications, placing families on the waiting list, selecting families from the waiting list and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the PHA to receive preferential treatment.

Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that the PHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that the PHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and PHA policies for taking applications, managing the waiting list and selecting families for HCV assistance. The policies outlined in this chapter are organized into three sections, as follows:

Part I: The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how the PHA will handle the applications it receives.

Part II: Managing the Waiting List. This part presents the policies that govern how the PHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for assistance. It also discusses the process the PHA will use to keep the waiting list current.

Part III: Selection for HCV Assistance. This part describes the policies that guide the PHA in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that the PHA has the information needed to make a final eligibility determination.

## **PART I: THE APPLICATION PROCESS**

### **4-I.A. OVERVIEW**

This part describes the policies that guide the PHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes the PHA's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency (LEP).

### **4-I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16]**

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the PHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by the PHA.

#### PHA Policy

Depending upon the length of time that applicants may need to wait to receive assistance, the PHA may use a one- or two-step application process.

A one-step process will be used when it is expected that a family will be selected from the waiting list within 60 days of the date of application. At application, the family must provide all of the information necessary to establish family eligibility and level of assistance.

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, the PHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.

Families may obtain application forms from the PHA's office or the PHA's designated sites during normal business hours. Families may also request – by telephone or by mail – that a form be sent to the family via first class mail.

Completed applications may be returned to the PHA to its designated site by mail, by fax or submitted in person during normal business hours. Applications must be complete in order to be accepted by the PHA for processing. If an application is incomplete, the PHA will notify the family of the additional information required.

### **4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS**

#### **Elderly and Disabled Populations [24 CFR 8 and HCV GB, pp. 4-11 – 4-13]**

The PHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard PHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The PHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or the PHA must provide an

alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the PHA's policies related to providing reasonable accommodations for people with disabilities.

### **Limited English Proficiency**

PHAs are required to take reasonable steps to ensure meaningful access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion on the PHA's policies related to ensuring access to people with limited English proficiency (LEP).

### **4-I.D. PLACEMENT ON THE WAITING LIST**

The PHA must review each complete application received and make a preliminary assessment of the family's eligibility. The PHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, the PHA must notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list [24 CFR 982.202(c)].

#### **Ineligible for Placement on the Waiting List**

##### PHA Policy

If the PHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, the PHA will send written notification of the ineligibility determination immediately after receiving a completed application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

#### **Eligible for Placement on the Waiting List**

##### PHA Policy

The PHA will send written notification of the preliminary eligibility determination immediately after receiving a completed application.

Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list.

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and the date and time their complete application is received by the PHA.

## **PART II: MANAGING THE WAITING LIST**

### **4-II.A. OVERVIEW**

The PHA must have policies regarding various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for assistance, as well as conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how a PHA may structure its waiting list and how families must be treated if they apply for assistance from a PHA that administers more than one assisted housing program.

### **4-II.B. ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 and 205]**

The PHA's HCV waiting list must be organized in such a manner to allow the PHA to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

The waiting list must contain the following information for each applicant listed:

- Applicant name;
- Family unit size;
- Date and time of application;
- Qualification for any local preference; and
- Racial or ethnic designation of the head of household.

HUD requires the PHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such PHAs are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

#### PHA Policy

The PHA will maintain a single waiting list for the HCV program.

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher, or moderate rehabilitation program the PHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.

HUD permits, but does not require, that PHAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs.

A family's decision to apply for, receive, or refuse other housing assistance must not affect the family's placement on the HCV waiting list, or any preferences for which the family may qualify.

#### PHA Policy

The PHA will not merge the HCV waiting list with the waiting list for any other program the PHA



operates.

#### **4-II.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]**

##### **Closing the Waiting List**

A PHA is permitted to close the waiting list if it has an adequate pool of families to use its available HCV assistance. Alternatively, the PHA may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria.

##### PHA Policy

The PHA will close the waiting list when the estimated waiting period for housing assistance for applicants has been determined to be of a long and extraordinary wait period for the most current applicants. Where the PHA has particular preferences or funding criteria that require a specific category of family, the PHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

##### **Reopening the Waiting List**

If the waiting list has been closed, it cannot be reopened until the PHA publishes a notice in local newspapers of general circulation, minority media, and other suitable media outlets. The notice must comply with HUD fair housing requirements and must specify who may apply, and where and when applications will be received.

##### PHA Policy

The PHA will announce the reopening of the waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice.

The PHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to:

- Honolulu Advertiser Star-Bulletin;
- MidWeek;
- Hawaii Hochi;
- Fil-Am Courier;
- Korea Central; and
- New United Chinese.

#### **4-II.D. FAMILY OUTREACH [HCV GB, pp. 4-2 to 4-4]**

The PHA must conduct outreach as necessary to ensure that the PHA has a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted.

Because HUD requires the PHA to serve a specified percentage of extremely low-income families (see

Chapter 4, Part III), the PHA may need to conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

PHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations;
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program; and
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class.

PHA outreach efforts must be designed to inform qualified families about the availability of assistance under the program. These efforts may include, as needed, any of the following activities:

- Submitting press releases to local newspapers, including minority newspapers;
- Developing informational materials and flyers to distribute to other agencies;
- Providing application forms to other public and private agencies that serve the low-income population; or
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities.

#### PHA Policy

The PHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in the PHA's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

### **4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

#### PHA Policy

While the family is on the waiting list, the family must immediately inform the PHA of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

### **4-II.F. UPDATING THE WAITING LIST [24 CFR 982.204]**

HUD requires the PHA to establish policies to use when removing applicant names from the waiting list. Purging the Waiting List

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to a PHA request for information or updates because of the family member's disability, the PHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)].

#### PHA Policy

The waiting list will be updated annually to ensure that all applicants and applicant information is

current and timely.

To update the waiting list, the PHA will send an update request via first class mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that the PHA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person, by mail, or by fax. Responses should be postmarked or received by the PHA not later than 15 business days from the date of the PHA letter.

If the family fails to respond within 15 business days, the family will be removed from the waiting list without further notice.

If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 15 business days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the Branch Administrator or its designee may reinstate the family if s/he determines the lack of response was due to PHA error, or to circumstances beyond the family's control.

## **Removal from the Waiting List**

### PHA Policy

If at any time an applicant family is on the waiting list, the PHA determines that the family is not eligible for assistance (see Chapter 3), the family will be removed from the waiting list.

If a family is removed from the waiting list because the PHA has determined the family is not eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the PHA's decision (see Chapter 16) [24 CFR 982.201(f)].

## **PART III: SELECTION FOR HCV ASSISTANCE**

### **4-III.A. OVERVIEW**

As vouchers become available, families on the waiting list must be selected for assistance in accordance with the policies described in this part.

The order in which families receive assistance from the waiting list depends on the selection method chosen by the PHA and is impacted in part by any selection preferences that the family qualifies for. The source of HCV funding also may affect the order in which families are selected from the waiting list.

The PHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the PHA's selection policies [24 CFR 982.204(b) and 982.207(e)].

### **4-III.B. SELECTION AND HCV FUNDING SOURCES**

#### **Special Admissions [24 CFR 982.203]**

HUD may award funding for specifically-named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects). In these cases, the PHA may admit families that are not on the waiting list, or without considering the family's position on the waiting list. The PHA must maintain records showing that such families were admitted with special program funding.

#### **Targeted Funding [24 CFR 982.204(e)]**

HUD may award a PHA funding for a specified category of families on the waiting list. The PHA must use this funding only to assist the families within the specified category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

#### PHA Policy

The PHA administers the following types of targeted funding:

- Mainstream; and
- Welfare-to-Work.

#### **Regular HCV Funding**

Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the policies provided in Section 4-III.C.

### **4-III.C. SELECTION METHOD**

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the PHA will use [24 CFR 982.202(d)].

#### **Local Preferences [24 CFR 982.207; HCV p. 4-16]**

PHAs are permitted to establish local preferences, and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the PHA to establish other local preferences, at its discretion.

Any local preferences established must be consistent with the PHA plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

### PHA Policy

The PHA will offer a local preference for:

- Homelessness [§17-2031-25, HAR]: Applicants who at any time within the last twelve months preceding the application date experienced homelessness. Homelessness means the lack a fixed, regular, and adequate nighttime residence (i.e., having a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations including welfare hotels, congregate shelters and transitional housing, or an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not ordinarily used as a sleeping accommodation for human beings).

Families are eligible for this preference if they are participating or have graduated from a transitional or supportive services housing program.

Homeless families may maintain their place on the waiting list while completing a transitional housing program.

Families who are residing with friends or relatives on a temporary basis will be included in the homeless definition.

Persons who reside as part of a family unit shall not be considered a separate household.

Subject to the availability of funding, the authority may admit families with a special preference into the program without consideration of the status of the tenant-based voucher waiting list. A special preference shall be given to:

- Federal public housing families [§17-2031-30.1, HAR]: The following federal public housing families may qualify admission and participation in the HCV Program through a super preference:
  - A federal public housing family that is involuntarily displaced for reasons such as:
    - Relocation due to modernization activity; or
    - An emergency where the conditions of a public housing dwelling unit, building, or project pose an immediate, verifiable threat to the life, health, or safety of the family, and the family cannot be relocated to another public housing dwelling unit in the same program that meets their needs;
  - A federal public housing family that is approved for a transfer as a reasonable accommodation to a dwelling unit with special accessibility features, but the authority does not have an appropriate dwelling unit within its inventory that meets the family's needs, and the family has waited over one year;

- A federal public housing family that includes a member who is a victim of domestic violence, dating violence, sexual assault, stalking, reprisal, or a hate crime and who cannot be transferred safely to another public housing dwelling unit; or
- A federal public housing family that is under-housed, and the authority does not have an appropriately sized public housing dwelling unit available or within its inventory;
- A family that was previously issued a special purpose voucher (SPV) and experienced a loss of rental assistance because of insufficient funding or because the eligible family member exceeds the maximum age allowable for the applicable SPV.

### **Income Targeting Requirement [24 CFR 982.201(b)(2)]**

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during the PHA's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, a PHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low-income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

#### PHA Policy

The PHA will monitor progress in meeting the ELI requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income targeting requirement is met.

### **Order of Selection**

The PHA system of preferences may select families either according to the date and time of application, or by a random selection process [24 CFR 982.207(c)]. When selecting families from the waiting list PHAs are required to use targeted funding to assist only those families who meet the specified criteria, and PHAs are not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

#### PHA Policy

Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the PHA's hierarchy of preferences, if applicable. Within each targeted funding or preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the PHA. Documentation will be maintained by the PHA as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list is not qualified or not interested in targeted funding, there will be a notation maintained so that the PHA does not have to ask higher placed families each time targeted selections are made.

## **4-III.D. NOTIFICATION OF SELECTION**

When a family has been selected from the waiting list, the PHA must notify the family.

#### PHA Policy

The PHA will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family of the following:

- Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview;
- Who is required to attend the interview;
- Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation;
- Other documents and information that should be brought to the interview; and
- If a notification letter is returned to the PHA with no forwarding address, the family will be removed from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any known alternate address.

#### **4-III.E. THE APPLICATION INTERVIEW**

HUD recommends that the PHA obtain the information and documentation needed to make an eligibility determination through a private interview [HCV GB, pg. 4-16]. Being invited to attend an interview does not constitute admission to the program.

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability.

#### PHA Policy

Families selected from the waiting list are required to participate in an eligibility interview.

The interview will be conducted only if the head or household or spouse/co-head provides appropriate documentation of legal identity. (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

All adult family members are required to attend the interview. Verification of information pertaining to adult members of the household who are not present at the interview will not begin until signed release forms are returned to the PHA.

If an adult member of the household is not present, the interview must proceed, but the missing adult member must be interviewed separately. If the missing adult member under extreme conditions (e.g., full-time student outside of this jurisdiction, hospitalization, employed outside of this jurisdiction is unable to attend, etc.), a statement from the missing adult member must be provided as to why attendance was not possible and verification to that fact. This signature of the statement will be used in lieu of the signature as required and attached to the Family

Annual/Update Report.

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation. If any materials are missing, the PHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible non-citizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (See Chapter 3).

An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

Interviews will be conducted in English. For limited English proficient (LEP) applicants, the PHA will provide translation services in accordance with the PHA's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the PHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without PHA approval will be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

#### **4-III.F. COMPLETING THE APPLICATION PROCESS**

The PHA must verify all information provided by the family (see Chapter 7). Based on verified information, the PHA must make a final determination of eligibility (see Chapter 3) and must confirm that the family qualified for any special admission, targeted admission, or selection preference that affected the order in which the family was selected from the waiting list.

##### PHA Policy

If the PHA determines that the family is ineligible, the PHA will send written notification of the ineligibility determination immediately of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 16).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g., targeted funding, extremely low-income), the family will be returned to its original position on the waiting list. The PHA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

If the PHA determines that the family is eligible to receive assistance, the PHA will invite the family to attend a briefing in accordance with the policies in Chapter 5.



## Chapter 11

### REEXAMINATIONS

#### INTRODUCTION

The PHA is required to reexamine each family's income and composition at least biennially, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both biennial and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and PHA policies concerning reexaminations are presented in three parts:

Part I: Biennial Reexaminations. This part discusses the process for conducting biennial reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between biennial reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of biennial and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both biennial and interim reexaminations.

## PART I: BIENNIAL REEXAMINATIONS [24 CFR 982.516]

### 11-I.A. OVERVIEW

The PHA must conduct a reexamination of family income and composition at least biennially. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for biennial reexaminations, the information to be collected and verified, and biennial reexamination effective dates.

#### PHA Policy

Pending HUD approval of the HPHA's Amended Moving to Work (MTW) Supplement for FY 24, the HPHA may utilize MTW Activity Waiver 3.b. and perform income and eligibility reexaminations for all HCV participants biennially. Under this MTW activity, the HPHA would not limit the number of interim reexaminations that a family may request.

### 11-I.B. SCHEDULING BIENNIAL REEXAMINATIONS

The PHA must establish a policy to ensure that the biennial reexamination for each family is completed within a 24-month period, and may require reexaminations more frequently [HCV GB p. 12-1].

#### PHA Policy

The PHA will begin the biennial reexamination process 120 days in advance of its scheduled effective date. Generally, the PHA will schedule biennial reexamination effective dates to coincide with the family's anniversary date.

*Anniversary date* is defined as 24 months from the effective date of the family's last biennial reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

The next biennial reexamination will be the first day of the same month of move in.

If the family moves to a new unit, the PHA will not perform a new biennial reexamination.

The PHA also may schedule an biennial reexamination for completion prior to the anniversary date for administrative purposes.

### Notification of and Participation in the Biennial Reexamination Process

The PHA is required to obtain the information needed to conduct biennial reexaminations. How that information will be collected is left to the discretion of the PHA.

#### PHA Policy

Families generally are required to participate in an biennial reexamination interview in person, telephone, or home visit.

Notification of biennial reexamination interviews will be sent by first-class mail and will contain

the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the PHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without PHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the PHA must execute a certification attesting to the role and assistance of any such third party.

## **11-I.C. CONDUCTING BIENNIAL REEXAMINATIONS**

As part of the **biennial** reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

### PHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a PHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on a **biennial** basis. These include:

- Legal identity
- Age;
- Social security numbers;
- A person's disability status; and
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

#### **11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]**

Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on a **biennial** basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility. Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

##### PHA Policy

During the **biennial** reexamination process, the PHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the PHA will process a reexamination in accordance with the policies in this chapter.

#### **11-I.E. EFFECTIVE DATES**

The PHA must establish policies concerning the effective date of changes that result from a **biennial** reexamination [24 CFR 982.516].

##### PHA Policy

In general, an *increase* in the family share of the rent that results from a **biennial** reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take

effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the PHA chooses to schedule a **biennial** reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the **biennial** reexamination, *increases* in the family share of the rent will be applied retroactively to the scheduled effective date of the **biennial** reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from a **biennial** reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the PHA chooses to schedule a **biennial** reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA.

If the family causes a delay in processing the **biennial** reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the PHA by the date specified, and this delay prevents the PHA from completing the reexamination as scheduled.

## **PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]**

### **11-II.A. OVERVIEW**

Family circumstances may change throughout the period between **biennial** reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both PHA- and family-initiated interim reexaminations.

### **11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, the PHA has limited discretion in this area.

#### PHA Policy

The PHA will conduct interim reexaminations to account for any changes in household composition that occur between **biennial** reexaminations.

#### **New Family Members Not Requiring Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 982.551(h)(2)].

#### PHA Policy

The family must inform the PHA of the birth, adoption, or court-awarded custody of a child within 10 business days.

#### **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or another household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the PHA must conduct a reexamination to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

#### PHA Policy

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days, or 90 cumulative days, within a twelve-month period, and therefore no longer qualifies as a “guest.” Requests must be made in writing and approved by the PHA prior to the individual moving in the unit.

The PHA will not approve the addition of a new family or household member unless the individual meets the PHA’s eligibility criteria (see Chapter 3).

The PHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the PHA determines an individual meets the PHA’s eligibility criteria as defined in Chapter 3, the PHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued another voucher and will be required to move.

If the PHA determines that an individual does not meet the PHA’s eligibility criteria as defined in Chapter 3, the PHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The PHA will make its determination within 10 business days of receiving all information required to verify the individual’s eligibility.

#### **Departure of a Family or Household Member**

Families must promptly notify the PHA if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the PHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

#### PHA Policy

If a household member ceases to reside in the unit, the family must inform the PHA within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the PHA within 10 business days.

### **11-IL.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

### **PHA-Initiated Interim Reexaminations**

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.

#### PHA Policy

The PHA will conduct interim reexaminations in each of the following instances:

If the family has reported zero income, the PHA will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

If at the time of the **biennial** reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g., seasonal, or cyclic income), the PHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the **biennial** reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the PHA will conduct an interim reexamination.

The PHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

### **Family-Initiated Interim Reexaminations**

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

#### ***Required Reporting***

HUD regulations give the PHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

#### PHA Policy

Families are required to report all increases in earned income, including new employment, within 10 business days of the date the change takes effect.

The PHA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.



### ***Optional Reporting***

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)]. The PHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

#### PHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, the PHA will note the information in the tenant file, but will not conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, the PHA will conduct an interim reexamination. See Section 11-II.D. for effective dates.

Families may report changes in income or expenses at any time.

## **11-II.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

#### PHA Policy

The family must notify the PHA of changes in writing. If the family provides oral notice, the PHA will require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the PHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, by fax, or in person.

### **Effective Dates**

The PHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

#### PHA Policy

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported, and all required documentation was submitted. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

## PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

### 11-III.A. OVERVIEW

After gathering and verifying required information for a **biennial** or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### 11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

#### Payment Standards [24 CFR 982.505]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the PHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the PHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
  - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first biennial* reexamination following the effective date of the increase in the payment standard.
  - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *second biennial* reexamination following the effective date of the decrease in the payment standard.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

#### Subsidy Standards [24 CFR 982.505(c)(4)]

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the PHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first biennial* reexamination following the change in family unit size.

#### Utility Allowances [24 CFR 982.517(d)]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule [HCV GB, p. 12-5].

Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the PHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the PHA must use the PHA current utility allowance schedule [24 CFR 982.517(d)(2)].

#### PHA Policy

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first **biennial** reexamination after the allowance is adopted.

### **11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

The PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment;
- The amount and effective date of the new family share of the rent; and
- The amount and effective date of the new tenant rent to owner.

The family must be given an opportunity for an informal hearing regarding the PHA's determination of their **biennial** or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

#### PHA Policy

The notice to the family will include the **biennial** and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

### **11-III.D. DISCREPANCIES**

During a **biennial** or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

## FOR ACTION

- MOTION:** To (1) Adopt Proposed Changes to the Hawaii Public Housing Authority's Chapter 17-2031, Hawaii Administrative Rules, Entitled "Section 8 – Housing Choice Voucher and Project Based Voucher Program," as follows:
- (a) Amend Section 17-2031-25 to:
    - (i) Eliminate the Local Preference Tiers and Several Preference Categories; and
    - (ii) Retain a Local Preference for Applicants Who Experienced Homelessness at Any Time Within the Last Twelve Months Preceding Their Application Date;
  - (b) Adopt Section 17-2031-30.1 to Allow for the Admission of Families with Special Preferences, Without Consideration of the Waiting List Status and Provided There is Adequate Voucher Assistance Available. Families Qualifying for a Special Preference Include:
    - (i) Federal Public Housing Families That Are Involuntarily Displaced for Reasons Such As (1) Public Housing Modernization Activities; or (2) an Emergency Where the Conditions of a Dwelling Unit, Building, or Project Pose an Immediate, Verifiable Threat to the Lives, Health, or Safety of the Family, and There Are No Public Housing Dwelling Units Available That Suit Their Needs;
    - (ii) Federal Public Housing Families That Are Approved for a Transfer as a Reasonable Accommodation to a Dwelling Unit with Special Accessibility Features, but the Authority Does Not Have an Appropriate Dwelling Unit Within Its Inventory That Meets the Family's Needs, and the Family Has Waited Over One Year;
    - (iii) Federal Public Housing Families That Include a Member Who Is a Victim of Domestic Violence, Dating Violence, Sexual Assault, Stalking, Reprisal, or a Hate Crime and Who Cannot Be Transferred Safely to Another Public Housing Dwelling Unit; and
    - (iv) A Family That Was Previously Issued a Special Purpose Voucher and Experienced a Loss of Rental Assistance Because of Insufficient Funding or the Eligible Member of the Family Exceeded the Maximum Allowable Age for the Applicable Special Purpose Voucher;
  - (c) Amend Section 17-2031-32 to Establish That the Authority May Perform Reexaminations of a Participant's Income and Eligibility Biennially;

- (d) Amend Section 17-2031-3 to Make Technical, Non-Substantive Changes; and
  - (e) Update Exhibit C to Include the Most Recent Income Limits for Admission to the Program Made Effective by HUD on May 15, 2023; and
- (2) Authorize the Executive Director to Conduct a Public Hearing and Undertake All Other Actions Necessary Under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 18-02 to Implement the Revision of Chapter 17-2031, Hawaii Administrative Rules, Entitled “Section 8 – Housing Choice Voucher and Project Based Voucher Program,” Including Making Non-Substantive Revisions to Formatting as May Be Required.

\* \* \*

The proposed amendments to the Hawaii Public Housing Authority’s (HPHA) Chapter 17-2031, Hawaii Administrative Rules, entitled “Section 8 – Housing Choice Voucher and Project Based Voucher Program,” may be viewed on the internet on or about April 4, 2024, on the HPHA’s website at [https://files.hawaii.gov/hpha/adminrules/proposed/17-2031 Biennial Reexams Preferences D8 NA Ramseyer.pdf](https://files.hawaii.gov/hpha/adminrules/proposed/17-2031%20Biennial%20Reexams%20Preferences%20D8%20NA%20Ramseyer.pdf). Alternatively, the proposed amendments may be viewed from 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, at the HPHA’s Main Administrative Office located at 1002 North School Street, Building E, Honolulu, Hawaii 96187. Interested persons may request a copy of the rules be mailed to them by calling (808) 832-4690 or by emailing a request to [hpha@hawaii.gov](mailto:hpha@hawaii.gov).

**I. FACTS**

- A. The Hawaii Public Housing Authority’s (HPHA) Housing Choice Voucher (HCV) Program is governed by a variety of federal, state, and agency statutes and rules, such as the United States Code; the Code of Federal Regulations (CFR); Chapter 356D, Hawaii Revised Statutes (HRS); and Chapter 17-2031, Hawaii Administrative Rules (HAR).
- B. Sections 356D-4 and 356D-13, HRS, authorize the HPHA to adopt administrative rules with the force and effect of law to govern its federal programs.
- C. On January 18, 2024, the Board of Directors approved the Amended MTW Supplement for Fiscal Year 2024 which requests HUD’s approval of MTW Waiver 3.b. which would allow the HPHA to perform biennial reexaminations for HCV Program participants. A public hearing on the Amended MTW Supplement was held on March 4, 2024. Following the

public review process and discussions with the Resident Advisory Board, no substantive changes were made. The Amended MTW Supplement was submitted to the HUD Honolulu Field Office on March 12, 2024, and is pending final approval.

- D. On March 21, 2024, the Board of Directors approved the final draft of the Annual Public Housing Agency (PHA) Plan for Fiscal Year 2025 which expressed the HPHA's intent to make various changes to discretionary policies within the HCV Program, including the simplification of the local preference categories used during admission and the adoption of "special preferences" for certain public housing families and former participants with Special Purpose Vouchers (SPV). The Annual PHA Plan for Fiscal Year 2025 was submitted to the HUD Honolulu Field Office on March 29, 2024, and is pending final approval.

## II. DISCUSSION

- A. The specific amendments proposed to Chapter 17-2031, HAR, are as follows:
  - 1. Amend Section 17-2031-25 [Local preferences] to eliminate the local preference tiers and the majority of preference categories, but retain a preference for applicants who experienced homelessness at any time within the last twelve months preceding their application date.
  - 2. Adopt Section 17-2031-30.1 [Special admission and exception for families with a special preference] which allows for the HPHA to admit certain families into the HCV Program without consideration of the status of the waiting list and provided there is adequate voucher funding. Families that qualify for a special preference include:
    - a. Federal public housing families that are involuntarily displaced for reasons such as (1) public housing modernization activities; or (2) an emergency where the conditions of a dwelling unit, building, or project pose an immediate, verifiable threat to the lives, health, or safety of the family, and there are no public housing dwelling units available that suit their needs;
    - b. Federal public housing families that are approved for a transfer as a reasonable accommodation to a dwelling unit with special accessibility features, but the HPHA does not have an appropriate dwelling unit within its inventory that

meets the family's needs, and the family has waited over one year;

- c. Federal public housing families that include a member who is a victim of domestic violence, dating violence, sexual assault, stalking, reprisal, or a hate crime and who cannot be transferred safely to another public housing dwelling unit;
  - d. Federal public housing families that are under-housed, and the authority does not have an appropriately sized public housing dwelling unit available or within its inventory; and
  - e. A family that was previously issued an SPV and experienced a loss of rental assistance because of insufficient funding or because the eligible member of the family exceeded the maximum allowable age for the applicable SPV.
- 3. Amend Sections 17-2031-32 [Reexaminations] to establish that the HPHA may perform reexaminations of a participant's income and eligibility on a biennial basis (i.e., once every twenty-four months).
  - 4. Amend Sections 17-2031-3 [Definitions] to make technical, non-substantive changes.
  - 5. Amend Exhibit C to include the latest income limits for admission published by HUD and made effective on May 15, 2023.
- B. Once approved by the HPHA Board of Directors, the Authority must request permission from the Governor to take the proposed draft to a public hearing.
  - C. Following approval from the Governor to hold a public hearing on the proposed amendment, the HPHA must give 30 days' notice to the public and hold a public hearing.
  - D. The Executive Director may make technical, non-substantive amendments to the proposed draft during the public review and comment period and following the public hearing.

After the public hearing, the Executive Director will transmit the proposed draft to the Governor for final approval, provided that no substantive amendments are made. Staff anticipate the following schedule for the draft's approval.



| <u>Action</u>                               | <u>Timeframe</u> |
|---|------------------|
| Board approves amendments                   | April 4, 2024    |
| Send request to Governor for public hearing | April 4, 2024    |
| Receive Governor's authorization            | April 19, 2024   |
| Publish hearing notice (30-day notice)      | April 26, 2024   |
| Public Hearing                              | May 27, 2024     |
| Final rule approval & transmit to Governor  | May 31, 2024     |
| Rules effective                             | June 14, 2024    |

- E. If substantive amendments are proposed, the revised rules will be presented to the Board of Directors for additional review and approval.

### III. RECOMMENDATION

To **(1)** Adopt Proposed Changes to the Hawaii Public Housing Authority's Chapter 17-2031, Hawaii Administrative Rules, Entitled "Section 8 – Housing Choice Voucher and Project Based Voucher Program," as follows:

- (a) Amend Section 17-2031-25 to:
  - (i) Eliminate the Local Preference Tiers and Several Preference Categories; and
  - (ii) Retain a Local Preference for Applicants Who Experienced Homelessness at Any Time Within the Last Twelve Months Preceding Their Application Date;
- (b) Adopt Section 17-2031-30.1 to Allow for the Admission of Families with Special Preferences, Without Consideration of the Waiting List Status and Provided There is Adequate Voucher Assistance Available. Families Qualifying for a Special Preference Include:
  - (i) Federal Public Housing Families That Are Involuntarily Displaced for Reasons Such As (1) Public Housing Modernization Activities; or (2) an Emergency Where the Conditions of a Dwelling Unit, Building, or Project Pose an Immediate, Verifiable Threat to the Lives, Health, or Safety of the Family, and There Are No Public Housing Dwelling Units Available That Suit Their Needs;
  - (ii) Federal Public Housing Families That Are Approved for a Transfer as a Reasonable Accommodation to a Dwelling Unit With Special Accessibility Features, but the Authority Does Not Have an Appropriate Dwelling Unit Within Its Inventory That Meets the Family's Needs, and the Family has Waited Over One Year;
  - (iii) Federal Public Housing Families That Include a Member Who Is a Victim of Domestic Violence, Dating Violence, Sexual Assault, Stalking, Reprisal, or a Hate Crime and Who Cannot Be Transferred Safely to Another Public Housing Dwelling Unit; and
  - (iv) A Family That Was Previously Issued a Special Purpose Voucher and Experienced a Loss of Rental Assistance Because of Insufficient Funding or the Eligible Member of the Family Exceeded

the Maximum Allowable Age for the Applicable Special Purpose Voucher;

- (c) Amend Section 17-2031-32 to Allow the Authority to Perform Reexaminations of a Participant's Income and Eligibility on a Biennial Basis;
  - (d) Amend Section 17-2031-3 to Make Technical, Non-Substantive Changes; and
  - (e) Update Exhibit C to Include the Most Recent Income Limits for Admission to the Program Made Effective by HUD on May 15, 2023; and
- (2)** Authorize the Executive Director to Conduct a Public Hearing and Undertake All Other Actions Necessary Under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 18-02 to Implement the Revision of Chapter 17-2031, Hawaii Administrative Rules, Entitled "Section 8 – Housing Choice Voucher and Project Based Voucher Program," Including Making Non-Substantive Revisions to Formatting as May Be Required.

Attachment A: Ramseyer format draft of Chapter 17-2031, HAR  
Attachment B: Standard format draft of Chapter 17-2031, HAR

Prepared by: Benjamin Park, Chief Planner 

Approved by the Board of Directors  
on the date set forth above  
 As Presented [ ] As Amended



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Robert J. Hall  
Chairperson

DEPARTMENT OF HUMAN SERVICES

Amendment and Compilation of Chapter 17-2031  
Hawaii Administrative Rules

SUMMARY

[DATE]

1. Chapter 17-2031, Hawaii Administrative Rules, entitled "Section 8 - Housing Choice Voucher and Project Based Voucher Program", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HAWAII PUBLIC HOUSING AUTHORITY

CHAPTER 2031

SECTION 8 - HOUSING CHOICE VOUCHER AND PROJECT BASED  
VOUCHER PROGRAM

## SUBCHAPTER 1 General Provisions

|                            |  |
|----------------------------|--|
| §17-2031-1                 | Purpose                                    |
| §17-2031-2                 | Nondiscrimination                          |
| §17-2031-3                 | Definitions                                |
| §17-2031-4                 | Public notice to lower-income families     |
| §17-2031-5                 | Participation by owners and others         |
| §17-2031-6                 | Income limits                              |
| §17-2031-7                 | Assets                                     |
| §17-2031-8                 | Subsidy and occupancy standards            |
| §17-2031-9                 | Allowance for utilities and other services |
| §17-2031-10                | Verification of information                |
| §§17-2031-11 to 17-2031-20 | (Reserved)                                 |

## SUBCHAPTER 2 Eligibility

|                            |   |
|----------------------------|---|
| §17-2031-21                | Applications  |
| §17-2031-22                | Eligibility for admission and participation                                   |
| §17-2031-23                | Income targeting  |
| §17-2031-24                | Notification of eligibility   |
| §17-2031-25                | Local preferences   |
| §17-2031-26                | Waiting list  |
| §17-2031-27                | Removal from the waiting list   |
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| §17-2031-29                | Final application process - selection and certification                       |
| §17-2031-30                | Exception for designated programs   |
| <u>§17-2031-30.1</u>       | <u>Special admission and exception for families with a special preference</u> |
| §17-2031-31                | Annual income   |
| §17-2031-32                | Reexaminations  |
| §17-2031-33                | Interim rent adjustment   |
| §17-2031-34                | Continued assistance  |
| §§17-2031-35 to 17-2031-40 | (Reserved)  |

## SUBCHAPTER 3 Lease

|             |                            |
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| §17-2031-41 | Request for lease approval |
|-------------|----------------------------|

§17-2031-42 Dwelling unit inspection  
§17-2031-43 Lease requirements  
§17-2031-44 Lease approval  
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#### SUBCHAPTER 4 Housing Assistance Payments and Rent

§17-2031-51 Housing assistance payments  
§17-2031-52 Contract rents  
§17-2031-53 Total tenant payment  
§17-2031-54 Rent  
§17-2031-55 Payment standard  
§17-2031-56 Security deposits  
§17-2031-57 Ownership change  
§§17-2031-58 to 17-2031-60 (Reserved)

#### SUBCHAPTER 5 Operations

§17-2031-61 Inspections  
§17-2031-62 Overcrowded or under occupied dwelling  
units  
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§17-2031-64 Transfers  
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owner  
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#### SUBCHAPTER 6 Informal Reviews and Hearings

§17-2031-71 Informal review process for applicants  
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participants  
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#### SUBCHAPTER 7 Family Self-Sufficiency Program

§17-2031-81 Family self-sufficiency program

- §17-2031-82 Eligibility
- §17-2031-83 Recruitment and outreach
- §17-2031-84 Selection
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- §§17-2031-86 to 17-2031-90 (Reserved)

#### SUBCHAPTER 8 Project-Based Section 8 Program

- §17-2031-91 Purpose
- §17-2031-92 Eligible projects
- §17-2031-93 Notification of project-based assistance
- §17-2031-94 Applications for project-based assistance; information required
- §17-2031-95 Review and screening of applications
- §17-2031-96 Selection of project applications
- §17-2031-97 Agreement to enter into housing assistance contract
- §17-2031-98 Selection of eligible tenants
- §17-2031-99 Dwelling unit cap on project-based dwelling units by building.
- §17-2031-100 Rental assistance demonstration
- §17-2031-101 Term of the RAD PBV contract
- §17-2031-102 Contract rents
- §17-2031-103 Re-determining rent to owner - rent reasonableness
- §17-2031-104 Conversion from public housing to RAD PBV
- §17-2031-105 Phase-in of tenant rent increases
- §17-2031-106 Termination notification requirements
- §17-2031-107 Grievance process
- §17-2031-108 Establishment of waiting list
- §17-2031-109 Resident participation and funding
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#### SUBCHAPTER 9 Miscellaneous Provisions

- §17-2031-201 Severability
- §17-2031-202 Number

Historical Note: Chapter 2031 of Title 17, Hawaii  
Administrative Rules, is substantially based upon  
Chapter 17-511, Hawaii Administrative Rules  
[Eff 2/18/82; am 10/31/88; R 12/3/01]; and Chapter 15-  
185, Hawaii Administrative Rules. [Eff 12/3/01;  
R ]

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§17-2031-1 Purpose.** These rules are adopted under chapter 91, HRS, and shall govern the implementation of the management requirements of the tenant based housing choice voucher program and the project based voucher program authorized by the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, the Quality Housing Work Responsibility Act (QHWRA) of 1998, and the Housing and Economic Recovery Act of 2008 (HERA) and establish the role and responsibility of the participants and the Hawaii public housing authority. These rules set forth some of the authority's administrative plan that a public housing agency is required to adopt pursuant to the U.S. Department of Housing and Urban development section 8 program regulations in 24 C.F.R. Chapter IX Part 982 ("Administrative Plan") as it existed on October 20, 2022. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; C.F.R. §982.54)

**§17-2031-2 Nondiscrimination.** (a) The authority shall not deny any family or individual the opportunity to apply for or receive assistance under this chapter on the basis of race, color, sex, religion, marital status, creed, national or ethnic origin, age, familial status, handicap or disability or HIV infection.

The authority shall comply with federal and state nondiscrimination laws and with rules and regulations governing fair housing and equal opportunity in the administration of the program.

The authority shall provide a family with the United States Department of Housing and Urban



Development discrimination complaint form and information on how to file a fair housing complaint if the family claims that discrimination prevented them from finding or leasing a suitable dwelling unit under the program. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-7; 24 C.F.R. §§982.53, 982.304)

**§17-2031-3 Definitions.** As used in this chapter:

"Adjusted income" means "annual income" of the members of the family residing or intending to reside in the dwelling unit minus any HUD allowable expenses and deductions as defined in 24 C.F.R. §5.611, as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit A.

"Annual income" means the gross amount of income anticipated to be received by the family during the twelve months after certification or recertification. Gross income is the amount of income prior to any HUD allowable expenses or deductions and does not include income which has been excluded by HUD, as defined in 24 C.F.R. §5.609, as it existed on October 20, 2022.

"Applicant" means an individual or family that submits an application for admission to the program but is not yet a participant in the program.

"Assets" or "net family assets" means net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment as defined in 24 C.F.R. §5.603, as it existed on October 20, 2022.

"Authority" means the Hawaii public housing authority.

"Board" means the board of directors of the Hawaii public housing authority.

"C.F.R. " means the United States Code of Federal Regulations.

"Child" means a person who is born alive and is less than eighteen years of age.

"Community wide" means inclusive of any location that is under the jurisdiction of the authority.

"Continuously assisted" means that the applicant is currently receiving assistance under any program of the U.S. Housing Act of 1937, as amended, and there is no break in assistance to the family.

"Contract rent" means the total rent payable to the owner of a dwelling unit through a housing assistance payments contract.

"Covered families" means families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

"Criminal activity" means any conduct that is prohibited by any criminal laws, whether federal, state or county, regardless of whether there has been an arrest or conviction and without satisfying the standard of proof for a criminal conviction.

"Disability" means having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment, including persons who have human immunodeficiency virus (HIV) or AIDs. The term does not include current illegal use or addition to a controlled substance or alcohol or drug abuse that threatens the property or safety of others. Disabled individual or family includes:

- (1) A single individual who or a family whose head or spouse is unable to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in indefinite duration; or
- (2) A single individual who or a family whose head or spouse has a physical impairment which is expected to be of long, continued and indefinite duration and which

substantially impedes the ability to live independently, and which is of a nature that the ability could be improved by suitable housing conditions.

"Disabled family" means a family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

"Domestic violence" means the actual or threatened physical violence directed against a family member by a spouse or other household member who lives in the dwelling unit with the family.

"Domiciled" means physically residing in the dwelling unit with intent to remain.

"Drug" means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. §802) as it existed on October 20, 2022.

"Drug related criminal activity" means the manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance as defined in 21 U.S.C. 802, as it existed on October 20, 2022, and which activity is conducted on or near the premises of the assisted dwelling unit.

"Dwelling unit" means a residential unit accepted for lease in the program.

"Economic self-sufficiency program" means any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families.

"Elderly" or "elderly family" means a family whose head, spouse, or sole member is a person who is at least sixty-two years of age; or two or more persons who are at least sixty-two years of age living together; or one or more persons who are at least sixty-two years of age living with one or more live-in aides.

"Eligible family" means a family that meets the qualifications and requirements of the program.

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

"Extremely low income family" means a family whose annual income does not exceed thirty per cent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty per cent of the median income for the area [~~may be established~~ if] if HUD finds that such variations are necessary because of unusually high or low family incomes.

"Fair market rent" or "FMR" means the rent including the cost of utilities (except telephone or cable television), as established by HUD for dwelling units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

"Family" means regardless of actual or perceived sexual orientation, gender identity, or marital status:

- (1) Two or more persons who live or intend to live together and whose income and resources are available to meet the family's needs and who may be related by blood, marriage, or operation of law and whose head of family has reached the age of majority. A child who is temporarily away from the home because of placement in foster care is considered a member of the family. Family may include foster children and hanai children or a child who is domiciled with, and for whom an adult member of the current household is caring for with written or unwritten permission from the legal parent or other person having legal custody, or child domiciled with, and for whom an adult member of the current household is in the process of securing custody;
- (2) An elderly family;

- (3) A disabled family;
- (4) A displaced family;
- (5) The remaining member of a tenant family who is recorded as an authorized occupant on the current list of household members and who has reached the age of majority; or
- (6) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

"Family self sufficiency program" or "FSS program" means the program establish by the authority in accordance with 24 C.F.R. Part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services.

"Foster child" or " Foster children" means a person or persons under eighteen years of age who is or are provided foster care by a foster parent pursuant to Chapter 587A, HRS.

"Foster parent" means any adult person licensed by the department of human services or another authorized agency to provide foster care services for a child or children under Chapter 587A, HRS.

"Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

"Gross rent" means the contract rent plus allowances for utilities and other services.

"Hanai child" or "Hanai children" means a child who is taken permanently to reside, be educated, and reared by someone other than the natural parents, traditionally a grandparent or other relative, with the written or unwritten permission of the natural parents.

"HAP" means the monthly housing assistance payment by the authority as defined in 24 C.F.R.

§982.4, as it existed on October 20, 2022, which includes:

- (1) A payment to the owner for rent under the family's lease and
- (2) Any additional payment to the family if the total assistance payment exceeds the rent to the owner.

"HAP contract" means housing assistance payments contract.

"HCV" means Housing Choice Voucher

"Household" means the family and the authority-approved live-in aide.

"HRS" means Hawaii Revised Statutes.

"Housing quality standards" means the HUD minimum quality standards for housing assisted under the tenant-based programs.

"HUD" means the United States Department of Housing and Urban Development.

"Imputed welfare income" means the amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

"Involuntarily displaced" means an applicant who has vacated or may have to vacate the dwelling unit where the applicant lives because of one or more of the following:

- (1) Displacement by disaster;
- (2) Displacement by governmental action; or
- (3) Displacement by action of housing owner for reasons beyond the applicant's control and despite the applicant meeting all previously imposed conditions of occupancy. The action taken by the owner is for reasons other than rent increase.

"Landlord" means either the owner of the property or his or her representative or the managing agent or his or her representative, as shall be designated by the owner.

"Live-in aide" means a person who resides with one or more elderly persons, or near elderly persons, or persons with disabilities, and who:

- (1) Is eighteen years of age or older;
- (2) Is determined by the authority to be essential to the care and well-being of the elder or elderly family member or the family member with disabilities;
- (3) Is not obligated for the support of the elder or the elderly family member or family member with disabilities;
- (4) Would not be living in the dwelling unit except to provide the necessary support services;
- (5) Is not a tenant; and
- (6) Notwithstanding any other rule, has no rights of tenancy, continued occupancy of dwelling unit, and is not a remaining member of the household and shall cease to be an occupant therein upon the recovery of the dwelling unit by the authority, or removal from the project of the elder or elderly family member or a family member with disabilities who required the live-in aide.

"Near elderly" means a family whose head, spouse, or solo member is at least fifty years of age but below the age of sixty two.

"Owner" means any persons or entity having the legal right to lease or sublease a residential dwelling unit to a participant and includes, when applicable, a mortgagee.

"Participant" or "tenant" means a person or family that is receiving rental assistance in the program. Participation begins on the first day of the approved lease term.

"Payment standard" means the maximum monthly assistance payment for a family assisted in the voucher program before deducting the total tenant payment by the family.

"PBRA" means Project-Based Rental Assistance.

"PBV" means Project-Based Voucher.

"Portability" means the right to receive Section 8 tenant-based assistance outside of the jurisdiction of the initial public housing agency.

"Program" means the tenant-based Section 8 rental and voucher programs.

"RAD" means Rental Assistance Demonstration.

"Resident" for the purpose of conducting eligibility means a United States citizen or national or an eligible immigrant under one of the categories set forth in 42 U.S.C. §1436a(a), as it existed on October 20, 2022, also known as "noncitizen", who is able to demonstrate his or her intent to reside in Hawaii. Under one of these categories, one eligible immigrant is an alien who is a lawful resident in the United States and its territories and possessions under section 141 of the Compacts of the Free Association between the Government of the Republic of the Marshall Islands, the Federal States of Micronesia (48 U.S.C. 1901 note), and the Republic of Palau (48 U.S.C. 931 note) while the applicable section is in effect, also known as "COFA" resident. Intent to reside in Hawaii may be demonstrated by the following: length of time spent in Hawaii; leasing or renting of a home in Hawaii; filing of personal Hawaii income tax returns; registering to vote in Hawaii; Hawaii driver's license; record of Hawaii motor vehicle registration; notification of hire to work in Hawaii; record of employment in Hawaii; military records substantiating Hawaii residency; record of Hawaii residency; enrollment of minor children in Hawaii schools; establishment of bank accounts and other accounts in Hawaii; written reference from Hawaii residents, relatives, or social agencies; and any other indicia which could substantiate a claim of an intent to reside in Hawaii.

"Security deposit" means the deposit required by an owner from a participant as defined in the Residential Landlord-Tenant Code, §521-44, HRS, as it existed on October 20, 2022.

"Sexual orientation" means having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of the preferences, or being identified with any one of more of these preferences, "sexual orientation" shall not



be construed to protect conduct otherwise proscribed by law.

"Utility allowance" means the value of utilities such as electricity, gas, and water costs that are included in the gross rent of the participant. This does not include telephone or cable TV services.

"Veteran" means a person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released from active service under conditions other than dishonorable.

"Violent criminal activity" means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

"Voucher" means a document issued by the authority to a family selected for admission to a voucher program.

"Voucher holder" means an applicant who has a valid voucher but not an approved lease.

[Eff 12/31/22; am and comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Parts 5 and 982)

**§17-2031-4 Public notice to lower-income families.** The authority shall inform the public of the availability and nature of housing assistance for families within allowed income limits through publications of general circulation and shall ensure wide and appropriate coverage. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.206)

**§17-2031-5 Participation by owners and others.** The authority shall invite eligible owners, including owners of suitable dwelling units located outside of poverty or racially concentrated areas, to make

dwelling units available for leasing by eligible families and to expand opportunities for disabled persons. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§ 982.1, 982.54, 982.306)

**§17-2031-6 Income limits.** (a) Income limits for a family's participation in the program shall be the same income limits established by HUD for its section 8 tenant-based housing choice voucher program, which are incorporated by reference and attached as exhibit C.

(b) Applicable income limits as provided in subsection (a) shall be published once per year in a publication with wide circulation, be posted at all times in a conspicuous place at the authority's offices that accept applications, on the authority's website, and printed in the [corporation's] authority's informational materials on eligibility for the programs. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.201)

**§17-2031-7 Assets.** All assets held by each member of an eligible family shall be used to determine annual income. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §5.609)

**§17-2031-8 Subsidy and occupancy standards.** (a) The authority shall establish subsidy standards that shall provide for a minimum commitment of subsidy while avoiding overcrowding. The subsidy standards are incorporated by reference and attached as exhibit D.

(b) The standards determine the number of bedrooms to be entered on the voucher and not a family's actual living arrangement.

(c) The authority's occupancy standards follow the occupancy codes of the County in which the dwelling unit is located. The occupancy standards are incorporated by reference and attached as exhibit E. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-31; 24 C.F.R. §§982.54(d)(9), 982.401, 982.402)

**§17-2031-9 Allowance for utilities and other services.** (a) The authority shall maintain a utility allowance schedule for utilities and other services that shall be coordinated with the allowance schedules of the respective counties. The utility allowance schedules are incorporated by reference and attached as exhibit F.

(b) On request from a family that includes a person with disabilities, the authority shall approve a utility allowance which is higher than the applicable amount in the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 C.F.R. part 8, as it existed on October 20, 2022, to make the program accessible to and usable by the family member with a disability.

(c) A participant shall receive a utility reimbursement when the utility allowance exceeds the total tenant payment. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.517)

**§17-2031-10 Verification of information.** (a) The authority shall require an applicant or participant to provide documentation verifying information provided by the family relating to the program.

(b) An applicant or participant who fails to provide documentation to verify information requested by staff shall be ineligible for participation in the program.

(c) Verification documents shall be valid for the following lengths of time:

- (1) For applicants, sixty days before the voucher is issued to the applicant.
- (2) For participants, one hundred twenty days from the date received by the authority.  
[Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. S§982.201, 982.551; 982.552; 982.553)

## SUBCHAPTER 2

### ELIGIBILITY

**§17-2031-21 Applications.** (a) A family seeking to participate in the program shall submit a completed pre-application form prepared by the authority. The applicant is permitted to file a pre-application on the authority's application portal, or through reasonable accommodation in person, by mail, or at any of the authority's section 8 applications offices for any and all waiting list areas prescribed in section 17-2031-26.

(b) The initial pre-application review shall not require an interview. Only applicants who are determined eligible in the initial review shall be placed on the waiting list. A final eligibility review shall be conducted when the applicant reaches the top of the waiting list.

(c) An applicant who has misrepresented material information in a pre-application, application, or other inquiry for any of the authority's programs shall not be eligible to file an application with the authority for twelve months from the date of written notification from the authority. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.201, 982.202)

**§17-2031-22 Eligibility for admission and participation.** (a) To be eligible for participation in the program, an applicant and family members shall meet all of the requirements of the pre-application and final-application phases as set forth below:

- (1) During the pre-application phase, the applicant and adult family members shall:
  - (A) Qualify as a family;

- (B) Be income eligible as determined under section 17-2031-6;
- (C) Not have an outstanding debt owed to the authority as a participant in any of its programs;
- (D) Not have an outstanding liability for unpaid rent or damages incurred while previously participating in any section 8 rental subsidy program;
- (E) Provide a social security number for all family members who are at least six years of age or under the age of six and has an assigned social security number. If a family member is under the age of six and has not been assigned a social security number, the applicant or participant shall provide for each new child within ninety calendar days of being added to the household, a valid social security number issued by the social security administration, or an original document issued by a federal or state government agency, which contains the name of the individual and the social security number, along with other identifying information of the individual;
- (F) Not have been evicted since March 1,1985 from a public housing program administered by the authority or any of its predecessors, the housing and community development corporation of Hawaii or Hawaii housing authority with the exception of evictions solely due to failure to pay a debt to the authority, in which case, the applicant can be admitted upon payment in full of the unpaid amounts due to the agency;
- (G) Not have been terminated for assistance under the program;
- (H) Not have committed fraud, bribery, or any other corrupt or criminal act in

- connection with any federal housing program;
- (I) Within one year of the projected date of voucher award, not have been engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, right of peaceful enjoyment of the premises by other residents, the owner, or authority employees;
  - (J) Not be illegally using a controlled substance or give the authority a reasonable cause to believe that the illegal use (or pattern of illegal use) of a controlled substance or abuse of alcohol (or pattern of abuse) may interfere with the health, safety, or right to peaceful enjoyment of a rental premises by other residents;
    - (i) For the purposes of this subsection, "reasonable cause to believe" means by a preponderance of the evidence;
    - (ii) For the purposes of this subsection, in determining whether to deny eligibility based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol, the authority may consider rehabilitation as provided for under 42 U.S.C. §13661(b)(2)(A)-(C), as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit G;
  - (K) Not be engaged in any drug-related criminal activity or violent criminal activity which would adversely affect the health, safety, right to peaceful enjoyment of the premises by other

- residents, the owner, or authority employees;
- (L) Not have been convicted of the manufacture, production, or distribution of methamphetamines; and
  - (M) Not subject to lifetime registration requirements under any State sex offender's registration program.
- (2) During the final application phase the applicant and all adult household members shall meet the requirements set forth in subsection 17-2031-22(a)(1), as well as the following requirements:
- (A) Not have engaged in or threatened abusive or violent behavior toward the authority's personnel. For purposes of this subsection, "threatened" means an oral or written threat or physical gestures that communicate an intent to abuse or commit violence. Abusive or violent behavior may be verbal or physical and include use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate; and
  - (B) Furnish evidence of citizenship or eligible immigrant status as provided for in 24 C.F.R. §5.508, as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit H.

(b) An applicant who is continuously assisted under the U.S. Housing Act of 1937 shall be admitted to the program as though the applicant was already a program participant.

(c) A participant shall not receive a voucher at the same time as other rent supplement or housing benefits including state rent supplement payments authorized under section 356D-151, HRS.



(d) Before the authority denies or terminates assistance on the basis of a criminal record, the authority shall provide the applicant or participant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record pursuant to section 17-2031-71 or 17-2031-72.

[Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§5.216, 982.201, 982.202, 982.307, 982.551, 982.552, 982.553)

**§17-2031-23 Income targeting.** At least seventy five per cent of families admitted to the program during the fiscal year from the waiting list shall be extremely low income families. [Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.201)

**§17-2031-24 Notification of eligibility.** (a) An applicant shall be mailed or sent a written or electronic notification after an eligibility determination is made. The notification shall specifically state the reasons for the determination.

(b) An eligible applicant shall be placed on the waiting list.

(c) An applicant determined to be ineligible for admission or participation in the program shall be accorded an opportunity to request for an informal review as set forth in section 17-2031-71. [Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.201, 982.204, 982.554)

**§17-2031-25 Local preferences.** (a) ~~[Eligible applicants shall be given preference for certification in the program if, at the time they are seeking housing assistance, they fall within the following~~

preference categories] A local preference which gives priority to certain families in the placement and ordering of the housing choice voucher waiting list shall be given to an applicant if:

- (1) ~~[The following preferences shall be given first priority but have equal weight within this group:]~~ At any time within the twelve months preceding the application date an applicant experienced homelessness.
  - ~~[(A) Involuntarily displaced, including public housing families subject to relocation due to modernization activity, or based on an emergency where conditions of the public housing dwelling unit, building, or project pose an immediate, verifiable threat to life, health or safety of the family, and the family cannot be relocated to another public housing dwelling unit in the same program, meeting their needs;~~
  - ~~(B) Victims of domestic violence, including public housing tenants that are victims of stalking, or reprisals, or hate crimes, and cannot be safely transferred to another public housing dwelling unit in the same program; or~~
  - ~~(C) Homeless; or~~
  - ~~(D) Public housing families that exceed the largest public housing dwelling unit size on the island where they reside; or Public housing tenants who are approved for a reasonable accommodation for a dwelling unit with special features and have not been offered a dwelling unit in the public housing program that meets the family's needs and have waited over one year.~~
- ~~(2) The following preferences shall be given second priority but have equal weight within this group:~~
  - ~~(A) Living in substandard housing; or~~

~~(B) Paying more than fifty per cent of annual income for rent.~~

~~(3) The following are other preferences that have equal weight:~~

~~(A) Working families and those unable to work because of age or disability;~~

~~(B) Veterans and veterans' surviving spouse;~~

~~(C) Residents who live or work in the jurisdiction (by county); or~~

~~(D) Victims of reprisals or hate crimes.]~~

(b) ~~[Each preference in each priority group is of equal weight and an]~~ An applicant who qualifies for ~~[any of the preferences]~~ a local preference shall receive assistance before any other applicant who is not so qualified regardless of:

(1) Place on the waiting list;

(2) Date or time of submission of an application; or

(3) Lottery position.

(c) An applicant shall not receive preference if any adult member of the applicant family is a person who was evicted or terminated from any housing program operated by the authority during the past three years because of drug-related criminal activities unless the adult member has successfully completed a rehabilitation program approved by the authority.

[Eff 12/31/22; am and comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.203, 982.207)

**§17-2031-26 Waiting list.** (a) The authority shall maintain a separate waiting list for each of its housing choice voucher or project-based voucher programs.

(b) Placement on the waiting list may be by:

(1) Date and time; or

(2) Random lottery selection, so long as all adopted preferences are considered.

(c) Applicants shall be notified of the opportunity to apply for vouchers and of the procedure to be used to be placed on the waiting lists through notices posted in a conspicuous place at the authority's offices that accept section 8 applications, the authority's website, and in a printed statement in the authority's information material on its application process.

(d) The notice to open the waiting list shall include information on what procedure shall be used to place applicants on the waiting list, how to apply, the date and time of the lottery selection and the number of applicants that will be selected by the lottery, if applicable.

(e) The authority may accept applications from applicants with and without a preference, or solely based on preference, which will be specified in the notice of opening of the wait list.

(f) Applicants who are selected for placement on the waiting list shall be notified in writing, through mail or electronic communication, of their selection on the waiting list approximately ten business days after the waiting list has closed.

(g) Selection of applicants from the waiting list shall be based upon:

- (1) A randomly assigned number based on the number of applicants that were selected by the lottery; or
- (2) Date and time of the application; and
- (3) Applicable local preference.

(h) An applicant must notify the authority, at least annually, of any change that may affect the applicant's place on the waiting list and the authority's ability to contact applicant. Changes include, but are not limited to, familial status, financial status, mailing address and current residence.

(i) An applicant may continue to be on the waiting list even though the applicant is a tenant in or receiving housing assistance from another housing program.

(j) Applications for the housing choice voucher program will be active for eighteen months from the date of placement on the waiting list and then will expire. Applicants on the waitlist at eighteen months will receive a letter informing them that their application has expired within ten business days.

(k) When the authority opens the waiting list for applicants and limits applications to those with local preferences, any applicant who is unable to verify their preference within ten business days shall be removed from the waiting list.

(l) Applicants who were either not selected to participate in the lottery, or whose application has expired, will not qualify for an informal hearing. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.204, 982.205, 982.206)

**§17-2031-27 Removal from the waiting list.** An applicant shall be removed from the waiting list for any one of the following reasons:

- (1) The applicant requests that applicant's name be removed;
- (2) The applicant fails to notify the authority of applicant's continued interest for housing at least once every twelve months;
- (3) The applicant no longer meets the eligibility criteria set forth in section 17-2031-22;
- (4) The applicant fails to respond to the authority's reasonable contact efforts. Two written or electronic notices to the last known address shall constitute reasonable effort to contact;
- (5) The applicant fails without good cause to keep a scheduled interview or to provide requested information necessary to determine eligibility;
- (6) The applicant refuses a voucher for housing assistance; or

- (7) The applicant misrepresents any material information to the authority on the application or otherwise. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.204)

**§17-2031-28 Closing and reopening the waiting list.** (a) The authority may suspend the acceptance of applications and close the waiting list, in whole or in part, when it is determined that there are enough applicants on the waiting list to fill anticipated openings for the next twenty-four months.

(b) The authority may publicly announce any closure and reopening of the application taking process pursuant to section 17-2031-4. If the list is opened for only a limited time, the opening announcement shall include the closing date and not require further notice. Publicly announce may include, but is not limited to, publishing notices in a newspaper of general circulation and minority newspapers or notifying social service organizations.

(c) During periods when the waiting list is closed, the authority is not required to maintain a list of persons to be notified when application taking is reopened. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.206)

**§17-2031-29 Final application process - selection and certification.** (a) Selection for certification shall be from the established waiting list and shall be based on:

- (1) Applicable local preferences; and
- (2) Lottery placement; or
- (3) Date and time of receipt of application.

(b) The authority shall contact applicants selected off the waiting list in writing through mail, electronic or other virtual written communication.

(c) Completed applications will be processed as they are returned on a first come, first served basis.

(d) Following initial contact with an applicant from the waiting list, housing assistance will be offered to applicants in the order in which they completed the application process.

(e) Applicants shall be provided with a briefing packet containing all required materials and shall be informed of their responsibilities prior to acceptance of a voucher. A voucher shall not be issued unless the applicant or an authorized representative attends a briefing and signs the voucher.

(d) A voucher holder shall be responsible for finding a qualified dwelling unit of appropriate size prior to the expiration of the voucher.

(e) A voucher shall expire at the end of sixty days from issuance unless within that timeframe, the family submits a request for lease approval, in which case the sixty day time limit shall be suspended while the authority determines whether to approve the lease.

(f) An applicant may request an extension to the initial sixty day time period if the voucher is about to expire. The request for extension shall be in writing and be received by the authority or postmarked no later than the last day of the voucher term. The extension request shall include an explanation for the request and a progress report on efforts made to locate a suitable dwelling unit.

(g) An applicant may request an extension beyond one hundred twenty days provided there are verifiable circumstances beyond the applicant's control that hinder the applicant from locating a suitable dwelling unit. The request for extension shall be in writing and be received by the authority or postmarked no later than the last day of the voucher term. The extension request shall include an explanation for the request and a progress report on efforts made to locate a suitable dwelling unit. If an extension is granted, the authority shall recertify the applicant's eligibility and income.

(h) Upon request from a prospective landlord, the authority may furnish the current address and the

name and address of any current or prior landlord of the voucher holder as shown in the authority's records. Also upon request from the prospective landlord, the authority may furnish other information about the tenancy history of family members, or about drug trafficking by family members, provided that there has been a criminal conviction. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§ 982.204, 982.301, 982.302, 982.303, 982.305, 982.306, 982.307)

**§17-2031-30 Special admission and exception for designated programs.**

(a) The authority may admit families not on the established waiting list, or without considering the family's waiting list position, that are targeted for specific funding awards from HUD, including, but not limited to:

- (1) A family displaced because of modernization, demolition or disposition of a public or Indian housing project;
- (2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;
- (3) Housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990;
- (4) A family residing in a project covered by a section 8 project-based housing assistance payment contract at or near the end of the housing assistance payment contract term; or
- (5) A non-purchasing family residing in a HOPE 1 or HOPE 2 project; or
- (6) A family that resides or will reside in a dwelling unit covered by a project-based section 8 housing assistance payment contract.

(b) The authority shall admit families on the established waiting list who qualify for special funding awards from HUD including, but not limited to:



(1) The Mainstream Housing Opportunities for Persons with Disabilities program and

(2) The Welfare-to-Work or similar self-sufficiency programs.

(c) This section shall also apply to a family displaced because of demolition or disposition of an authority owned housing project that is not federally assisted.

(d) A family may be admitted under this section without qualifying for any preferences, or without being on the program waiting list.

(e) The authority shall maintain records showing the family was admitted through HUD-targeted assistance. [Eff 12/31/22; comp \_\_\_\_\_ ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.203)

**§17-2031-30.1 Special admission and exception for families with a special preference.** (a) Subject to the availability of funding, the authority may admit families with a special preference into the program without consideration of the status of the housing choice voucher waiting list. A special preference shall be given to:

(1) A federal public housing family that is involuntarily displaced for reasons such as:

(A) Relocation due to modernization activity; or

(B) An emergency where the conditions of a public housing dwelling unit, building, or project pose an immediate, verifiable threat to the life, health, or safety of the family, and the family cannot be relocated to another public housing dwelling unit in the same program that meets their needs;

(2) A federal public housing family that is approved for a transfer as a reasonable accommodation to a dwelling unit with special accessibility features, but the

authority does not have an appropriate dwelling unit within its inventory that meets the family's needs, and the family has waited over one year;

- (3) A federal public housing family that includes a member who is a victim of domestic violence, dating violence, sexual assault, stalking, reprisal, or a hate crime and who cannot be transferred safely to another public housing dwelling unit;
- (4) A federal public housing family that is under-housed, and the authority does not have an appropriately sized public housing dwelling unit available or within its inventory; or
- (5) A family that was previously issued a special purpose voucher and experienced a loss of rental assistance because of:
  - (i) Insufficient funding; or
  - (ii) The eligible family member exceeded the maximum allowable age under the applicable special purpose voucher.

(b) The authority shall ensure that a family admitted to the program through a special preference meets the eligibility requirements set forth in section 17-2031-22 before issuing a housing choice voucher. [Eff and comp ] (Auth: HRS §356D-13) (Imp: 24 C.F.R. 982.206, 982.207, HRS §356D-13)

**§17-2031-31 Annual income.** The authority shall determine each applicant's and participant's annual income pursuant to 24 C.F.R. §5.609, as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit B. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. § 5.609)

**§17-2031-32 Reexaminations.** (a) At least once every [~~twelve~~] twenty-four months, the authority may reexamine a participant family's income, composition, and any other matter necessary to determine the [~~participant's~~] participant family's rent contribution and eligibility for continued housing assistance.

(b) If at the time of admission or reexamination, a family's income cannot be reasonably anticipated for the next twelve-month period, the authority may schedule a special reexamination at any time prior to the next [~~annual~~] biennial reexamination when deemed necessary.

(c) The participant family and owner shall be notified in writing by the authority of the results of any reexamination within a reasonable time. [Eff 12/31/22; am and comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R §982.516)

**§17-2031-33 Interim rent adjustment.** (a) The authority may adjust a participant's rent between reexaminations if a participant reports a change in income.

(b) Adjustments reflecting a lower rent shall be made effective on the first day of the month following the month the report was made. A participant who has obtained a decrease in rent under this section, shall report all income increases which occur prior to the next reexamination and rent may be readjusted accordingly.

(c) A rent adjustment shall be made between reexaminations when a participant's income increases as a result of the inclusion of additional persons with income to the family, and such adjustment shall be made effective on the first day of the second month following the inclusion.

(d) The participant and owner shall be notified in writing by the authority of the results of any reexamination within a reasonable time. [Eff

12/31/22; comp ] (Auth: HRS §356D-13)  
(Imp: HRS §356D-13; 24 C.F.R. §982.516)

**§17-2031-34 Continued assistance.** (a) When one family splits into two eligible families, both families wish to continue assistance, and there is no court order, the authority shall decide to continue assistance to one family instead of the other if that family:

- (1) Retains the children or includes any disabled or elderly members. Children subject to a joint custody agreement but live with one parent for a cumulative period of at least one hundred eighty three days of the year shall be considered a member of that household;
- (2) Includes the family member that applied as head of household;
- (3) Excludes the responsible party for domestic violence which caused the split of the family;
- (4) Is subject to other factors specified by the authority; or
- (5) Is recommended by social service agencies or qualified professionals to retain assistance. [Eff 12/31/22; comp ] (Auth: HRS §356D-13)  
(Imp: HRS §356D-13; 24 C.F.R. §982.315)

## SUBCHAPTER 3

### LEASE

**§17-2031-41 Request for lease approval.** Upon finding a dwelling unit that an owner is willing to lease, the family shall submit a request to have the lease approved by the authority. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.305)

**§17-2031-42 Dwelling unit inspection.**(a) Prior to approving a lease, the authority shall inspect the dwelling unit within a reasonable time after receipt of the owner's inspection request.

(b) Dwelling units approved for lease in the program shall meet minimum housing quality standards.

(c) Inspections will occur every other year, except in circumstances where the authority may determine a need for an annual inspection. Situations may include, but not be limited to:

- (1) If a dwelling unit does not pass an initial or annual inspection the first time;
- (2) The dwelling unit fails a quality control inspection; or
- (3) The participant or landlord requests a special inspection between the scheduled inspection. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.305, 982.401)

**§17-2031-43 Lease requirements.** (a) The authority shall review the lease, particularly noting compliance with HUD regulations and state and local

law. The participant also must have legal capacity to enter a lease under state and local law.

(b) The family and owner must submit a standard form lease used in the locality and that is generally used for other unassisted tenants in the premises by the owner. The terms and conditions of the lease must be consistent with state and local law. The lease must specify what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family. The HUD prescribed tenancy addendum must be included in the lease word-for-word before the lease is executed. The HUD tenancy addendum is incorporated by reference and attached as exhibit I. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.308)

**§17-2031-44 Lease approval.** (a) If the authority determines that a dwelling unit is suitable for the program and the lease meets the requirements of the program, the owner and family shall be notified, and a contract executed.

(b) The initial lease shall be for at least one year.

(c) If the authority determines that a lease cannot be approved for any reason, the owner and family shall be notified in writing. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.308, 982.309)

## SUBCHAPTER 4

### HOUSING ASSISTANCE PAYMENTS AND RENT

**§17-2031-51 Housing assistance payments.** The authority shall make housing assistance payments to the owner on behalf of an eligible family. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.311)

**§17-2031-52 Contract rents.** (a) The contract rent for a dwelling unit in the program shall be determined on a case-by-case basis. The approved rent shall be reasonable in comparison to rent for other comparable unassisted dwelling units in the housing market.

(b) Contract rents may be adjusted at each annual anniversary date of the HAP contract at the request of the owner. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.507)

**§17-2031-53 Total tenant payment.** (a) The authority shall compute the total tenant payment.

(b) There shall be an established minimum rent of \$50.00 per month. Exception to the application of the minimum monthly rental amount shall apply if the family is unable to pay because of financial hardship which is determined pursuant to 24 C.F.R. §5.630, as it existed on October 20, 2022, and includes the following situations:

- (1) The family has lost eligibility or is awaiting an eligibility determination for federal, state, or local assistance;

- (2) The family would be evicted as a result of the imposition of the minimum rent requirement;
- (3) The income of the family has decreased because of changed circumstances, including:
  - (A) Loss of employment;
  - (B) An income producing family member dies; and
  - (C) Other circumstances beyond the family's control as determined by the authority.
 

[Eff 12/31/22; comp \_\_\_\_\_ ]  
 (Auth: HRS §356D-13) (Imp: HRS §356D-13 ; 24 C.F.R. §§5.628, 5.630)

**§17-2031-54 Rent.** (a) Voucher rents are based on the payment standard as set by the authority on an annual basis and are guided by the fair market rents published annually by HUD. On request from the family that includes a person with disabilities, the authority shall approve an exception rent of up to one hundred twenty per cent of the fair market rent if the exception rent is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 C.F.R. Part 8, as it existed on October 20, 2022.

(b) The small area fair market rent, which includes utilities and is established for dwelling units of various bedroom sizes, is determined by HUD. [Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §888.111, 982.503, 982.504, 982.507)

**§17-2031-55 Payment standard.** (a) The maximum monthly subsidy payment for a family before deducting the family contribution is set by the authority between ninety per cent and one hundred ten per cent of the HUD determined small area fair market rent. The authority may establish a payment standard amount



that is higher or lower than the basic range subject to HUD approval or waiver.

(b) The authority may approve a higher payment standard within the basic range to reasonably accommodate a family that includes a person with disabilities which may be subject to HUD approval. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.503)

**§17-2031-56 Security deposits.** (a) The participant shall be responsible for the payment of a security and utility deposit as directed by their lease.

(b) The authority shall not be responsible for the payment of security and utility deposits. [Eff 12/31/22; comp ] (Auth: HRS §§356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.313)

**§17-2031-57 Ownership change.** (a) A change in ownership of a dwelling unit under a HAP contract does not require execution of a new contract or lease. The authority may approve the assignment of the HAP contract at the previous owner's request.

(b) The owner who is selling the dwelling unit shall provide written notice to the authority at least thirty days prior to the sale closing.

(c) The new owner shall provide documents to verify the sale and other information requested by the authority.

(d) Housing assistance payments to the owner who is selling the dwelling unit shall be suspended effective the first of the month following the receipt of the notification of the sale of the dwelling unit and when the assignment of the HAP contract to the new owner is approved by the authority. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.305, 982.306)

SUBCHAPTER 5

OPERATIONS

**§17-2031-61 Inspections.** (a) The authority shall annually inspect each dwelling unit leased to a participant of the program utilizing inspection standards required by HUD.

(b) The authority may conduct special inspections upon written notification by the participant or owner that the dwelling unit does not meet housing quality standards or based on information from third parties such as neighbors or public officials. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.405)

**§17-2031-62 Overcrowded or under occupied dwelling units.** A participant shall be issued a new voucher if the authority determines that the dwelling unit does not meet the authority's subsidy standards for occupancy. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.403)

**§17-2031-63 Portability.** (a) The authority may require applicants who were nonresidents at the time of application to live in its jurisdiction during the first twelve-month period.

(b) The authority shall not absorb a family under portability assistance into its program unless funds are available and there is no applicant with a preference on the applicable waiting list. [Eff 12/31/22; comp ] (Auth: HRS §356D-13)

(Imp: HRS §356D-13; 24 C.F.R. §§982.353, 982.354, 982.355)

**§17-2031-64 Transfers.** (a) A family may terminate its lease with the landlord at any time after the first twelve months as provided by the rental agreement with the landlord and shall provide a copy of the notice to the authority.

(b) The authority shall deny permission to move if:

- (1) There are insufficient program funds for continued assistance;
- (2) The participant has violated a family obligation listed on the voucher;
- (3) The participant owes the authority money; or
- (4) The participant has moved or has been issued a voucher within the last twelve months.

[Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.354, 982.552)

**§17-2031-65 Eviction - termination of tenancy by owner.** (a) If the owner wishes to terminate the lease, the owner is required to provide proper notice as provided in the lease and the Hawaii Residential Landlord-Tenant Code.

(b) During the term of the lease the owner may only evict for:

- (1) Serious or repeated violations of the lease, including but not limited to failure to pay rent or other amounts due under the lease, or repeated violation of the terms and conditions of the lease;
- (2) Violations of federal, state or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises, such as failure to comply with all obligations, restrictions, whether

demonstrated by the landlord as rules or otherwise, which are in accordance with section 521-52, HRS, and which the landlord can demonstrate are reasonably necessary for the preservation of the property or protection of the persons of the landlord, other tenants, or any other person;

- (3) Criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control that threatens the health, safety or right to peaceful enjoyment of the premises by the other residents, or persons residing in the immediate vicinity of the premises or any drug-related criminal activity on or near the premises; or

- (4) Other good cause.

(c) During the initial term of the lease, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do.

(d) The owner shall provide the tenant a written notice specifying the grounds for termination of tenancy pursuant to chapter 521, HRS, before the commencement of the eviction action. The notice of grounds provided in 982.310(e)(1)(ii), CFR, as it existed on October 20, 2022, may be included in, or may be combined with, any owner eviction notice to the tenant. The owner eviction notice means a notice to vacate, or a complaint, or other initial pleading used under State or local law to commence an eviction action.

(e) Housing assistance payments are paid to the owner under the terms of the HAP contract. If the owner has begun eviction and the family continues to reside in the dwelling unit, the authority shall continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The authority may continue housing assistance payments until the family moves or is evicted from the dwelling unit. If the action is finalized in court, the owner

must provide the authority with the documentation, including notice of the date of physical eviction.

(f) The authority shall continue making housing assistance payments to the owner in accordance with the contract as long as the tenant continues to occupy the dwelling unit in accordance with the terms of the lease. By endorsing the monthly check from the authority, the owner certifies that the tenant is still in the dwelling unit, and that the rent is reasonable and in compliance with the contract.

(g) If an eviction is not due to a serious or repeated violation of the lease, and if the authority has no other grounds for termination of assistance, the authority may issue a new voucher so that the family can move with continued assistance.

(h) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under HAP contract between the owner and the authority. The authority's failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner. During the term of the lease, the owner may not terminate the tenancy of the family for nonpayment of the authority's housing assistance payment. [Eff 12/31/22; comp \_\_\_\_\_] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.310, 982.455)

**§17-2031-66 Termination of participation.** (a)

The authority shall terminate a family's participation in the program when:

- (1) The family has been evicted from housing assistance under the program for serious violation of the lease;
  - (2) Any member of the family fails to sign and submit consent forms for obtaining information in accordance with the program;
- or

- (3) The family does not submit required evidence of citizenship or eligible immigration status.
- (4) Any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in 24 C.F.R. 5.612, as it existed on October 20, 2022.
- (b) The authority may terminate a family's participation in the program when:
  - (1) The family fails to fulfill their obligations under the program;
  - (2) Any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
  - (3) The family is under contract and one hundred and eighty days have elapsed since the last housing assistance payment was made due to housing assistance payment being zero dollars, or other participant related reason;
  - (4) The family has not reimbursed any public housing agency for amounts paid to an owner under a HAP contract on behalf of the family for rent, damages to the dwelling unit, or other amounts owed by the family under the lease;
  - (5) The family breaches an agreement with the authority to pay amounts owed to the authority, or amounts paid to an owner by the authority;
  - (6) Any member of the family has engaged in or threatened abusive or violent behavior toward the authority's personnel. Threatened means an oral or written threat or physical gestures that communicate an intent to abuse or commit violence. Abusive or violent behavior may be verbal or physical and include use of expletives that are generally considered insulting, racial epithets, or other language, written or

oral, that is customarily used to insult or intimidate;

- (7) Any member of the family has engaged in any drug-related criminal activity or violent criminal activity. For the purpose of this subsection, "violent criminal activity" means any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another;
- (8) Any member of the family is illegally using a controlled substance or whose illegal use or pattern of abuse of a controlled substance, or whose abuse of alcohol or pattern of abuse of alcohol is determined by the authority to interfere with the health, safety, or right to peaceful enjoyment of a rental premises by other residents. In determining whether to terminate assistance based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, the authority may consider rehabilitation as provided for under 42 U.S.C. §13661(b)(2)(A)-(C), as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit G;
- (9) A family participating in the family self-sufficiency program fails to comply, without good cause, with the family's family self-sufficiency contract of participation; or
- (10) Welfare-to-work family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

(c) The authority may implement a lottery system to terminate a family's participation in the program if the authority must terminate housing assistance payment contracts due to insufficient funds. Families will be randomly chosen to be terminated from the housing choice voucher program. Individuals who are elderly, disabled, victims of domestic violence, or VASH participants shall be excluded from the lottery.

(d) A participant found to be ineligible for continued participation in the program shall be notified in writing by the authority and be accorded an opportunity to request an informal hearing as set forth in these rules. Such notice shall state the reasons for the authority's determination and that the participant has the opportunity to request an informal hearing. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.551, 982.552, 982.553)



## SUBCHAPTER 6

### INFORMAL REVIEWS

**§17-2031-71 Informal review process for applicants.** (a) An applicant who has been denied assistance by the authority shall have an opportunity for an informal review pursuant to 24 C.F.R. §982.554, as it existed on October 20, 2022.

(b) The applicant shall provide the authority with a request for an informal review within fifteen days from the date of the authority's notification of denial of assistance.

(c) The informal review shall be scheduled within fifteen days from the date the written request is received by the authority and shall be conducted by any person or persons designated by the authority, but shall not be a person who made or approved the decision under review or a subordinate of this person.

(d) The applicant shall be given the opportunity to present oral or written objections to the authority's denial of assistance. Both the authority and the applicant may present evidence and witnesses. The applicant may be assisted by an attorney or other representative at his or her own expense.

(e) The informal review may be conducted by mail, video conference or telephone if acceptable to both parties.

(f) A written notice of the review of findings shall be provided to the applicant within thirty days after the review. The notice shall include the decision of the hearing officer and an explanation of the reasons for decision.

(g) An applicant who is denied assistance for citizen or immigrant status shall have an opportunity for an informal hearing pursuant to 24 C.F.R. §5.514, as it existed on October 20, 2022. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.54(d)(12), 982.554)

**§17-2031-72 Informal hearing process for participants.** (a) The authority shall give a participant an opportunity for an informal hearing to consider whether the following authority decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and authority rules pursuant to:

- (1) A determination of the family's annual or adjusted income and the use of such income to compute the housing assistance payment;
- (2) A determination of the appropriate utility allowance, if any, for tenant-paid utilities from the authority's utility allowance schedule;
- (3) A determination of the family dwelling unit size under the authority's subsidy standards;
- (4) A determination that a family is residing in a dwelling unit with a larger number of bedrooms than appropriate for the family dwelling unit size under the authority's subsidy standards, or the authority's determination to deny the family's request for an exception from the standards;
- (5) A determination to terminate assistance for a participant family because of the family's action or failure to act;
- (6) A determination to terminate assistance because the participant family has been absent from the assisted dwelling unit for longer than the maximum period permitted; or
- (7) A determination to terminate a family's family self-sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account.

(b) The opportunity for informal hearing shall be provided to participants prior to the termination of assistance.

(c) The participant shall provide the authority with a written request for an informal hearing within fifteen days of the authority's notification of determination.

(d) The informal hearing shall be scheduled within fifteen days from the date the written request is received and shall be conducted by any person or persons designated by the authority, but shall not be a person who made or approved the decision under review or a subordinate of this person.

(e) Prior to the informal hearing:

(1) The participant shall be given the opportunity to examine any authority documents that are directly relevant to the hearing. The participant may copy any relevant document at the participant's expense.

(2) The authority shall be given the opportunity to examine any family documents that are directly relevant to the hearing. The authority may copy any relevant document at the authority's expense.

(f) The participant and the authority shall be given the opportunity to present evidence and may question witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(g) The participant may be assisted by an attorney or other representative at the participant's expense.

(h) A written notice of the findings of the hearing officer shall be provided to the authority and participant within ten days upon conclusion of the informal hearing. The notice shall include:

(1) A summary of the decision and reasons for the decision;

(2) The amount owed and documentation of the calculation of monies owed and

(3) The effective date of the decision.

(i) The authority shall not be bound by the decision of the hearing officer that:

- (1) Concerns matters in which the authority is not required to provide an opportunity for a hearing or that otherwise exceeds the authority of the hearing; or
- (2) Is contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.
- (3) If the authority determines that it is not bound by a decision of the hearing officer, the authority shall send a letter to the participant within thirty days of its determination. The letter shall state the reasons for the determination.

(j) A participant who is determined to be ineligible for assistance due to citizen or immigration status shall have an opportunity for an informal hearing pursuant to 24 C.F.R. §5.514, as it existed on October 20, 2022. [Eff 12/31/22; comp ] (Auth: 356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§5.514, 982.54(d)(13), 982.555)

SUBCHAPTER 7

FAMILY SELF-SUFFICIENCY PROGRAM

**§17-2031-81 Family self-sufficiency program.**

The objective of the authority's family self-sufficiency ("FSS") program is to reduce the dependency of low-income families on welfare assistance and to reduce Section 8, public housing, or any federal, state, and local rent or homeownership subsidies. Under the family self-sufficiency program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

**§17-2031-82 Eligibility.** (a) Participants in the authority's Section 8 tenant-based program are eligible to participate in the family self-sufficiency program.

(b) Preference shall be given to applicants who already receive family self-sufficiency-related support services for fifty per cent or less of the allocations. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

**§17-2031-83 Recruitment and outreach.** (a) The authority shall conduct outreach programs to recruit family self-sufficiency participants.

(b) Outreach efforts may include the following:

- (1) Sending informational brochures to each family participating in the authority's Section 8 program;
- (2) Conducting orientation sessions for families who express an interest in participating in the family self-sufficiency program; and
- (3) Identifying and targeting potential families in the authority's caseloads. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

**§17-2031-84 Selection.** (a) Families shall be selected without regard to race, color, religion, sex, handicap, familial status, or national origin.

(b) Families may be selected by date of receipt of application.

(c) In the event there are more applicants than family self-sufficiency allocations, the authority shall conduct a lottery to determine placement on the waiting list.

(d) Initially, up to one hundred thirty-six Section 8 participants shall be selected to participate in the family self-sufficiency program. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

**§17-2031-85 Termination or withholding services.**

(a) The authority shall monitor and assess the family self-sufficiency participant's progress and compliance with the goals set forth in the contract of participation. When the authority determines that the family self-sufficiency participant is not making progress or complying with the goals set forth in the contract of participation, the authority shall notify the family self-sufficiency participant of such determination and provide the family self-sufficiency

participant six months to demonstrate compliance with the plan of the contract of participation.

(b) If no progress has been made or the family self-sufficiency participant is still not complying with the contract of participation after the six-month period, the authority shall provide the family self-sufficiency participant with a written notice of intent to terminate or withhold services and of the opportunity to request an informal hearing. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

## SUBCHAPTER 8

### SECTION 8 PROJECT-BASED VOUCHER PROGRAM

**§17-2031-91 Purpose.** The purpose of this subchapter is to establish a procedure for the selection of dwelling units to which the authority may attach Section 8 voucher assistance. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 983)

**§17-2031-92 Eligible projects.** (a) The authority may attach Section 8 voucher assistance to dwelling units in newly constructed and existing structures of various types including single-family housing and multifamily structures.

(b) The authority may not attach Section 8 voucher assistance to dwelling units in the following types of housing:

- (1) Owner occupied dwelling units; however, cooperatives are considered to be rental housing for purposes of this subchapter;
- (2) Mobile or manufactured homes;
- (3) Shared housing, nursing homes, and facilities providing continual psychiatric, medical, nursing services, board and care or intermediate care;
- (4) Except for existing dwelling units, housing for which the construction or rehabilitation has started prior to execution of an agreement with the authority;
- (5) Dwelling units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions;
- (6) Housing located in an area that has been identified by the Federal Emergency Management Agency as having special flood



- hazards unless the community in which the area is situated is participating in the National Flood Insurance Program;
- (7) Housing located in the coastal barrier resources system designated under the Coastal Barrier Resources Act;
  - (8) College or other school dormitories;
  - (9) Dwelling units subsidized under other federal housing programs including:
    - (i) Public housing;
    - (ii) A dwelling unit subsidized by any other form of section 8 assistance;
    - (iii) A dwelling unit subsidized with any local or state rent subsidy;
    - (iv) A section 236 project or a dwelling unit subsidized with section 236 rental assistance payments;
    - (v) A Rural Development Administration section 515 project;
    - (vi) A dwelling unit subsidized with rental assistance payments under section 521 of the Housing Act of 1949 (a Rural Development Administration Program);
    - (vii) Housing assisted under former section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
    - (viii) A section 221(d)(3) project;
    - (ix) A project with a section 202 loan;
    - (x) A section 202 project for non-elderly persons with disabilities;
    - (xi) Section 202 supportive housing for the elderly;
    - (xii) Section 811 supportive housing for persons with disabilities;
    - (xiii) A section 101 rent supplement project;

(xiv) A dwelling unit subsidized with tenant-based assistance under the HOME program, or any dwelling unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§983.52, 983.53)

**§17-2031-93 Notification of project-based assistance.** (a) The authority shall publish requests for proposals to participate in the Section 8 project-based voucher program in a newspaper of general circulation once a week for three consecutive weeks. The advertisement shall state the number of vouchers available for project-based assistance; whether proposals will be accepted for rehabilitation, new construction, or existing dwelling units; state the selection criteria; and specify an application deadline of at least thirty days after the date the advertisement is last published.

(b) The authority may select dwelling units to which assistance is to be attached, without advertising under paragraph (a) of this section and without applying the selection factors otherwise required under section 17-2031-95, if attachment of project-based assistance would further the purposes of the sale of a public housing project to a resident management corporation under section 21 of the United States Housing Act of 1937. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.51)

**§17-2031-94 Applications for project-based assistance; information required.** (a) Housing providers or agencies desiring Section 8 project-based

voucher assistance shall submit to the authority a proposal, in the format prescribed by the authority, along with any additional information that the authority determines to be applicable.

(b) Housing provider or agency information may include, but is not limited to the following:

- (1) Name and address of the eligible housing provider or owner and other project principals and officers and principal members, shareholders, investors, and other parties having a substantial interest in the ownership of the project, and evidence of the applicant's status as a corporation, partnership, joint venture or other business organization;
- (2) Certification showing that the above-mentioned parties are not on the United States General Services Administration list of parties excluded from federal procurement and non-procurement programs or the State list of parties debarred or suspended; a disclosure of any possible conflict of interest by any of these parties that would be a violation of the agreement or the housing assistance payments contract;
- (3) To the extent available, certified copies of the housing provider's or owner's organizational documents, including its articles of incorporation and bylaws, declaration of trust, partnership or limited partnership agreement, together with all amendments thereto and, in the case of nonprofit organizations, a copy of the determination letter from the Internal Revenue Service as to recognition of exemption from federal income taxation;
- (4) A resume of the housing provider's experience in the construction or rehabilitation of rental housing projects including a list and a brief description of the projects in which the applicant participated;

- (5) A resume of the housing provider's or owner's experience in the management of rental housing projects including a list and a brief description of the projects which the applicant manages;
- (6) The name, title, address, and telephone number of the person to whom communications should be addressed;
- (7) Evidence of the housing provider's or owner's legal authority to incur obligations and to sign and deliver such documents as may be necessary to finance, construct, or rehabilitate the project;
- (8) A current certificate of good standing from the State department of commerce and consumer affairs and tax clearance from the State department of taxation;
- (9) Evidence of the housing provider's or owner's ability to develop, own, market, manage, and provide appropriate services in connection with housing project;
- (10) Evidence of the housing provider's or owner's financial ability to complete the project;
- (11) The housing provider's or owner's ties to the community and support from local community groups;
- (12) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the applicant or its principals;
- (13) A description of the housing provider's or owner's experience or involvement in the provision of supportive services;
- (14) A statement of the housing provider's or owner's past or current involvement with the authority or its predecessors, the housing finance and development corporation, the Hawaii housing authority or the housing and community development corporation of Hawaii, and the assistance, if any, received from those entities.

(c) Project information may include, but is not limited to the following:

- (1) A description of the proposed housing project, including the number of dwelling units by square footage, bedroom count, bathroom count, sketches of the proposed building, dwelling units plans, listing of amenities and services, and the estimated date of completion;
- (2) Identification and description of the proposed site, site plan, and neighborhood characteristics;
- (3) Identification of the census tract in which the project is located;
- (4) Evidence of site control, such as a deed, agreement of sale, commitment letter, or development agreement;
- (5) Availability of public services and facilities, such as schools, sewers, parks, and fire protection, and the adequacy thereof;
- (6) If applicable, evidence that the proposed new construction is permitted by current zoning ordinances or regulations or evidence to indicate that the needed re-zoning is likely and will not delay the project;
- (7) The proposed contract rent per dwelling unit, including an indication of which utilities, services, and equipment are included in the rent and which are not included. For those utilities that are not included in the rent, an estimate of the average monthly cost for each dwelling unit type for the first year of occupancy;
- (8) A signed certification of the owner's intention to comply with all applicable federal requirements referenced in 24 CFR 983.4, as it existed on October 20, 2022;
- (9) A statement from the owner certifying the number of persons, businesses, non-profit corporations occupying the property on the date of submission of the application; the

number of persons displaced, temporarily relocated or moved permanently within the building complex; estimated cost of relocation payments and services; the funding source of relocation activities; and the name of the organization that will carry out the relocation activities;

- (10) The owner's plan for managing and maintaining the dwelling units;
- (11) Evidence of financing or lender interest and the proposed terms of financing;
- (12) The proposed term of the housing assistance payments contract;
- (13) If applicable, a relocation plan that includes steps that will be taken to minimize the displacement of households, businesses, nonprofit organizations, and farms as a result of the project; and
- (14) Such other information as the authority deems necessary. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§983.3, 983.6, 983.51)

**§17-2031-95 Review and screening of applications.** (a) Applications shall be time and date stamped and assigned a number.

(b) Applications shall be screened for completeness, i.e., submission of information required under sections 17-2031-92 and 94. Applications that do not meet the application submission deadline or information requirements shall be rejected by the executive director.

(c) The authority shall review each application and any additional information submitted by the applicant or obtained from other sources in its review of each application. Additional information or data may be requested and the authority may independently verify any or all information supplied by the applicant. [Eff 12/31/22; comp ]

(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.51)

**§17-2031-96 Selection of project applications.**

(a) Based upon the review of the applications, documents, and any additional information submitted by the applicants or obtained from other sources by the authority, the executive director shall prepare a recommendation to the board to attach Section 8 voucher assistance to specific projects.

(b) The board shall review the recommendation of the executive director and, if the board determines that the project-basing of Section 8 voucher assistance for a specific project is consistent with the public housing agency plan and the goals of deconcentrating poverty and expanding housing and economic opportunities, it may approve the application and authorize the executive director to allocate an appropriate amount of Section 8 voucher funding, subject to such terms and conditions as it deems necessary or appropriate to assure compliance with 24 C.F.R. part 983, as it existed on October 20, 2022 and these rules.

(c) Upon the board's approval to allocate Section 8 voucher funding to an applicant, the executive director shall notify the applicant of the allocation. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.52)

**§17-2031-97 Agreement to enter into housing assistance contract.** (a) The authority shall enter into an agreement with the selected project owner prior to the start of any new construction or rehabilitation.

(b) After the agreement has been executed, the owner shall promptly proceed with the construction or rehabilitation work as provided for in the agreement.

If the work is not promptly commenced, diligently continued, or completed, the authority may terminate the agreement or take other appropriate action. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.101; Pub. Law 106-377, 114 Stat. 1441)

**§17-2031-98 Eligibility and selection of tenants.** (a) Tenants in a section 8 project-based voucher assisted dwelling unit shall meet the eligibility criteria set forth in section 17-2031-22. (b) The authority may use the section 8 tenant-based waiting list as set forth in section 17-2031-26. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.203)

**§17-2031-99 Dwelling unit cap on project-based dwelling units by project** (a) The authority may not select a proposal to provide project-based voucher assistance for dwelling units in a project or enter into an agreement or HAP contract to provide PBV assistance for dwelling units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units, either assisted or unassisted, in the project.

(b) Exceptions to the 25 percent cap per project are permitted, where PBV dwelling units are not counted against the cap, when:

- (1) The dwelling units are in a single-family project, comprising one to four dwelling units; or
- (2) The dwelling units are excepted dwelling units in a multifamily project because they are made available for elderly or disabled families receiving supportive services, also known as qualifying families.



(c) The approved services are not required to be provide at or near the project.

(d) To qualify, a family must have at least one member receiving at least one qualifying supportive service. The authority shall not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted dwelling unit, although such services may be offered. The following services may be offered to families for a project to qualify for the 25 percent cap, depending on the needs of the family:

- (1) Palolo Valley Homes, Ohana Learning Center, 2170 Ahe Street, Honolulu, HI 96816; Owner: Mutual Housing Association of Hawaii:
  - (A) Computer access for the community to use for job search, printing documents, internet access, etc;
  - (B) University student assist children with homework;
  - (C) Resident services department provides referrals to available services in the community;
  - (D) Music lab;
  - (E) Reading room;
  - (F) Demonstration kitchen for children's cooking lessons;
  - (G) Nurses station/health room;
  - (H) HCAP education programs;
  - (I) Iolani School programs, STEM, Kai program; and
  - (J) Foodbank;
- (2) Towers of Kuhio Park, 1475 Linapuni Street #100, Honolulu, HI 96819; Owner: Michaels Development Company:
  - (A) Early childcare development preschools;
  - (B) Case management and referral services;
  - (C) Food bank and food programs;
  - (D) Out of school teen programming;
  - (E) Mental and behavioral health;
  - (F) Domestic violence prevention and intervention;

- (G) Child abuse prevention and intervention;
- (H) Child sex trafficking intervention;
- (I) Community computer and resource centers;
- (J) Educational and vocational financial aid;
- (K) Parenting training;
- (L) Job training and placement;
- (M) Emergency financial support;
- (N) Financial literacy;
- (O) Housing navigation;
- (P) Gang and bullying prevention;
- (Q) Interpretation services;
- (R) Skills training and makers space;
- (S) Substance abuses referral services;
- (T) Community building and family engagement;
- (U) Acculturation services;
- (V) Walking school bus; and
- (W) English as a second language.

(e) A dwelling unit shall continue to count as an excepted dwelling unit for as long as the family resides in the dwelling unit, if a family at the time of initial tenancy is receiving, and while the resident of an excepted dwelling unit has received, FSS supportive services or any other supportive services as defined by the rules above, and successfully completes the FSS contract of participation or the supportive services requirement.

(f) On an annual basis, the authority will monitor all families receiving services to determine if such families will be allowed to continue receiving PBV assistance.

- (1) The authority will require families receiving services to provide written evidence from each provider confirming that the family has received all of the required services in the statement of family obligations or FSS contract of family participation; or

- (2) Alternatively, each service provider will submit a report to the management of the property, identifying the services received by each family. The property owner will submit the report to the authority, who will verify that all services required in the statement of family obligation or FSS contract of participation received. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.56)

**§17-2031-100 Rental assistance demonstration.**

Where the authority chooses to convert public housing projects to Rental Assistance Demonstration (RAD) Section 8 Project Based Voucher (PBV) the provisions of this section and its subsections will apply. In the event of a conflict between applicable RAD notices and guidance issued by HUD and the following provisions, applicable RAD notices and guidance apply. When future notices or amendments are issued by HUD and create a conflict, the authority shall amend its rules to comply with the new HUD requirements. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice))

**§17-2031-101 Term of the RAD PBV contract. (a)**

The initial contract will be for a period of at least fifteen years. The initial contract may be up to twenty years upon request of the project owner and with approval by the authority.

(b) Upon expiration of the initial contract, the authority must offer, and the project owner must accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriated funds and the owner's satisfactory RAD PBV program performance, for such

periods as the authority deems appropriate and in accordance with HUD instructions. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6.B.1-2)

**§17-2031-102 Contract rents.** The initial rent to project owner will be provided by HUD based on the level of public housing capital and operating subsidies and tenant rents, and shall be further constrained by the reasonable rent and as otherwise provided in RAD program requirements. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6.B.5)

**§17-2031-103 Re-determining rent to owner - rent reasonableness.** (a) Contract rents will be adjusted only by HUD's OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term.

(1) OCAF means "an operating cost adjustment factor established by HUD that is applied to the current contract rent, less the portion of the rent paid for debt service".

(b) The rent to project owner may at no time exceed the reasonable rent charged for comparable unassisted dwelling units in the private market, as determined by the authority in accordance with 24 CFR 983.303, as it existed on October 20, 2022. However, the rent to project owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract. [Eff 12/31/22;

comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6.B.6)

**§17-2031-104 Conversion from public housing to RAD.**

(a) At conversion, current public housing households are not subject to rescreening, income eligibility, or income targeting. These households will be grandfathered for conditions that occurred prior to conversion, but will be subject to any ongoing eligibility requirements for actions that occur after conversion.

(b) Once any such household moves out, the dwelling unit must be leased to an eligible family. To facilitate the right to return to the assisted property, this provision shall apply to current public housing residents of the converting project that will reside in non-RAD PBV dwelling units placed on a project site that contains RAD PBV dwelling units or PBRA dwelling units. Such families and such contract dwelling units otherwise will be subject to all requirements of the PBV program, except as may be modified by any RAD requirements.

(c) Households at project sites converting to RAD who were not public housing residents that will reside in non-RAD PBV dwelling units also will be subject to any applicable RAD requirements, to the extent such requirements modify otherwise applicable PBV requirements. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. C.1)

**§17-2031-105 Phase-in of tenant rent increases.**

(a) If a tenant's monthly rent increases by more than the greater of ten percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years.

(b) For each RAD transaction, the authority shall specify prior to conversion whether the length of the tenant rent phase-in will be 3 or 5 years, or a combination depending on circumstances. The authority

will communicate the policy in writing to affected residents.

(c) The public housing dwelling units at Kuhio Park Towers, owned and managed by project owner KPT Towers 1, LLC, located at 1475 Linapuni Street #100, Honolulu, HI 96819, are converting to RAD. Upon conversion to RAD, if the tenant's monthly rent increases by more than the greater of ten percent or \$25 purely as a result of conversion, the rent increase shall be phased in over three (3) years. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. C.3)

**§17-2031-106 Termination notification requirements.** (a) In addition to the regulations at 24 CFR 983.257, as it existed on October 20, 2022, related to project owner termination of tenancy and eviction, the termination procedure for RAD conversions to PBV will require adequate written notice of termination of the lease which shall be:

- (1) A reasonable period of time, but not to exceed 30 days:
  - (A) If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - (B) In the event of any drug-related or violent criminal activity or any felony conviction;
- (2) Not less than fourteen days in the case of nonpayment of rent;
- (3) Not less than thirty days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09

PIH-2019-23(HA) issued 9/5/2019 (RAD Notice)  
section 1.6. C.6)

**§17-2031-107 Grievance process.** (a) For the termination of assistance and several other authority determinations, the PBV program rules require the authority to provide an opportunity for an informal hearing, as outlined in 24 CFR 982.555, as it existed on October 20, 2022. RAD specifies alternative requirements for 24 CFR 982.555(b), as it existed on October 20, 2022, in part, to require that:

- (1) In addition to reasons that require an opportunity for an informal hearing given in 24 CFR 982.555(a)(1)(i)-(vi), as it existed on October 20, 2022, an opportunity for an informal hearing must be given to families for any dispute that a family may have with respect to a project owner action in accordance with the family's lease or the authority in accordance with RAD PBV requirements that adversely affect the family's rights, obligations, welfare, or status.
  - (A) For any hearing required under 24 CFR 982.555(a)(1)(i)-(vi), as it existed on October 20, 2022, the authority will perform the hearing, as is the current standard in the program. The hearing officer must be selected in accordance with 24 CFR 982.555(e)(4)(i), as it existed on October 20, 2022.
  - (B) For any additional hearings required under RAD, the project owner will perform the hearing.
- (1) There is no right to an informal hearing for class grievances or to disputes between families not involving the project owner or the authority.
- (2) The project owner gives families notice of their ability to request an informal hearing

as outlined in 24 CFR 982.555(c)(1), as it existed on October 20, 2022, for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)-(vi), as it existed on October 20, 2022.

- (3) The project owner provides opportunity for an informal hearing before an eviction. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. C.6)

**§17-2031-108 Establishment of waiting list. (a)**

For public housing projects converting to Section 8 assistance through the RAD program, there shall be a preference established on the RAD waiting list for applicants currently on the public housing waiting list wishing to be added to the RAD or PBV site based waiting list for the converting dwelling units.

(b) Individuals on the public housing waiting list who wish to be added to the RAD waiting list shall maintain their original public housing application date. The authority considers this the best means to transition applicants from the current public housing waiting list as provided by RAD Notice 2019-23 as amended or superseded from time to time.

(c) At conversion, the authority will inform applicants on the applicable geographic or site based public housing waiting list via electronic or written notice of the availability of the PBV waiting list. The authority will inform individuals of the opening of the waiting list consistent with 24 CFR 983.251, as it existed on October 20, 2022, and these rules.

(d) The authority shall maintain its waiting list in accordance with all applicable civil rights and fair housing laws and regulations. [Eff ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. D.4)



**§17-2031-109 Resident participation and funding.**

For public housing conversions to long-term, project-based Section 8 voucher rental assistance contracts, including RAD, residents will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding. Project owners must provide \$25 per occupied replacement PBV dwelling unit annually for resident participation, of which at least \$15 per occupied dwelling unit shall be provided to the legitimate resident organization at the property. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. C.5)

**§17-2031-110 Voucher inventory turnover cap.**

The authority shall not have a voucher turnover cap. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. D.8)

SUBCHAPTER 9

MISCELLANEOUS PROVISIONS

**§17-2031-201 Severability.** If any part, section, sentence, clause, or phrase of this chapter, of its application to any person or transaction of other circumstances is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or the application of this chapter to other persons or transactions or circumstances shall not be affected. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13)

**§17-2031-202 Number.** The use of all words used in the singular shall extend to and include the plural." [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §1-17)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored

4. These amendments to and compilation of chapter 17-2031, Hawaii Administrative rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised

Statutes, which were adopted on August 2, 1982, and  
filed with the Office of the Lieutenant Governor.

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Robert J. Hall, Chairperson  
Board of Directors  
Hawaii Public Housing  
Authority

APPROVED AS TO FORM:

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Deputy Attorney General

EXHIBIT A

Adjusted Income (24 C.F.R. §5.611)

EXHIBIT B

Annual Income (24 C.F.R. §5.609)

EXHIBIT C

Income Limits for Admission  
(Effective May 15, 2023)

|                                    | 1<br>Person | 2<br>Persons | 3<br>Persons | 4<br>Persons | 5<br>Persons | 6<br>Persons | 7<br>Persons | 8<br>Persons |
|------------------------------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| City &<br>County<br>of<br>Honolulu | \$45,850    | \$52,400     | \$58,950     | \$65,500     | \$70,750     | \$76,000     | \$81,250     | \$86,500     |
| County<br>of<br>Hawaii             | \$35,300    | \$40,350     | \$45,400     | \$50,400     | \$54,450     | \$58,500     | \$62,500     | \$66,550     |
| County<br>of Kauai                 | \$42,250    | \$48,300     | \$54,350     | \$60,350     | \$65,200     | \$70,050     | \$74,850     | \$79,700     |
| County<br>of Maui                  | \$40,550    | \$46,350     | \$52,150     | \$57,900     | \$62,550     | \$67,200     | \$71,800     | \$76,450     |

EXHIBIT D

Subsidy Standards

In determining the appropriate dwelling unit size to be entered on the voucher, the following criteria shall be applied:

1. The smallest dwelling unit suitable for the family size shall be assigned.
2. Each bedroom shall be occupied by at least one person and no more than two persons shall be assigned to a bedroom.
3. Every member of the family, regardless of age, shall be counted as a person; except that a child not yet born by a pregnant household member shall not be counted as a person in determining dwelling unit size.
4. Persons of the opposite sex (other than spouses) over the age of three, and unrelated adults shall be allocated separate bedrooms;
5. A foster child shall be included in determining dwelling unit size only if the child shall remain in the dwelling unit for more than six months.
6. A live-in aide shall be provided a separate bedroom; however, no additional bedrooms shall be provided for a live-in aide's family.
7. Exceptions are allowed for verifiable health and safety reasons.

Application of the above criteria results in the following subsidy standards:

| Voucher Size | Minimum Number of Persons in Household | Maximum Number of Persons in Household |
|--------------|--|--|
| 0            | 1                                      | 1                                      |
| 1            | 1*                                     | 2                                      |
| 2            | 2                                      | 4                                      |
| 3            | 4                                      | 6                                      |
| 4            | 6                                      | 8                                      |
| 5            | 8                                      | 10                                     |

\*A voucher for a 1-bedroom dwelling unit would be issued to a single person household only when there are no (0/studio) bedroom dwellings available in the area.

In the inspection of a dwelling unit before leasing, the dwelling unit must meet the Occupancy Standards set by the respective county. See Exhibit E, "HPHA OCCUPANCY STANDARDS", which shall be incorporated as part of this subsection.



EXHIBIT E

Occupancy Standards  
(Building Code Guidelines for Determining Occupancy)

- I. City and County of Honolulu (Oahu)
  - A. One (1) or more bedrooms
    - 1. Living Room (minimum size is 150 sq. ft.)  
Measure living room area (do not include kitchen area, but may include dining space if in one area)
      - 1st 70 sq. ft. 2 persons
      - each additional 50 sq. ft. 1 person per 50 sq. ft.
    - 2. Bedrooms  
Measure bedroom area ( do not include closet, halls, bathrooms)
      - 1st 70 sq. ft. 2 persons
      - each additional 50 sq. ft. 1 person per 50 sq. ft.
  - B. Efficiency Units (Studios)  
Measure living room area ( do not include kitchen area, but may include dining space if in one area)
    - 1st 70 sq. ft. 2 persons
    - each additional 100 sq. ft. 1 person per 100 sq. ft.
- II. County of Maui (Maui, Lanai, and Molokai)
  - A. One (1) or more bedrooms
    - 1. Living Room - Cannot be used as a sleeping area
    - 2. Bedrooms  
Measure bedroom area (do not include closet, halls, bathrooms)
      - 1st 70 sq. ft. 2 persons

each additional 50 sq. ft. 1 person per  
50 sq. ft.

B. Efficiency Dwelling Units (studios)  
Measure living room area (do not include kitchen  
area, but may include dining space if in one  
area)

1st 70 sq. ft. 2 persons  
each additional 100 sq. ft. 1 person per  
100 sq. ft.

III. County of Kauai

A. One (1) or more bedrooms

1. Living Room - Cannot be used as a sleeping  
area

2. Bedroom #1  
Measure bedroom area (do not include closet,  
halls, bathrooms)

1st 120 sq. ft. 2 persons  
each additional 50 sq. ft. 1 person per  
50 sq. ft.

3. Bedroom #2  
Measure bedroom area (do not include closet,  
halls, bathrooms)

1st 70 sq. ft. 2 persons  
each additional 50 sq. ft. 1 person per  
50 sq. ft.

4. Bedroom #3 and on  
Measure bedroom area (do not include closet,  
halls, bathrooms)

1st 80 sq. ft. 2 persons  
each additional 50 sq. ft. 1 person per  
50 sq. ft.

B. Efficiency Dwelling Units (studios)  
Measure living room area (do not include kitchen  
area, but may include dining space if in one  
area)

1st 70 sq. ft. 2 persons  
each additional 100 sq. ft. 1 person per 100  
sq. ft.

IV. County of Hawaii

A. One (1) or more bedrooms (Housing Code states that overcrowding is prohibited)

1. Living Room - (must be 120 sq. ft. minimum)
2. Bedroom #1 - (must be 120 sq. ft. minimum)
3. Bedroom #2 - (must be 80 sq. ft. minimum)

B. Efficiency Dwelling Units (studios)

Measure living room area (do not include kitchen area, but may include dining space if in one area)

|                             |                          |
|-----------------------------|--------------------------|
| 1st 70 sq. ft.              | 2 persons                |
| each additional 100 sq. ft. | 1 person per 100 sq. ft. |

EXHIBIT F

Utility Allowance Schedule

EXHIBIT G

Rehabilitation U.S.C. §13661(b)(2)(A)-(C)

EXHIBIT H

Evidence of Citizenship or Eligible Immigrant Status  
(24 C.F.R. §5.508)

EXHIBIT I

Tenancy Addendum

DEPARTMENT OF HUMAN SERVICES

Amendment and Compilation of Chapter 17-2031  
Hawaii Administrative Rules

SUMMARY

[DATE]

1. §17-2031-3 is amended.
2. §17-2031-30.1 is adopted.
3. §17-2031-32 is amended.
4. Chapter 17-2031 is compiled.



HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HAWAII PUBLIC HOUSING AUTHORITY

CHAPTER 2031

SECTION 8 - HOUSING CHOICE VOUCHER AND PROJECT BASED  
VOUCHER PROGRAM

SUBCHAPTER 1 General Provisions

- §17-2031-1 Purpose
- §17-2031-2 Nondiscrimination
- §17-2031-3 Definitions
- §17-2031-4 Public notice to lower-income families
- §17-2031-5 Participation by owners and others
- §17-2031-6 Income limits
- §17-2031-7 Assets
- §17-2031-8 Subsidy and occupancy standards
- §17-2031-9 Allowance for utilities and other services
- §17-2031-10 Verification of information
- §§17-2031-11 to 17-2031-20 (Reserved)

SUBCHAPTER 2 Eligibility

- §17-2031-21 Applications

§17-2031-22 Eligibility for admission and participation  
§17-2031-23 Income targeting  
§17-2031-24 Notification of eligibility  
§17-2031-25 Local preferences  
§17-2031-26 Waiting list  
§17-2031-27 Removal from the waiting list  
§17-2031-28 Closing and reopening the waiting list  
§17-2031-29 Final application process - selection and certification  
§17-2031-30 Exception for designated programs  
§17-2031-30.1 Special admission and exception for families with a special preference  
§17-2031-31 Annual income  
§17-2031-32 Reexaminations  
§17-2031-33 Interim rent adjustment  
§17-2031-34 Continued assistance  
§§17-2031-35 to 17-2031-40 (Reserved)

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§17-2031-42 Dwelling unit inspection  
§17-2031-43 Lease requirements  
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§17-2031-52 Contract rents  
§17-2031-53 Total tenant payment  
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§17-2031-92 Eligible projects  
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|              |  |
|--------------|--|
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| §17-2031-100 | Rental assistance demonstration                                |
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| §17-2031-102 | Contract rents   |
| §17-2031-103 | Re-determining rent to owner - rent reasonableness             |
| §17-2031-104 | Conversion from public housing to RAD PBV                      |
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| §17-2031-106 | Termination notification requirements                          |
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| §17-2031-108 | Establishment of waiting list                                  |
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#### SUBCHAPTER 9 Miscellaneous Provisions

|              |              |
|--------------|--------------|
| §17-2031-201 | Severability |
| §17-2031-202 | Number       |

Historical Note: Chapter 2031 of Title 17, Hawaii Administrative Rules, is substantially based upon Chapter 17-511, Hawaii Administrative Rules [Eff 2/18/82; am 10/31/88; R 12/3/01]; and Chapter 15-185, Hawaii Administrative Rules. [Eff 12/3/01;  
R ]

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§17-2031-1 Purpose.** These rules are adopted under chapter 91, HRS, and shall govern the implementation of the management requirements of the tenant based housing choice voucher program and the project based voucher program authorized by the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, the Quality Housing Work Responsibility Act (QHWRA) of 1998, and the Housing and Economic Recovery Act of 2008 (HERA) and establish the role and responsibility of the participants and the Hawaii public housing authority. These rules set forth some of the authority's administrative plan that a public housing agency is required to adopt pursuant to the U.S. Department of Housing and Urban development section 8 program regulations in 24 C.F.R. Chapter IX Part 982 ("Administrative Plan") as it existed on October 20, 2022. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; C.F.R. §982.54)

**§17-2031-2 Nondiscrimination.** (a) The authority shall not deny any family or individual the opportunity to apply for or receive assistance under this chapter on the basis of race, color, sex, religion, marital status, creed, national or ethnic origin, age, familial status, handicap or disability or HIV infection.

The authority shall comply with federal and state nondiscrimination laws and with rules and regulations governing fair housing and equal opportunity in the administration of the program.

The authority shall provide a family with the United States Department of Housing and Urban

Development discrimination complaint form and information on how to file a fair housing complaint if the family claims that discrimination prevented them from finding or leasing a suitable dwelling unit under the program. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-7; 24 C.F.R. §§982.53, 982.304)

**§17-2031-3 Definitions.** As used in this chapter:

"Adjusted income" means "annual income" of the members of the family residing or intending to reside in the dwelling unit minus any HUD allowable expenses and deductions as defined in 24 C.F.R. §5.611, as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit A.

"Annual income" means the gross amount of income anticipated to be received by the family during the twelve months after certification or recertification. Gross income is the amount of income prior to any HUD allowable expenses or deductions and does not include income which has been excluded by HUD, as defined in 24 C.F.R. §5.609, as it existed on October 20, 2022.

"Applicant" means an individual or family that submits an application for admission to the program but is not yet a participant in the program.

"Assets" or "net family assets" means net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment as defined in 24 C.F.R. §5.603, as it existed on October 20, 2022.

"Authority" means the Hawaii public housing authority.

"Board" means the board of directors of the Hawaii public housing authority.

"C.F.R. " means the United States Code of Federal Regulations.

"Child" means a person who is born alive and is less than eighteen years of age.

"Community wide" means inclusive of any location that is under the jurisdiction of the authority.

"Continuously assisted" means that the applicant is currently receiving assistance under any program of the U.S. Housing Act of 1937, as amended, and there is no break in assistance to the family.

"Contract rent" means the total rent payable to the owner of a dwelling unit through a housing assistance payments contract.

"Covered families" means families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

"Criminal activity" means any conduct that is prohibited by any criminal laws, whether federal, state or county, regardless of whether there has been an arrest or conviction and without satisfying the standard of proof for a criminal conviction.

"Disability" means having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment, including persons who have human immunodeficiency virus (HIV) or AIDs. The term does not include current illegal use or addition to a controlled substance or alcohol or drug abuse that threatens the property or safety of others. Disabled individual or family includes:

- (1) A single individual who or a family whose head or spouse is unable to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in indefinite duration; or
- (2) A single individual who or a family whose head or spouse has a physical impairment which is expected to be of long, continued and indefinite duration and which

substantially impedes the ability to live independently, and which is of a nature that the ability could be improved by suitable housing conditions.

"Disabled family" means a family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

"Domestic violence" means the actual or threatened physical violence directed against a family member by a spouse or other household member who lives in the dwelling unit with the family.

"Domiciled" means physically residing in the dwelling unit with intent to remain.

"Drug" means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. §802) as it existed on October 20, 2022.

"Drug related criminal activity" means the manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance as defined in 21 U.S.C. 802, as it existed on October 20, 2022, and which activity is conducted on or near the premises of the assisted dwelling unit.

"Dwelling unit" means a residential unit accepted for lease in the program.

"Economic self-sufficiency program" means any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families.

"Elderly" or "elderly family" means a family whose head, spouse, or sole member is a person who is at least sixty-two years of age; or two or more persons who are at least sixty-two years of age living together; or one or more persons who are at least sixty-two years of age living with one or more live-in aides.

"Eligible family" means a family that meets the qualifications and requirements of the program.



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

"Extremely low income family" means a family whose annual income does not exceed thirty per cent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty per cent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

"Fair market rent" or "FMR" means the rent including the cost of utilities (except telephone or cable television), as established by HUD for dwelling units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

"Family" means regardless of actual or perceived sexual orientation, gender identity, or marital status:

- (1) Two or more persons who live or intend to live together and whose income and resources are available to meet the family's needs and who may be related by blood, marriage, or operation of law and whose head of family has reached the age of majority. A child who is temporarily away from the home because of placement in foster care is considered a member of the family. Family may include foster children and hanai children or a child who is domiciled with, and for whom an adult member of the current household is caring for with written or unwritten permission from the legal parent or other person having legal custody, or child domiciled with, and for whom an adult member of the current household is in the process of securing custody;
- (2) An elderly family;

- (3) A disabled family;
- (4) A displaced family;
- (5) The remaining member of a tenant family who is recorded as an authorized occupant on the current list of household members and who has reached the age of majority; or
- (6) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

"Family self sufficiency program" or "FSS program" means the program establish by the authority in accordance with 24 C.F.R. Part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services.

"Foster child" or " Foster children" means a person or persons under eighteen years of age who is or are provided foster care by a foster parent pursuant to Chapter 587A, HRS.

"Foster parent" means any adult person licensed by the department of human services or another authorized agency to provide foster care services for a child or children under Chapter 587A, HRS.

"Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

"Gross rent" means the contract rent plus allowances for utilities and other services.

"Hanai child" or "Hanai children" means a child who is taken permanently to reside, be educated, and reared by someone other than the natural parents, traditionally a grandparent or other relative, with the written or unwritten permission of the natural parents.

"HAP" means the monthly housing assistance payment by the authority as defined in 24 C.F.R.

§982.4, as it existed on October 20, 2022, which includes:

- (1) A payment to the owner for rent under the family's lease and
- (2) Any additional payment to the family if the total assistance payment exceeds the rent to the owner.

"HAP contract" means housing assistance payments contract.

"HCV" means Housing Choice Voucher

"Household" means the family and the authority-approved live-in aide.

"HRS" means Hawaii Revised Statutes.

"Housing quality standards" means the HUD minimum quality standards for housing assisted under the tenant-based programs.

"HUD" means the United States Department of Housing and Urban Development.

"Imputed welfare income" means the amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

"Involuntarily displaced" means an applicant who has vacated or may have to vacate the dwelling unit where the applicant lives because of one or more of the following:

- (1) Displacement by disaster;
- (2) Displacement by governmental action; or
- (3) Displacement by action of housing owner for reasons beyond the applicant's control and despite the applicant meeting all previously imposed conditions of occupancy. The action taken by the owner is for reasons other than rent increase.

"Landlord" means either the owner of the property or his or her representative or the managing agent or his or her representative, as shall be designated by the owner.

"Live-in aide" means a person who resides with one or more elderly persons, or near elderly persons, or persons with disabilities, and who:

- (1) Is eighteen years of age or older;
- (2) Is determined by the authority to be essential to the care and well-being of the elder or elderly family member or the family member with disabilities;
- (3) Is not obligated for the support of the elder or the elderly family member or family member with disabilities;
- (4) Would not be living in the dwelling unit except to provide the necessary support services;
- (5) Is not a tenant; and
- (6) Notwithstanding any other rule, has no rights of tenancy, continued occupancy of dwelling unit, and is not a remaining member of the household and shall cease to be an occupant therein upon the recovery of the dwelling unit by the authority, or removal from the project of the elder or elderly family member or a family member with disabilities who required the live-in aide.

"Near elderly" means a family whose head, spouse, or solo member is at least fifty years of age but below the age of sixty two.

"Owner" means any persons or entity having the legal right to lease or sublease a residential dwelling unit to a participant and includes, when applicable, a mortgagee.

"Participant" or "tenant" means a person or family that is receiving rental assistance in the program. Participation begins on the first day of the approved lease term.

"Payment standard" means the maximum monthly assistance payment for a family assisted in the voucher program before deducting the total tenant payment by the family.

"PBRA" means Project-Based Rental Assistance.

"PBV" means Project-Based Voucher.

"Portability" means the right to receive Section 8 tenant-based assistance outside of the jurisdiction of the initial public housing agency.

"Program" means the tenant-based Section 8 rental and voucher programs.

"RAD" means Rental Assistance Demonstration.

"Resident" for the purpose of conducting eligibility means a United States citizen or national or an eligible immigrant under one of the categories set forth in 42 U.S.C. §1436a(a), as it existed on October 20, 2022, also known as "noncitizen", who is able to demonstrate his or her intent to reside in Hawaii. Under one of these categories, one eligible immigrant is an alien who is a lawful resident in the United States and its territories and possessions under section 141 of the Compacts of the Free Association between the Government of the Republic of the Marshall Islands, the Federal States of Micronesia (48 U.S.C. 1901 note), and the Republic of Palau (48 U.S.C. 931 note) while the applicable section is in effect, also known as "COFA" resident. Intent to reside in Hawaii may be demonstrated by the following: length of time spent in Hawaii; leasing or renting of a home in Hawaii; filing of personal Hawaii income tax returns; registering to vote in Hawaii; Hawaii driver's license; record of Hawaii motor vehicle registration; notification of hire to work in Hawaii; record of employment in Hawaii; military records substantiating Hawaii residency; record of Hawaii residency; enrollment of minor children in Hawaii schools; establishment of bank accounts and other accounts in Hawaii; written reference from Hawaii residents, relatives, or social agencies; and any other indicia which could substantiate a claim of an intent to reside in Hawaii.

"Security deposit" means the deposit required by an owner from a participant as defined in the Residential Landlord-Tenant Code, §521-44, HRS, as it existed on October 20, 2022.

"Sexual orientation" means having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of the preferences, or being identified with any one of more of these preferences, "sexual orientation" shall not

be construed to protect conduct otherwise proscribed by law.

"Utility allowance" means the value of utilities such as electricity, gas, and water costs that are included in the gross rent of the participant. This does not include telephone or cable TV services.

"Veteran" means a person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released from active service under conditions other than dishonorable.

"Violent criminal activity" means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

"Voucher" means a document issued by the authority to a family selected for admission to a voucher program.

"Voucher holder" means an applicant who has a valid voucher but not an approved lease.

[Eff 12/31/22; am and comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Parts 5 and 982)

**§17-2031-4 Public notice to lower-income families.** The authority shall inform the public of the availability and nature of housing assistance for families within allowed income limits through publications of general circulation and shall ensure wide and appropriate coverage. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.206)

**§17-2031-5 Participation by owners and others.** The authority shall invite eligible owners, including owners of suitable dwelling units located outside of poverty or racially concentrated areas, to make

dwelling units available for leasing by eligible families and to expand opportunities for disabled persons. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§ 982.1, 982.54, 982.306)

**§17-2031-6 Income limits.** (a) Income limits for a family's participation in the program shall be the same income limits established by HUD for its section 8 tenant-based housing choice voucher program, which are incorporated by reference and attached as exhibit C.

(b) Applicable income limits as provided in subsection (a) shall be published once per year in a publication with wide circulation, be posted at all times in a conspicuous place at the authority's offices that accept applications, on the authority's website, and printed in the [corporation's] authority's informational materials on eligibility for the programs. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.201)

**§17-2031-7 Assets.** All assets held by each member of an eligible family shall be used to determine annual income. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §5.609)

**§17-2031-8 Subsidy and occupancy standards.** (a) The authority shall establish subsidy standards that shall provide for a minimum commitment of subsidy while avoiding overcrowding. The subsidy standards are incorporated by reference and attached as exhibit D.

(b) The standards determine the number of bedrooms to be entered on the voucher and not a family's actual living arrangement.

(c) The authority's occupancy standards follow the occupancy codes of the County in which the dwelling unit is located. The occupancy standards are incorporated by reference and attached as exhibit E. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-31; 24 C.F.R. §§982.54(d)(9), 982.401, 982.402)

**§17-2031-9 Allowance for utilities and other services.** (a) The authority shall maintain a utility allowance schedule for utilities and other services that shall be coordinated with the allowance schedules of the respective counties. The utility allowance schedules are incorporated by reference and attached as exhibit F.

(b) On request from a family that includes a person with disabilities, the authority shall approve a utility allowance which is higher than the applicable amount in the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 C.F.R. part 8, as it existed on October 20, 2022, to make the program accessible to and usable by the family member with a disability.

(c) A participant shall receive a utility reimbursement when the utility allowance exceeds the total tenant payment. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.517)

**§17-2031-10 Verification of information.** (a) The authority shall require an applicant or participant to provide documentation verifying information provided by the family relating to the program.



(b) An applicant or participant who fails to provide documentation to verify information requested by staff shall be ineligible for participation in the program.

(c) Verification documents shall be valid for the following lengths of time:

- (1) For applicants, sixty days before the voucher is issued to the applicant.
- (2) For participants, one hundred twenty days from the date received by the authority.  
[Eff 12/31/22; comp \_\_\_\_\_ ] (Auth:  
HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R.  
S§982.201, 982.551; 982.552; 982.553)

## SUBCHAPTER 2

### ELIGIBILITY

**§17-2031-21 Applications.** (a) A family seeking to participate in the program shall submit a completed pre-application form prepared by the authority. The applicant is permitted to file a pre-application on the authority's application portal, or through reasonable accommodation in person, by mail, or at any of the authority's section 8 applications offices for any and all waiting list areas prescribed in section 17-2031-26.

(b) The initial pre-application review shall not require an interview. Only applicants who are determined eligible in the initial review shall be placed on the waiting list. A final eligibility review shall be conducted when the applicant reaches the top of the waiting list.

(c) An applicant who has misrepresented material information in a pre-application, application, or other inquiry for any of the authority's programs shall not be eligible to file an application with the authority for twelve months from the date of written notification from the authority. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.201, 982.202)

**§17-2031-22 Eligibility for admission and participation.** (a) To be eligible for participation in the program, an applicant and family members shall meet all of the requirements of the pre-application and final-application phases as set forth below:

- (1) During the pre-application phase, the applicant and adult family members shall:
  - (A) Qualify as a family;

- (B) Be income eligible as determined under section 17-2031-6;
- (C) Not have an outstanding debt owed to the authority as a participant in any of its programs;
- (D) Not have an outstanding liability for unpaid rent or damages incurred while previously participating in any section 8 rental subsidy program;
- (E) Provide a social security number for all family members who are at least six years of age or under the age of six and has an assigned social security number. If a family member is under the age of six and has not been assigned a social security number, the applicant or participant shall provide for each new child within ninety calendar days of being added to the household, a valid social security number issued by the social security administration, or an original document issued by a federal or state government agency, which contains the name of the individual and the social security number, along with other identifying information of the individual;
- (F) Not have been evicted since March 1,1985 from a public housing program administered by the authority or any of its predecessors, the housing and community development corporation of Hawaii or Hawaii housing authority with the exception of evictions solely due to failure to pay a debt to the authority, in which case, the applicant can be admitted upon payment in full of the unpaid amounts due to the agency;
- (G) Not have been terminated for assistance under the program;
- (H) Not have committed fraud, bribery, or any other corrupt or criminal act in

connection with any federal housing program;

- (I) Within one year of the projected date of voucher award, not have been engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, right of peaceful enjoyment of the premises by other residents, the owner, or authority employees;
- (J) Not be illegally using a controlled substance or give the authority a reasonable cause to believe that the illegal use (or pattern of illegal use) of a controlled substance or abuse of alcohol (or pattern of abuse) may interfere with the health, safety, or right to peaceful enjoyment of a rental premises by other residents;
  - (i) For the purposes of this subsection, "reasonable cause to believe" means by a preponderance of the evidence;
  - (ii) For the purposes of this subsection, in determining whether to deny eligibility based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol, the authority may consider rehabilitation as provided for under 42 U.S.C. §13661(b)(2)(A)-(C), as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit G;
- (K) Not be engaged in any drug-related criminal activity or violent criminal activity which would adversely affect the health, safety, right to peaceful enjoyment of the premises by other

- residents, the owner, or authority employees;
- (L) Not have been convicted of the manufacture, production, or distribution of methamphetamines; and
  - (M) Not subject to lifetime registration requirements under any State sex offender's registration program.
- (2) During the final application phase the applicant and all adult household members shall meet the requirements set forth in subsection 17-2031-22(a)(1), as well as the following requirements:
- (A) Not have engaged in or threatened abusive or violent behavior toward the authority's personnel. For purposes of this subsection, "threatened" means an oral or written threat or physical gestures that communicate an intent to abuse or commit violence. Abusive or violent behavior may be verbal or physical and include use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate; and
  - (B) Furnish evidence of citizenship or eligible immigrant status as provided for in 24 C.F.R. §5.508, as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit H.

(b) An applicant who is continuously assisted under the U.S. Housing Act of 1937 shall be admitted to the program as though the applicant was already a program participant.

(c) A participant shall not receive a voucher at the same time as other rent supplement or housing benefits including state rent supplement payments authorized under section 356D-151, HRS.

(d) Before the authority denies or terminates assistance on the basis of a criminal record, the authority shall provide the applicant or participant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record pursuant to section 17-2031-71 or 17-2031-72.

[Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§5.216, 982.201, 982.202, 982.307, 982.551, 982.552, 982.553)

**§17-2031-23 Income targeting.** At least seventy five per cent of families admitted to the program during the fiscal year from the waiting list shall be extremely low income families. [Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.201)

**§17-2031-24 Notification of eligibility.** (a) An applicant shall be mailed or sent a written or electronic notification after an eligibility determination is made. The notification shall specifically state the reasons for the determination.

(b) An eligible applicant shall be placed on the waiting list.

(c) An applicant determined to be ineligible for admission or participation in the program shall be accorded an opportunity to request for an informal review as set forth in section 17-2031-71. [Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.201, 982.204, 982.554)

**§17-2031-25 Local preferences.** (a) A local preference which gives priority to certain families in the placement and ordering of the housing choice

voucher waiting list shall be given to an applicant if:

- (1) At any time within the twelve months preceding the application date an applicant experienced homelessness.
  - (b) An applicant who qualifies for a local preference shall receive assistance before any other applicant who is not so qualified regardless of:
    - (1) Place on the waiting list;
    - (2) Date or time of submission of an application; or
    - (3) Lottery position.
  - (c) An applicant shall not receive preference if any adult member of the applicant family is a person who was evicted or terminated from any housing program operated by the authority during the past three years because of drug-related criminal activities unless the adult member has successfully completed a rehabilitation program approved by the authority.
- [Eff 12/31/22; am and comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.203, 982.207)

**§17-2031-26 Waiting list.** (a) The authority shall maintain a separate waiting list for each of its housing choice voucher or project-based voucher programs.

- (b) Placement on the waiting list may be by:
  - (1) Date and time; or
  - (2) Random lottery selection, so long as all adopted preferences are considered.
- (c) Applicants shall be notified of the opportunity to apply for vouchers and of the procedure to be used to be placed on the waiting lists through notices posted in a conspicuous place at the authority's offices that accept section 8 applications, the authority's website, and in a printed statement in the authority's information material on its application process.

(d) The notice to open the waiting list shall include information on what procedure shall be used to place applicants on the waiting list, how to apply, the date and time of the lottery selection and the number of applicants that will be selected by the lottery, if applicable.

(e) The authority may accept applications from applicants with and without a preference, or solely based on preference, which will be specified in the notice of opening of the wait list.

(f) Applicants who are selected for placement on the waiting list shall be notified in writing, through mail or electronic communication, of their selection on the waiting list approximately ten business days after the waiting list has closed.

(g) Selection of applicants from the waiting list shall be based upon:

(1) A randomly assigned number based on the number of applicants that were selected by the lottery; or

(2) Date and time of the application; and

(3) Applicable local preference.

(h) An applicant must notify the authority, at least annually, of any change that may affect the applicant's place on the waiting list and the authority's ability to contact applicant. Changes include, but are not limited to, familial status, financial status, mailing address and current residence.

(i) An applicant may continue to be on the waiting list even though the applicant is a tenant in or receiving housing assistance from another housing program.

(j) Applications for the housing choice voucher program will be active for eighteen months from the date of placement on the waiting list and then will expire. Applicants on the waitlist at eighteen months will receive a letter informing them that their application has expired within ten business days.

(k) When the authority opens the waiting list for applicants and limits applications to those with local preferences, any applicant who is unable to



verify their preference within ten business days shall be removed from the waiting list.

(1) Applicants who were either not selected to participate in the lottery, or whose application has expired, will not qualify for an informal hearing. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.204, 982.205, 982.206)

**§17-2031-27 Removal from the waiting list.** An applicant shall be removed from the waiting list for any one of the following reasons:

- (1) The applicant requests that applicant's name be removed;
- (2) The applicant fails to notify the authority of applicant's continued interest for housing at least once every twelve months;
- (3) The applicant no longer meets the eligibility criteria set forth in section 17-2031-22;
- (4) The applicant fails to respond to the authority's reasonable contact efforts. Two written or electronic notices to the last known address shall constitute reasonable effort to contact;
- (5) The applicant fails without good cause to keep a scheduled interview or to provide requested information necessary to determine eligibility;
- (6) The applicant refuses a voucher for housing assistance; or
- (7) The applicant misrepresents any material information to the authority on the application or otherwise. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.204)

**§17-2031-28 Closing and reopening the waiting list.** (a) The authority may suspend the acceptance of applications and close the waiting list, in whole or in part, when it is determined that there are enough applicants on the waiting list to fill anticipated openings for the next twenty-four months.

(b) The authority may publicly announce any closure and reopening of the application taking process pursuant to section 17-2031-4. If the list is opened for only a limited time, the opening announcement shall include the closing date and not require further notice. Publicly announce may include, but is not limited to, publishing notices in a newspaper of general circulation and minority newspapers or notifying social service organizations.

(c) During periods when the waiting list is closed, the authority is not required to maintain a list of persons to be notified when application taking is reopened. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.206)

**§17-2031-29 Final application process - selection and certification.** (a) Selection for certification shall be from the established waiting list and shall be based on:

- (1) Applicable local preferences; and
- (2) Lottery placement; or
- (3) Date and time of receipt of application.

(b) The authority shall contact applicants selected off the waiting list in writing through mail, electronic or other virtual written communication.

(c) Completed applications will be processed as they are returned on a first come, first served basis.

(d) Following initial contact with an applicant from the waiting list, housing assistance will be offered to applicants in the order in which they completed the application process.

(e) Applicants shall be provided with a briefing packet containing all required materials and shall be

informed of their responsibilities prior to acceptance of a voucher. A voucher shall not be issued unless the applicant or an authorized representative attends a briefing and signs the voucher.

(d) A voucher holder shall be responsible for finding a qualified dwelling unit of appropriate size prior to the expiration of the voucher.

(e) A voucher shall expire at the end of sixty days from issuance unless within that timeframe, the family submits a request for lease approval, in which case the sixty day time limit shall be suspended while the authority determines whether to approve the lease.

(f) An applicant may request an extension to the initial sixty day time period if the voucher is about to expire. The request for extension shall be in writing and be received by the authority or postmarked no later than the last day of the voucher term. The extension request shall include an explanation for the request and a progress report on efforts made to locate a suitable dwelling unit.

(g) An applicant may request an extension beyond one hundred twenty days provided there are verifiable circumstances beyond the applicant's control that hinder the applicant from locating a suitable dwelling unit. The request for extension shall be in writing and be received by the authority or postmarked no later than the last day of the voucher term. The extension request shall include an explanation for the request and a progress report on efforts made to locate a suitable dwelling unit. If an extension is granted, the authority shall recertify the applicant's eligibility and income.

(h) Upon request from a prospective landlord, the authority may furnish the current address and the name and address of any current or prior landlord of the voucher holder as shown in the authority's records. Also upon request from the prospective landlord, the authority may furnish other information about the tenancy history of family members, or about drug trafficking by family members, provided that there has been a criminal conviction. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS

§356D-13; 24 C.F.R. §§ 982.204, 982.301, 982.302, 982.303, 982.305, 982.306, 982.307)

**§17-2031-30 Special admission and exception for designated programs.**

(a) The authority may admit families not on the established waiting list, or without considering the family's waiting list position, that are targeted for specific funding awards from HUD, including, but not limited to:

- (1) A family displaced because of modernization, demolition or disposition of a public or Indian housing project;
- (2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;
- (3) Housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990;
- (4) A family residing in a project covered by a section 8 project-based housing assistance payment contract at or near the end of the housing assistance payment contract term; or
- (5) A non-purchasing family residing in a HOPE 1 or HOPE 2 project; or
- (6) A family that resides or will reside in a dwelling unit covered by a project-based section 8 housing assistance payment contract.

(b) The authority shall admit families on the established waiting list who qualify for special funding awards from HUD including, but not limited to:

- (1) The Mainstream Housing Opportunities for Persons with Disabilities program and
- (2) The Welfare-to-Work or similar self-sufficiency programs.

(c) This section shall also apply to a family displaced because of demolition or disposition of an authority owned housing project that is not federally assisted.

(d) A family may be admitted under this section without qualifying for any preferences, or without being on the program waiting list.

(e) The authority shall maintain records showing the family was admitted through HUD-targeted assistance. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.203)

**§17-2031-30.1 Special admission and exception for families with a special preference.** (a) Subject to the availability of funding, the authority may admit families with a special preference into the program without consideration of the status of the housing choice voucher waiting list. A special preference shall be given to:

- (1) A federal public housing family that is involuntarily displaced for reasons such as:
  - (A) Relocation due to modernization activity; or
  - (B) An emergency where the conditions of a public housing dwelling unit, building, or project pose an immediate, verifiable threat to the life, health, or safety of the family, and the family cannot be relocated to another public housing dwelling unit in the same program that meets their needs;
- (2) A federal public housing family that is approved for a transfer as a reasonable accommodation to a dwelling unit with special accessibility features, but the authority does not have an appropriate dwelling unit within its inventory that meets the family's needs, and the family has waited over one year;
- (3) A federal public housing family that includes a member who is a victim of domestic violence, dating violence, sexual assault, stalking, reprisal, or a hate crime

- and who cannot be transferred safely to another public housing dwelling unit;
- (4) A federal public housing family that is under-housed, and the authority does not have an appropriately sized public housing dwelling unit available or within its inventory; or
  - (5) A family that was previously issued a special purpose voucher and experienced a loss of rental assistance because of:
    - (i) Insufficient funding; or
    - (ii) The eligible family member exceeded the maximum allowable age under the applicable special purpose voucher.

(b) The authority shall ensure that a family admitted to the program through a special preference meets the eligibility requirements set forth in section 17-2031-22 before issuing a housing choice voucher. [Eff and comp ] (Auth: HRS §356D-13) (Imp: 24 C.F.R. 982.206, 982.207, HRS §356D-13)

**§17-2031-31 Annual income.** The authority shall determine each applicant's and participant's annual income pursuant to 24 C.F.R. §5.609, as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit B. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. § 5.609)

**§17-2031-32 Reexaminations.** (a) At least once every twenty-four months, the authority may reexamine a participant family's income, composition, and any other matter necessary to determine the participant family's rent contribution and eligibility for continued housing assistance.

(b) If at the time of admission or reexamination, a family's income cannot be reasonably anticipated for the next twelve-month period, the authority may schedule a special reexamination at any time prior to the next biennial reexamination when deemed necessary.

(c) The participant family and owner shall be notified in writing by the authority of the results of any reexamination within a reasonable time. [Eff 12/31/22; am and comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.516)

**§17-2031-33 Interim rent adjustment.** (a) The authority may adjust a participant's rent between reexaminations if a participant reports a change in income.

(b) Adjustments reflecting a lower rent shall be made effective on the first day of the month following the month the report was made. A participant who has obtained a decrease in rent under this section, shall report all income increases which occur prior to the next reexamination and rent may be readjusted accordingly.

(c) A rent adjustment shall be made between reexaminations when a participant's income increases as a result of the inclusion of additional persons with income to the family, and such adjustment shall be made effective on the first day of the second month following the inclusion.

(d) The participant and owner shall be notified in writing by the authority of the results of any reexamination within a reasonable time. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.516)

**§17-2031-34 Continued assistance.** (a) When one family splits into two eligible families, both families wish to continue assistance, and there is no

court order, the authority shall decide to continue assistance to one family instead of the other if that family:

- (1) Retains the children or includes any disabled or elderly members. Children subject to a joint custody agreement but live with one parent for a cumulative period of at least one hundred eighty three days of the year shall be considered a member of that household;
- (2) Includes the family member that applied as head of household;
- (3) Excludes the responsible party for domestic violence which caused the split of the family;
- (4) Is subject to other factors specified by the authority; or
- (5) Is recommended by social service agencies or qualified professionals to retain assistance. [Eff 12/31/22;  
comp ] (Auth: HRS §356D-13)  
(Imp: HRS §356D-13; 24 C.F.R. §982.315)



## SUBCHAPTER 3

### LEASE

**§17-2031-41 Request for lease approval.** Upon finding a dwelling unit that an owner is willing to lease, the family shall submit a request to have the lease approved by the authority. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.305)

**§17-2031-42 Dwelling unit inspection.**(a) Prior to approving a lease, the authority shall inspect the dwelling unit within a reasonable time after receipt of the owner's inspection request.

(b) Dwelling units approved for lease in the program shall meet minimum housing quality standards.

(c) Inspections will occur every other year, except in circumstances where the authority may determine a need for an annual inspection. Situations may include, but not be limited to:

- (1) If a dwelling unit does not pass an initial or annual inspection the first time;
- (2) The dwelling unit fails a quality control inspection; or
- (3) The participant or landlord requests a special inspection between the scheduled inspection. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.305, 982.401)

**§17-2031-43 Lease requirements.** (a) The authority shall review the lease, particularly noting compliance with HUD regulations and state and local

law. The participant also must have legal capacity to enter a lease under state and local law.

(b) The family and owner must submit a standard form lease used in the locality and that is generally used for other unassisted tenants in the premises by the owner. The terms and conditions of the lease must be consistent with state and local law. The lease must specify what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family. The HUD prescribed tenancy addendum must be included in the lease word-for-word before the lease is executed. The HUD tenancy addendum is incorporated by reference and attached as exhibit I. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.308)

**§17-2031-44 Lease approval.** (a) If the authority determines that a dwelling unit is suitable for the program and the lease meets the requirements of the program, the owner and family shall be notified, and a contract executed.

(b) The initial lease shall be for at least one year.

(c) If the authority determines that a lease cannot be approved for any reason, the owner and family shall be notified in writing. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.308, 982.309)

## SUBCHAPTER 4

### HOUSING ASSISTANCE PAYMENTS AND RENT

**§17-2031-51 Housing assistance payments.** The authority shall make housing assistance payments to the owner on behalf of an eligible family. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.311)

**§17-2031-52 Contract rents.** (a) The contract rent for a dwelling unit in the program shall be determined on a case-by-case basis. The approved rent shall be reasonable in comparison to rent for other comparable unassisted dwelling units in the housing market.

(b) Contract rents may be adjusted at each annual anniversary date of the HAP contract at the request of the owner. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.507)

**§17-2031-53 Total tenant payment.** (a) The authority shall compute the total tenant payment.

(b) There shall be an established minimum rent of \$50.00 per month. Exception to the application of the minimum monthly rental amount shall apply if the family is unable to pay because of financial hardship which is determined pursuant to 24 C.F.R. §5.630, as it existed on October 20, 2022, and includes the following situations:

- (1) The family has lost eligibility or is awaiting an eligibility determination for federal, state, or local assistance;

- (2) The family would be evicted as a result of the imposition of the minimum rent requirement;
- (3) The income of the family has decreased because of changed circumstances, including:
  - (A) Loss of employment;
  - (B) An income producing family member dies; and
  - (C) Other circumstances beyond the family's control as determined by the authority.
 

[Eff 12/31/22; comp \_\_\_\_\_ ]  
 (Auth: HRS §356D-13) (Imp: HRS §356D-13 ; 24 C.F.R. §§5.628, 5.630)

**§17-2031-54 Rent.** (a) Voucher rents are based on the payment standard as set by the authority on an annual basis and are guided by the fair market rents published annually by HUD. On request from the family that includes a person with disabilities, the authority shall approve an exception rent of up to one hundred twenty per cent of the fair market rent if the exception rent is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 C.F.R. Part 8, as it existed on October 20, 2022.

(b) The small area fair market rent, which includes utilities and is established for dwelling units of various bedroom sizes, is determined by HUD. [Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §888.111, 982.503, 982.504, 982.507)

**§17-2031-55 Payment standard.** (a) The maximum monthly subsidy payment for a family before deducting the family contribution is set by the authority between ninety per cent and one hundred ten per cent of the HUD determined small area fair market rent. The authority may establish a payment standard amount

that is higher or lower than the basic range subject to HUD approval or waiver.

(b) The authority may approve a higher payment standard within the basic range to reasonably accommodate a family that includes a person with disabilities which may be subject to HUD approval. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.503)

**§17-2031-56 Security deposits.** (a) The participant shall be responsible for the payment of a security and utility deposit as directed by their lease.

(b) The authority shall not be responsible for the payment of security and utility deposits. [Eff 12/31/22; comp ] (Auth: HRS §§356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.313)

**§17-2031-57 Ownership change.** (a) A change in ownership of a dwelling unit under a HAP contract does not require execution of a new contract or lease. The authority may approve the assignment of the HAP contract at the previous owner's request.

(b) The owner who is selling the dwelling unit shall provide written notice to the authority at least thirty days prior to the sale closing.

(c) The new owner shall provide documents to verify the sale and other information requested by the authority.

(d) Housing assistance payments to the owner who is selling the dwelling unit shall be suspended effective the first of the month following the receipt of the notification of the sale of the dwelling unit and when the assignment of the HAP contract to the new owner is approved by the authority. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.305, 982.306)

## SUBCHAPTER 5

### OPERATIONS

**§17-2031-61 Inspections.** (a) The authority shall annually inspect each dwelling unit leased to a participant of the program utilizing inspection standards required by HUD.

(b) The authority may conduct special inspections upon written notification by the participant or owner that the dwelling unit does not meet housing quality standards or based on information from third parties such as neighbors or public officials. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.405)

**§17-2031-62 Overcrowded or under occupied dwelling units.** A participant shall be issued a new voucher if the authority determines that the dwelling unit does not meet the authority's subsidy standards for occupancy. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §982.403)

**§17-2031-63 Portability.** (a) The authority may require applicants who were nonresidents at the time of application to live in its jurisdiction during the first twelve-month period.

(b) The authority shall not absorb a family under portability assistance into its program unless funds are available and there is no applicant with a preference on the applicable waiting list. [Eff 12/31/22; comp ] (Auth: HRS §356D-13)

(Imp: HRS §356D-13; 24 C.F.R. §§982.353, 982.354, 982.355)

**§17-2031-64 Transfers.** (a) A family may terminate its lease with the landlord at any time after the first twelve months as provided by the rental agreement with the landlord and shall provide a copy of the notice to the authority.

(b) The authority shall deny permission to move if:

- (1) There are insufficient program funds for continued assistance;
- (2) The participant has violated a family obligation listed on the voucher;
- (3) The participant owes the authority money; or
- (4) The participant has moved or has been issued a voucher within the last twelve months.

[Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.354, 982.552)

**§17-2031-65 Eviction - termination of tenancy by owner.** (a) If the owner wishes to terminate the lease, the owner is required to provide proper notice as provided in the lease and the Hawaii Residential Landlord-Tenant Code.

(b) During the term of the lease the owner may only evict for:

- (1) Serious or repeated violations of the lease, including but not limited to failure to pay rent or other amounts due under the lease, or repeated violation of the terms and conditions of the lease;
- (2) Violations of federal, state or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises, such as failure to comply with all obligations, restrictions, whether

demonstrated by the landlord as rules or otherwise, which are in accordance with section 521-52, HRS, and which the landlord can demonstrate are reasonably necessary for the preservation of the property or protection of the persons of the landlord, other tenants, or any other person;

- (3) Criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control that threatens the health, safety or right to peaceful enjoyment of the premises by the other residents, or persons residing in the immediate vicinity of the premises or any drug-related criminal activity on or near the premises; or

- (4) Other good cause.

(c) During the initial term of the lease, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do.

(d) The owner shall provide the tenant a written notice specifying the grounds for termination of tenancy pursuant to chapter 521, HRS, before the commencement of the eviction action. The notice of grounds provided in 982.310(e)(1)(ii), CFR, as it existed on October 20, 2022, may be included in, or may be combined with, any owner eviction notice to the tenant. The owner eviction notice means a notice to vacate, or a complaint, or other initial pleading used under State or local law to commence an eviction action.

(e) Housing assistance payments are paid to the owner under the terms of the HAP contract. If the owner has begun eviction and the family continues to reside in the dwelling unit, the authority shall continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The authority may continue housing assistance payments until the family moves or is evicted from the dwelling unit. If the action is finalized in court, the owner



must provide the authority with the documentation, including notice of the date of physical eviction.

(f) The authority shall continue making housing assistance payments to the owner in accordance with the contract as long as the tenant continues to occupy the dwelling unit in accordance with the terms of the lease. By endorsing the monthly check from the authority, the owner certifies that the tenant is still in the dwelling unit, and that the rent is reasonable and in compliance with the contract.

(g) If an eviction is not due to a serious or repeated violation of the lease, and if the authority has no other grounds for termination of assistance, the authority may issue a new voucher so that the family can move with continued assistance.

(h) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under HAP contract between the owner and the authority. The authority's failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner. During the term of the lease, the owner may not terminate the tenancy of the family for nonpayment of the authority's housing assistance payment. [Eff 12/31/22; comp \_\_\_\_\_ ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.310, 982.455)

**§17-2031-66 Termination of participation.** (a)

The authority shall terminate a family's participation in the program when:

- (1) The family has been evicted from housing assistance under the program for serious violation of the lease;
  - (2) Any member of the family fails to sign and submit consent forms for obtaining information in accordance with the program;
- or

- (3) The family does not submit required evidence of citizenship or eligible immigration status.
- (4) Any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in 24 C.F.R. 5.612, as it existed on October 20, 2022.
- (b) The authority may terminate a family's participation in the program when:
  - (1) The family fails to fulfill their obligations under the program;
  - (2) Any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
  - (3) The family is under contract and one hundred and eighty days have elapsed since the last housing assistance payment was made due to housing assistance payment being zero dollars, or other participant related reason;
  - (4) The family has not reimbursed any public housing agency for amounts paid to an owner under a HAP contract on behalf of the family for rent, damages to the dwelling unit, or other amounts owed by the family under the lease;
  - (5) The family breaches an agreement with the authority to pay amounts owed to the authority, or amounts paid to an owner by the authority;
  - (6) Any member of the family has engaged in or threatened abusive or violent behavior toward the authority's personnel. Threatened means an oral or written threat or physical gestures that communicate an intent to abuse or commit violence. Abusive or violent behavior may be verbal or physical and include use of expletives that are generally considered insulting, racial epithets, or other language, written or

oral, that is customarily used to insult or intimidate;

- (7) Any member of the family has engaged in any drug-related criminal activity or violent criminal activity. For the purpose of this subsection, "violent criminal activity" means any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another;
- (8) Any member of the family is illegally using a controlled substance or whose illegal use or pattern of abuse of a controlled substance, or whose abuse of alcohol or pattern of abuse of alcohol is determined by the authority to interfere with the health, safety, or right to peaceful enjoyment of a rental premises by other residents. In determining whether to terminate assistance based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, the authority may consider rehabilitation as provided for under 42 U.S.C. §13661(b)(2)(A)-(C), as it existed on October 20, 2022, which is incorporated by reference and attached as exhibit G;
- (9) A family participating in the family self-sufficiency program fails to comply, without good cause, with the family's family self-sufficiency contract of participation; or
- (10) Welfare-to-work family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

(c) The authority may implement a lottery system to terminate a family's participation in the program if the authority must terminate housing assistance payment contracts due to insufficient funds. Families will be randomly chosen to be terminated from the housing choice voucher program. Individuals who are elderly, disabled, victims of domestic violence, or VASH participants shall be excluded from the lottery.

(d) A participant found to be ineligible for continued participation in the program shall be notified in writing by the authority and be accorded an opportunity to request an informal hearing as set forth in these rules. Such notice shall state the reasons for the authority's determination and that the participant has the opportunity to request an informal hearing. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.551, 982.552, 982.553)

## SUBCHAPTER 6

### INFORMAL REVIEWS

**§17-2031-71 Informal review process for applicants.** (a) An applicant who has been denied assistance by the authority shall have an opportunity for an informal review pursuant to 24 C.F.R. §982.554, as it existed on October 20, 2022.

(b) The applicant shall provide the authority with a request for an informal review within fifteen days from the date of the authority's notification of denial of assistance.

(c) The informal review shall be scheduled within fifteen days from the date the written request is received by the authority and shall be conducted by any person or persons designated by the authority, but shall not be a person who made or approved the decision under review or a subordinate of this person.

(d) The applicant shall be given the opportunity to present oral or written objections to the authority's denial of assistance. Both the authority and the applicant may present evidence and witnesses. The applicant may be assisted by an attorney or other representative at his or her own expense.

(e) The informal review may be conducted by mail, video conference or telephone if acceptable to both parties.

(f) A written notice of the review of findings shall be provided to the applicant within thirty days after the review. The notice shall include the decision of the hearing officer and an explanation of the reasons for decision.

(g) An applicant who is denied assistance for citizen or immigrant status shall have an opportunity for an informal hearing pursuant to 24 C.F.R. §5.514, as it existed on October 20, 2022. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§982.54(d)(12), 982.554)

**§17-2031-72 Informal hearing process for participants.** (a) The authority shall give a participant an opportunity for an informal hearing to consider whether the following authority decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and authority rules pursuant to:

- (1) A determination of the family's annual or adjusted income and the use of such income to compute the housing assistance payment;
- (2) A determination of the appropriate utility allowance, if any, for tenant-paid utilities from the authority's utility allowance schedule;
- (3) A determination of the family dwelling unit size under the authority's subsidy standards;
- (4) A determination that a family is residing in a dwelling unit with a larger number of bedrooms than appropriate for the family dwelling unit size under the authority's subsidy standards, or the authority's determination to deny the family's request for an exception from the standards;
- (5) A determination to terminate assistance for a participant family because of the family's action or failure to act;
- (6) A determination to terminate assistance because the participant family has been absent from the assisted dwelling unit for longer than the maximum period permitted; or
- (7) A determination to terminate a family's family self-sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account.

(b) The opportunity for informal hearing shall be provided to participants prior to the termination of assistance.

(c) The participant shall provide the authority with a written request for an informal hearing within fifteen days of the authority's notification of determination.

(d) The informal hearing shall be scheduled within fifteen days from the date the written request is received and shall be conducted by any person or persons designated by the authority, but shall not be a person who made or approved the decision under review or a subordinate of this person.

(e) Prior to the informal hearing:

(1) The participant shall be given the opportunity to examine any authority documents that are directly relevant to the hearing. The participant may copy any relevant document at the participant's expense.

(2) The authority shall be given the opportunity to examine any family documents that are directly relevant to the hearing. The authority may copy any relevant document at the authority's expense.

(f) The participant and the authority shall be given the opportunity to present evidence and may question witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(g) The participant may be assisted by an attorney or other representative at the participant's expense.

(h) A written notice of the findings of the hearing officer shall be provided to the authority and participant within ten days upon conclusion of the informal hearing. The notice shall include:

(1) A summary of the decision and reasons for the decision;

(2) The amount owed and documentation of the calculation of monies owed and

(3) The effective date of the decision.

(i) The authority shall not be bound by the decision of the hearing officer that:

- (1) Concerns matters in which the authority is not required to provide an opportunity for a hearing or that otherwise exceeds the authority of the hearing; or
- (2) Is contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.
- (3) If the authority determines that it is not bound by a decision of the hearing officer, the authority shall send a letter to the participant within thirty days of its determination. The letter shall state the reasons for the determination.

(j) A participant who is determined to be ineligible for assistance due to citizen or immigration status shall have an opportunity for an informal hearing pursuant to 24 C.F.R. §5.514, as it existed on October 20, 2022. [Eff 12/31/22; comp ] (Auth: 356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§5.514, 982.54(d)(13), 982.555)



SUBCHAPTER 7

FAMILY SELF-SUFFICIENCY PROGRAM

**§17-2031-81 Family self-sufficiency program.**

The objective of the authority's family self-sufficiency ("FSS") program is to reduce the dependency of low-income families on welfare assistance and to reduce Section 8, public housing, or any federal, state, and local rent or homeownership subsidies. Under the family self-sufficiency program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

**§17-2031-82 Eligibility.** (a) Participants in the authority's Section 8 tenant-based program are eligible to participate in the family self-sufficiency program.

(b) Preference shall be given to applicants who already receive family self-sufficiency-related support services for fifty per cent or less of the allocations. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

**§17-2031-83 Recruitment and outreach.** (a) The authority shall conduct outreach programs to recruit family self-sufficiency participants.

(b) Outreach efforts may include the following:

- (1) Sending informational brochures to each family participating in the authority's Section 8 program;
- (2) Conducting orientation sessions for families who express an interest in participating in the family self-sufficiency program; and
- (3) Identifying and targeting potential families in the authority's caseloads. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

**§17-2031-84 Selection.** (a) Families shall be selected without regard to race, color, religion, sex, handicap, familial status, or national origin.

(b) Families may be selected by date of receipt of application.

(c) In the event there are more applicants than family self-sufficiency allocations, the authority shall conduct a lottery to determine placement on the waiting list.

(d) Initially, up to one hundred thirty-six Section 8 participants shall be selected to participate in the family self-sufficiency program. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

**§17-2031-85 Termination or withholding services.**

(a) The authority shall monitor and assess the family self-sufficiency participant's progress and compliance with the goals set forth in the contract of participation. When the authority determines that the family self-sufficiency participant is not making progress or complying with the goals set forth in the contract of participation, the authority shall notify the family self-sufficiency participant of such determination and provide the family self-sufficiency

participant six months to demonstrate compliance with the plan of the contract of participation.

(b) If no progress has been made or the family self-sufficiency participant is still not complying with the contract of participation after the six-month period, the authority shall provide the family self-sufficiency participant with a written notice of intent to terminate or withhold services and of the opportunity to request an informal hearing. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 984)

## SUBCHAPTER 8

### SECTION 8 PROJECT-BASED VOUCHER PROGRAM

**§17-2031-91 Purpose.** The purpose of this subchapter is to establish a procedure for the selection of dwelling units to which the authority may attach Section 8 voucher assistance. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. Part 983)

**§17-2031-92 Eligible projects.** (a) The authority may attach Section 8 voucher assistance to dwelling units in newly constructed and existing structures of various types including single-family housing and multifamily structures.

(b) The authority may not attach Section 8 voucher assistance to dwelling units in the following types of housing:

- (1) Owner occupied dwelling units; however, cooperatives are considered to be rental housing for purposes of this subchapter;
- (2) Mobile or manufactured homes;
- (3) Shared housing, nursing homes, and facilities providing continual psychiatric, medical, nursing services, board and care or intermediate care;
- (4) Except for existing dwelling units, housing for which the construction or rehabilitation has started prior to execution of an agreement with the authority;
- (5) Dwelling units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions;
- (6) Housing located in an area that has been identified by the Federal Emergency Management Agency as having special flood

- hazards unless the community in which the area is situated is participating in the National Flood Insurance Program;
- (7) Housing located in the coastal barrier resources system designated under the Coastal Barrier Resources Act;
  - (8) College or other school dormitories;
  - (9) Dwelling units subsidized under other federal housing programs including:
    - (i) Public housing;
    - (ii) A dwelling unit subsidized by any other form of section 8 assistance;
    - (iii) A dwelling unit subsidized with any local or state rent subsidy;
    - (iv) A section 236 project or a dwelling unit subsidized with section 236 rental assistance payments;
    - (v) A Rural Development Administration section 515 project;
    - (vi) A dwelling unit subsidized with rental assistance payments under section 521 of the Housing Act of 1949 (a Rural Development Administration Program);
    - (vii) Housing assisted under former section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
    - (viii) A section 221(d)(3) project;
    - (ix) A project with a section 202 loan;
    - (x) A section 202 project for non-elderly persons with disabilities;
    - (xi) Section 202 supportive housing for the elderly;
    - (xii) Section 811 supportive housing for persons with disabilities;
    - (xiii) A section 101 rent supplement project;

(xiv) A dwelling unit subsidized with tenant-based assistance under the HOME program, or any dwelling unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§983.52, 983.53)

**§17-2031-93 Notification of project-based assistance.** (a) The authority shall publish requests for proposals to participate in the Section 8 project-based voucher program in a newspaper of general circulation once a week for three consecutive weeks. The advertisement shall state the number of vouchers available for project-based assistance; whether proposals will be accepted for rehabilitation, new construction, or existing dwelling units; state the selection criteria; and specify an application deadline of at least thirty days after the date the advertisement is last published.

(b) The authority may select dwelling units to which assistance is to be attached, without advertising under paragraph (a) of this section and without applying the selection factors otherwise required under section 17-2031-95, if attachment of project-based assistance would further the purposes of the sale of a public housing project to a resident management corporation under section 21 of the United States Housing Act of 1937. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.51)

**§17-2031-94 Applications for project-based assistance; information required.** (a) Housing providers or agencies desiring Section 8 project-based

voucher assistance shall submit to the authority a proposal, in the format prescribed by the authority, along with any additional information that the authority determines to be applicable.

(b) Housing provider or agency information may include, but is not limited to the following:

- (1) Name and address of the eligible housing provider or owner and other project principals and officers and principal members, shareholders, investors, and other parties having a substantial interest in the ownership of the project, and evidence of the applicant's status as a corporation, partnership, joint venture or other business organization;
- (2) Certification showing that the above-mentioned parties are not on the United States General Services Administration list of parties excluded from federal procurement and non-procurement programs or the State list of parties debarred or suspended; a disclosure of any possible conflict of interest by any of these parties that would be a violation of the agreement or the housing assistance payments contract;
- (3) To the extent available, certified copies of the housing provider's or owner's organizational documents, including its articles of incorporation and bylaws, declaration of trust, partnership or limited partnership agreement, together with all amendments thereto and, in the case of nonprofit organizations, a copy of the determination letter from the Internal Revenue Service as to recognition of exemption from federal income taxation;
- (4) A resume of the housing provider's experience in the construction or rehabilitation of rental housing projects including a list and a brief description of the projects in which the applicant participated;

- (5) A resume of the housing provider's or owner's experience in the management of rental housing projects including a list and a brief description of the projects which the applicant manages;
- (6) The name, title, address, and telephone number of the person to whom communications should be addressed;
- (7) Evidence of the housing provider's or owner's legal authority to incur obligations and to sign and deliver such documents as may be necessary to finance, construct, or rehabilitate the project;
- (8) A current certificate of good standing from the State department of commerce and consumer affairs and tax clearance from the State department of taxation;
- (9) Evidence of the housing provider's or owner's ability to develop, own, market, manage, and provide appropriate services in connection with housing project;
- (10) Evidence of the housing provider's or owner's financial ability to complete the project;
- (11) The housing provider's or owner's ties to the community and support from local community groups;
- (12) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the applicant or its principals;
- (13) A description of the housing provider's or owner's experience or involvement in the provision of supportive services;
- (14) A statement of the housing provider's or owner's past or current involvement with the authority or its predecessors, the housing finance and development corporation, the Hawaii housing authority or the housing and community development corporation of Hawaii, and the assistance, if any, received from those entities.



(c) Project information may include, but is not limited to the following:

- (1) A description of the proposed housing project, including the number of dwelling units by square footage, bedroom count, bathroom count, sketches of the proposed building, dwelling units plans, listing of amenities and services, and the estimated date of completion;
- (2) Identification and description of the proposed site, site plan, and neighborhood characteristics;
- (3) Identification of the census tract in which the project is located;
- (4) Evidence of site control, such as a deed, agreement of sale, commitment letter, or development agreement;
- (5) Availability of public services and facilities, such as schools, sewers, parks, and fire protection, and the adequacy thereof;
- (6) If applicable, evidence that the proposed new construction is permitted by current zoning ordinances or regulations or evidence to indicate that the needed re-zoning is likely and will not delay the project;
- (7) The proposed contract rent per dwelling unit, including an indication of which utilities, services, and equipment are included in the rent and which are not included. For those utilities that are not included in the rent, an estimate of the average monthly cost for each dwelling unit type for the first year of occupancy;
- (8) A signed certification of the owner's intention to comply with all applicable federal requirements referenced in 24 CFR 983.4, as it existed on October 20, 2022;
- (9) A statement from the owner certifying the number of persons, businesses, non-profit corporations occupying the property on the date of submission of the application; the

number of persons displaced, temporarily relocated or moved permanently within the building complex; estimated cost of relocation payments and services; the funding source of relocation activities; and the name of the organization that will carry out the relocation activities;

- (10) The owner's plan for managing and maintaining the dwelling units;
- (11) Evidence of financing or lender interest and the proposed terms of financing;
- (12) The proposed term of the housing assistance payments contract;
- (13) If applicable, a relocation plan that includes steps that will be taken to minimize the displacement of households, businesses, nonprofit organizations, and farms as a result of the project; and
- (14) Such other information as the authority deems necessary. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §§983.3, 983.6, 983.51)

**§17-2031-95 Review and screening of applications.** (a) Applications shall be time and date stamped and assigned a number.

(b) Applications shall be screened for completeness, i.e., submission of information required under sections 17-2031-92 and 94. Applications that do not meet the application submission deadline or information requirements shall be rejected by the executive director.

(c) The authority shall review each application and any additional information submitted by the applicant or obtained from other sources in its review of each application. Additional information or data may be requested and the authority may independently verify any or all information supplied by the applicant. [Eff 12/31/22; comp ]

(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.51)

**§17-2031-96 Selection of project applications.**

(a) Based upon the review of the applications, documents, and any additional information submitted by the applicants or obtained from other sources by the authority, the executive director shall prepare a recommendation to the board to attach Section 8 voucher assistance to specific projects.

(b) The board shall review the recommendation of the executive director and, if the board determines that the project-basing of Section 8 voucher assistance for a specific project is consistent with the public housing agency plan and the goals of deconcentrating poverty and expanding housing and economic opportunities, it may approve the application and authorize the executive director to allocate an appropriate amount of Section 8 voucher funding, subject to such terms and conditions as it deems necessary or appropriate to assure compliance with 24 C.F.R. part 983, as it existed on October 20, 2022 and these rules.

(c) Upon the board's approval to allocate Section 8 voucher funding to an applicant, the executive director shall notify the applicant of the allocation. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.52)

**§17-2031-97 Agreement to enter into housing assistance contract.** (a) The authority shall enter into an agreement with the selected project owner prior to the start of any new construction or rehabilitation.

(b) After the agreement has been executed, the owner shall promptly proceed with the construction or rehabilitation work as provided for in the agreement.

If the work is not promptly commenced, diligently continued, or completed, the authority may terminate the agreement or take other appropriate action. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.101; Pub. Law 106-377, 114 Stat. 1441)

**§17-2031-98 Eligibility and selection of tenants.** (a) Tenants in a section 8 project-based voucher assisted dwelling unit shall meet the eligibility criteria set forth in section 17-2031-22. (b) The authority may use the section 8 tenant-based waiting list as set forth in section 17-2031-26. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.203)

**§17-2031-99 Dwelling unit cap on project-based dwelling units by project** (a) The authority may not select a proposal to provide project-based voucher assistance for dwelling units in a project or enter into an agreement or HAP contract to provide PBV assistance for dwelling units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units, either assisted or unassisted, in the project.

(b) Exceptions to the 25 percent cap per project are permitted, where PBV dwelling units are not counted against the cap, when:

- (1) The dwelling units are in a single-family project, comprising one to four dwelling units; or
- (2) The dwelling units are excepted dwelling units in a multifamily project because they are made available for elderly or disabled families receiving supportive services, also known as qualifying families.

(c) The approved services are not required to be provide at or near the project.

(d) To qualify, a family must have at least one member receiving at least one qualifying supportive service. The authority shall not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted dwelling unit, although such services may be offered. The following services may be offered to families for a project to qualify for the 25 percent cap, depending on the needs of the family:

- (1) Palolo Valley Homes, Ohana Learning Center, 2170 Ahe Street, Honolulu, HI 96816; Owner: Mutual Housing Association of Hawaii:
  - (A) Computer access for the community to use for job search, printing documents, internet access, etc;
  - (B) University student assist children with homework;
  - (C) Resident services department provides referrals to available services in the community;
  - (D) Music lab;
  - (E) Reading room;
  - (F) Demonstration kitchen for children's cooking lessons;
  - (G) Nurses station/health room;
  - (H) HCAP education programs;
  - (I) Iolani School programs, STEM, Kai program; and
  - (J) Foodbank;
- (2) Towers of Kuhio Park, 1475 Linapuni Street #100, Honolulu, HI 96819; Owner: Michaels Development Company:
  - (A) Early childcare development preschools;
  - (B) Case management and referral services;
  - (C) Food bank and food programs;
  - (D) Out of school teen programming;
  - (E) Mental and behavioral health;
  - (F) Domestic violence prevention and intervention;

- (G) Child abuse prevention and intervention;
- (H) Child sex trafficking intervention;
- (I) Community computer and resource centers;
- (J) Educational and vocational financial aid;
- (K) Parenting training;
- (L) Job training and placement;
- (M) Emergency financial support;
- (N) Financial literacy;
- (O) Housing navigation;
- (P) Gang and bullying prevention;
- (Q) Interpretation services;
- (R) Skills training and makers space;
- (S) Substance abuses referral services;
- (T) Community building and family engagement;
- (U) Acculturation services;
- (V) Walking school bus; and
- (W) English as a second language.

(e) A dwelling unit shall continue to count as an excepted dwelling unit for as long as the family resides in the dwelling unit, if a family at the time of initial tenancy is receiving, and while the resident of an excepted dwelling unit has received, FSS supportive services or any other supportive services as defined by the rules above, and successfully completes the FSS contract of participation or the supportive services requirement.

(f) On an annual basis, the authority will monitor all families receiving services to determine if such families will be allowed to continue receiving PBV assistance.

- (1) The authority will require families receiving services to provide written evidence from each provider confirming that the family has received all of the required services in the statement of family obligations or FSS contract of family participation; or

- (2) Alternatively, each service provider will submit a report to the management of the property, identifying the services received by each family. The property owner will submit the report to the authority, who will verify that all services required in the statement of family obligation or FSS contract of participation received. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; 24 C.F.R. §983.56)

**§17-2031-100 Rental assistance demonstration.**

Where the authority chooses to convert public housing projects to Rental Assistance Demonstration (RAD) Section 8 Project Based Voucher (PBV) the provisions of this section and its subsections will apply. In the event of a conflict between applicable RAD notices and guidance issued by HUD and the following provisions, applicable RAD notices and guidance apply. When future notices or amendments are issued by HUD and create a conflict, the authority shall amend its rules to comply with the new HUD requirements. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice))

**§17-2031-101 Term of the RAD PBV contract. (a)**

The initial contract will be for a period of at least fifteen years. The initial contract may be up to twenty years upon request of the project owner and with approval by the authority.

(b) Upon expiration of the initial contract, the authority must offer, and the project owner must accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriated funds and the owner's satisfactory RAD PBV program performance, for such

periods as the authority deems appropriate and in accordance with HUD instructions. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6.B.1-2)

**§17-2031-102 Contract rents.** The initial rent to project owner will be provided by HUD based on the level of public housing capital and operating subsidies and tenant rents, and shall be further constrained by the reasonable rent and as otherwise provided in RAD program requirements. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6.B.5)

**§17-2031-103 Re-determining rent to owner - rent reasonableness.** (a) Contract rents will be adjusted only by HUD's OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term.

(1) OCAF means "an operating cost adjustment factor established by HUD that is applied to the current contract rent, less the portion of the rent paid for debt service".

(b) The rent to project owner may at no time exceed the reasonable rent charged for comparable unassisted dwelling units in the private market, as determined by the authority in accordance with 24 CFR 983.303, as it existed on October 20, 2022. However, the rent to project owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract. [Eff 12/31/22;

comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6.B.6)



**§17-2031-104 Conversion from public housing to RAD.**

(a) At conversion, current public housing households are not subject to rescreening, income eligibility, or income targeting. These households will be grandfathered for conditions that occurred prior to conversion, but will be subject to any ongoing eligibility requirements for actions that occur after conversion.

(b) Once any such household moves out, the dwelling unit must be leased to an eligible family. To facilitate the right to return to the assisted property, this provision shall apply to current public housing residents of the converting project that will reside in non-RAD PBV dwelling units placed on a project site that contains RAD PBV dwelling units or PBRA dwelling units. Such families and such contract dwelling units otherwise will be subject to all requirements of the PBV program, except as may be modified by any RAD requirements.

(c) Households at project sites converting to RAD who were not public housing residents that will reside in non-RAD PBV dwelling units also will be subject to any applicable RAD requirements, to the extent such requirements modify otherwise applicable PBV requirements. [Eff 12/31/22; comp ]  
(Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. C.1)

**§17-2031-105 Phase-in of tenant rent increases.**

(a) If a tenant's monthly rent increases by more than the greater of ten percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years.

(b) For each RAD transaction, the authority shall specify prior to conversion whether the length of the tenant rent phase-in will be 3 or 5 years, or a combination depending on circumstances. The authority

will communicate the policy in writing to affected residents.

(c) The public housing dwelling units at Kuhio Park Towers, owned and managed by project owner KPT Towers 1, LLC, located at 1475 Linapuni Street #100, Honolulu, HI 96819, are converting to RAD. Upon conversion to RAD, if the tenant's monthly rent increases by more than the greater of ten percent or \$25 purely as a result of conversion, the rent increase shall be phased in over three (3) years. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. C.3)

**§17-2031-106 Termination notification requirements.** (a) In addition to the regulations at 24 CFR 983.257, as it existed on October 20, 2022, related to project owner termination of tenancy and eviction, the termination procedure for RAD conversions to PBV will require adequate written notice of termination of the lease which shall be:

- (1) A reasonable period of time, but not to exceed 30 days:
  - (A) If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - (B) In the event of any drug-related or violent criminal activity or any felony conviction;
- (2) Not less than fourteen days in the case of nonpayment of rent;
- (3) Not less than thirty days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09

PIH-2019-23(HA) issued 9/5/2019 (RAD Notice)  
section 1.6. C.6)

**§17-2031-107 Grievance process.** (a) For the termination of assistance and several other authority determinations, the PBV program rules require the authority to provide an opportunity for an informal hearing, as outlined in 24 CFR 982.555, as it existed on October 20, 2022. RAD specifies alternative requirements for 24 CFR 982.555(b), as it existed on October 20, 2022, in part, to require that:

- (1) In addition to reasons that require an opportunity for an informal hearing given in 24 CFR 982.555(a)(1)(i)-(vi), as it existed on October 20, 2022, an opportunity for an informal hearing must be given to families for any dispute that a family may have with respect to a project owner action in accordance with the family's lease or the authority in accordance with RAD PBV requirements that adversely affect the family's rights, obligations, welfare, or status.
  - (A) For any hearing required under 24 CFR 982.555(a)(1)(i)-(vi), as it existed on October 20, 2022, the authority will perform the hearing, as is the current standard in the program. The hearing officer must be selected in accordance with 24 CFR 982.555(e)(4)(i), as it existed on October 20, 2022.
  - (B) For any additional hearings required under RAD, the project owner will perform the hearing.
- (1) There is no right to an informal hearing for class grievances or to disputes between families not involving the project owner or the authority.
- (2) The project owner gives families notice of their ability to request an informal hearing

as outlined in 24 CFR 982.555(c)(1), as it existed on October 20, 2022, for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)-(vi), as it existed on October 20, 2022.

- (3) The project owner provides opportunity for an informal hearing before an eviction. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. C.6)

**§17-2031-108 Establishment of waiting list. (a)**

For public housing projects converting to Section 8 assistance through the RAD program, there shall be a preference established on the RAD waiting list for applicants currently on the public housing waiting list wishing to be added to the RAD or PBV site based waiting list for the converting dwelling units.

(b) Individuals on the public housing waiting list who wish to be added to the RAD waiting list shall maintain their original public housing application date. The authority considers this the best means to transition applicants from the current public housing waiting list as provided by RAD Notice 2019-23 as amended or superseded from time to time.

(c) At conversion, the authority will inform applicants on the applicable geographic or site based public housing waiting list via electronic or written notice of the availability of the PBV waiting list. The authority will inform individuals of the opening of the waiting list consistent with 24 CFR 983.251, as it existed on October 20, 2022, and these rules.

(d) The authority shall maintain its waiting list in accordance with all applicable civil rights and fair housing laws and regulations. [Eff ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. D.4)

**§17-2031-109 Resident participation and funding.**

For public housing conversions to long-term, project-based Section 8 voucher rental assistance contracts, including RAD, residents will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding. Project owners must provide \$25 per occupied replacement PBV dwelling unit annually for resident participation, of which at least \$15 per occupied dwelling unit shall be provided to the legitimate resident organization at the property. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. C.5)

**§17-2031-110 Voucher inventory turnover cap.**

The authority shall not have a voucher turnover cap. [Eff 12/31/22; comp ] (Auth: HRS §356D-13) (Imp: HRS §356D-13; HUD Notice H-2019-09 PIH-2019-23(HA) issued 9/5/2019 (RAD Notice) section 1.6. D.8)

## SUBCHAPTER 9

### MISCELLANEOUS PROVISIONS

**§17-2031-201 Severability.** If any part, section, sentence, clause, or phrase of this chapter, of its application to any person or transaction of other circumstances is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or the application of this chapter to other persons or transactions or circumstances shall not be affected. [Eff 12/31/22; comp \_\_\_\_\_] (Auth: HRS §356D-13) (Imp: HRS §356D-13)

**§17-2031-202 Number.** The use of all words used in the singular shall extend to and include the plural." [Eff 12/31/22; comp \_\_\_\_\_] (Auth: HRS §356D-13) (Imp: HRS §1-17)

DEPARTMENT OF HUMAN SERVICES

Amendments to and compilation of chapter 17-2031, Hawaii Administrative Rules, on the Summary Page dated [DATE], were adopted on [DATE], following a public hearing held on [DATE], after public notice was given in the Honolulu Star-Advertiser, The Maui News, The Garden Island, and the Hawaii Tribune-Herald on [DATE].

These rules shall take effect ten days after filing with the office of the Lieutenant Governor.

\_\_\_\_\_  
Robert J. Hall, Chairperson  
Board of Directors  
Hawaii Public Housing  
Authority

\_\_\_\_\_  
Josh Green, M.D.  
Governor  
State of Hawaii

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

APPROVED AS TO FORM:

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

Filed: \_\_\_\_\_

EXHIBIT A

Adjusted Income (24 C.F.R. §5.611)



EXHIBIT B

Annual Income (24 C.F.R. §5.609)

EXHIBIT C

Income Limits for Admission  
(Effective May 15, 2023)

|                                    | 1<br>Person | 2<br>Persons | 3<br>Persons | 4<br>Persons | 5<br>Persons | 6<br>Persons | 7<br>Persons | 8<br>Persons |
|------------------------------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| City &<br>County<br>of<br>Honolulu | \$45,850    | \$52,400     | \$58,950     | \$65,500     | \$70,750     | \$76,000     | \$81,250     | \$86,500     |
| County<br>of<br>Hawaii             | \$35,300    | \$40,350     | \$45,400     | \$50,400     | \$54,450     | \$58,500     | \$62,500     | \$66,550     |
| County<br>of Kauai                 | \$42,250    | \$48,300     | \$54,350     | \$60,350     | \$65,200     | \$70,050     | \$74,850     | \$79,700     |
| County<br>of Maui                  | \$40,550    | \$46,350     | \$52,150     | \$57,900     | \$62,550     | \$67,200     | \$71,800     | \$76,450     |

EXHIBIT D

Subsidy Standards

In determining the appropriate dwelling unit size to be entered on the voucher, the following criteria shall be applied:

1. The smallest dwelling unit suitable for the family size shall be assigned.
2. Each bedroom shall be occupied by at least one person and no more than two persons shall be assigned to a bedroom.
3. Every member of the family, regardless of age, shall be counted as a person; except that a child not yet born by a pregnant household member shall not be counted as a person in determining dwelling unit size.
4. Persons of the opposite sex (other than spouses) over the age of three, and unrelated adults shall be allocated separate bedrooms;
5. A foster child shall be included in determining dwelling unit size only if the child shall remain in the dwelling unit for more than six months.
6. A live-in aide shall be provided a separate bedroom; however, no additional bedrooms shall be provided for a live-in aide's family.
7. Exceptions are allowed for verifiable health and safety reasons.

Application of the above criteria results in the following subsidy standards:

| Voucher Size | Minimum Number of Persons in Household | Maximum Number of Persons in Household |
|--------------|--|--|
| 0            | 1                                      | 1                                      |
| 1            | 1*                                     | 2                                      |
| 2            | 2                                      | 4                                      |
| 3            | 4                                      | 6                                      |
| 4            | 6                                      | 8                                      |
| 5            | 8                                      | 10                                     |

\*A voucher for a 1-bedroom dwelling unit would be issued to a single person household only when there are no (0/studio) bedroom dwellings available in the area.

In the inspection of a dwelling unit before leasing, the dwelling unit must meet the Occupancy Standards set by the respective county. See Exhibit E, "HPHA OCCUPANCY STANDARDS", which shall be incorporated as part of this subsection.

EXHIBIT E

Occupancy Standards  
(Building Code Guidelines for Determining Occupancy)

- I. City and County of Honolulu (Oahu)
  - A. One (1) or more bedrooms
    - 1. Living Room (minimum size is 150 sq. ft.)  
Measure living room area (do not include kitchen area, but may include dining space if in one area)
      - 1st 70 sq. ft. 2 persons
      - each additional 50 sq. ft. 1 person per 50 sq. ft.
    - 2. Bedrooms  
Measure bedroom area ( do not include closet, halls, bathrooms)
      - 1st 70 sq. ft. 2 persons
      - each additional 50 sq. ft. 1 person per 50 sq. ft.
  - B. Efficiency Units (Studios)  
Measure living room area ( do not include kitchen area, but may include dining space if in one area)
    - 1st 70 sq. ft. 2 persons
    - each additional 100 sq. ft. 1 person per 100 sq. ft.
- II. County of Maui (Maui, Lanai, and Molokai)
  - A. One (1) or more bedrooms
    - 1. Living Room - Cannot be used as a sleeping area
    - 2. Bedrooms  
Measure bedroom area (do not include closet, halls, bathrooms)
      - 1st 70 sq. ft. 2 persons

each additional 50 sq. ft. 1 person per  
50 sq. ft.

B. Efficiency Dwelling Units (studios)  
Measure living room area (do not include kitchen  
area, but may include dining space if in one  
area)

1st 70 sq. ft. 2 persons  
each additional 100 sq. ft. 1 person per  
100 sq. ft.

III. County of Kauai

A. One (1) or more bedrooms

1. Living Room - Cannot be used as a sleeping  
area

2. Bedroom #1  
Measure bedroom area (do not include closet,  
halls, bathrooms)

1st 120 sq. ft. 2 persons  
each additional 50 sq. ft. 1 person per  
50 sq. ft.

3. Bedroom #2  
Measure bedroom area (do not include closet,  
halls, bathrooms)

1st 70 sq. ft. 2 persons  
each additional 50 sq. ft. 1 person per  
50 sq. ft.

4. Bedroom #3 and on  
Measure bedroom area (do not include closet,  
halls, bathrooms)

1st 80 sq. ft. 2 persons  
each additional 50 sq. ft. 1 person per  
50 sq. ft.

B. Efficiency Dwelling Units (studios)  
Measure living room area (do not include kitchen  
area, but may include dining space if in one  
area)

1st 70 sq. ft. 2 persons  
each additional 100 sq. ft. 1 person per 100  
sq. ft.

IV. County of Hawaii

A. One (1) or more bedrooms (Housing Code states that overcrowding is prohibited)

1. Living Room - (must be 120 sq. ft. minimum)
2. Bedroom #1 - (must be 120 sq. ft. minimum)
3. Bedroom #2 - (must be 80 sq. ft. minimum)

B. Efficiency Dwelling Units (studios)

Measure living room area (do not include kitchen area, but may include dining space if in one area)

|                             |                          |
|-----------------------------|--------------------------|
| 1st 70 sq. ft.              | 2 persons                |
| each additional 100 sq. ft. | 1 person per 100 sq. ft. |

EXHIBIT F

Utility Allowance Schedule



EXHIBIT G

Rehabilitation U.S.C. §13661(b)(2)(A)-(C)

EXHIBIT H

Evidence of Citizenship or Eligible Immigrant Status  
(24 C.F.R. §5.508)

EXHIBIT I

Tenancy Addendum

**Hawaii Public Housing Authority  
Report for the Month of April**

**Planning and Evaluation**

Information Office Activities

On March 15, 2024, Governor Josh Green, M.D. and HPHA announced that the Kauai County Council unanimously approved the proposed plan to redevelop Kapa'a Homes.

Television news stories from KITV ISLANDNEWS, KHON2, and HAWAII NEWS NOW can be viewed at the following links below:

[https://www.kitv.com/video/kauai-county-council-approves-plans-to-add-affordable-homes-in-kapaa/video\\_d73bf695-b4a2-5c12-b542-4f8f7b404e3a.html](https://www.kitv.com/video/kauai-county-council-approves-plans-to-add-affordable-homes-in-kapaa/video_d73bf695-b4a2-5c12-b542-4f8f7b404e3a.html)

<https://www.khon2.com/kauai-news/kapaa-homes-redevelopment-project-moves-forward-on-kauai/>

<https://www.hawaiinewsnow.com/2024/03/20/redevelopment-affordable-rentals-kauai-receives-unanimous-approval/>

**Fiscal Management**

**Variance Report for February 2024**

**Revenue for the Month of February 2024**

**CFP Grant Income:** \$67,261 higher than budget

The Public Housing Capital Fund Program ("CFP") is granted by the U.S. Department of Housing and Urban Development (HUD) for capital and management activities including modernization and development of public housing. CFP drawdowns for the expenditures that are not capitalized are reported on this line as operating income. The amount of capitalized CFP expenditures is reported in the Balance Sheet under construction in progress.

It is impractical to estimate the amount not meeting the capitalization threshold during the annual budgeting process, and therefore no amount was budgeted under this line.

\$67,261 of CFP drawdowns during the month were for expenditures not to be capitalized. The amount was reported as operating income on this line.

**COCC Fee Income:** \$73,049 lower than budget

COCC receives fee income from the housing projects, Section 8 Voucher programs, and State Rent Supplement program based on the number of Unit Month Lease (UML). The unfavorable variance of \$73,049 was because the numbers of UML of those

programs were lower than anticipated, and the amounts of the management and bookkeeping fees COCC received were less than budget.

**Other Income:** \$313,222 lower than budget. The unfavorable variance of \$313,222 was because the front-line service fees generated by COCC programs and branches including Multi-Skilled Workers Pilot Program were lower than the amount budgeted.

### **Expenses for the Month of February 2024**

**Administrative:** \$650,191 lower than budget. The favorable variance of \$650,191 was due to: \$309,961 lower HPHA administrative payroll expenses; \$15,072 higher private management company's administrative payroll expenses; \$48,778 less audit fee billed and paid during the month; \$63,861 less front-line service fees charged by the Application, Hearings, and Compliance offices; \$7,573 lower legal service expenses, \$13,683 lower travel expenses; \$96,246 lower management agent fees; \$13,572 lower consultant, and other professional service expenses; \$2,991 higher expenses on office supplies, and \$114,581 lower expenses of the items not specified above (training, computer software, automobile, RSP contract administrative fees, etc.).

**Management Fees:** \$70,268 lower than budget. The favorable variance of \$70,268 was because the numbers of Unit Month Lease (UML) of Public Housing Projects, State Rent Supplement Program, and Section 8 Voucher Programs were lower than anticipated, and thus the amounts of the management fees paid to COCC were smaller.

**Tenant Services:** \$13,202 higher than budget. The unfavorable variance of \$13,202 was because: Relocation cost was higher by \$54,068 due to fire disaster of AMP34. \$5,852 budget for tenant participation did not occur. \$29,167 budget for tenant services of Emergency Housing Voucher Program was not incurred. All other tenant services were \$5,846 lower than budget.

**Utilities:** \$217,395 lower than budget. The favorable variance of \$217,395 was because the utility cost of electricity, gas, water, and sewer were \$110,392, \$41,161, \$33,190, and \$32,651 lower than budget, respectively.

**Maintenance:** \$335,901 lower than budget. The favorable variance of \$335,901 was due to: \$194,507 lower salaries and fringe benefits for HPHA maintenance employees, \$8,439 lower expenses of wages and benefits paid to maintenance employees of the private management company, \$56,646 lower expenses on furniture, appliances, and equipment, \$74,471 lower expenses on materials and supplies used for building, ground, safety, painting, electrical, janitorial maintenance, etc., \$228,334 lower front-line service fees billed by the Multi-Skilled Workers Pilot Program team, \$103,927 higher expenses on extraordinary vacant unit repairs, and \$122,570 higher expenses paid for contracted repairs and services including: refuse collection, sewer system repair, plumbing repair, pest control service, building and unit repair, tree trimming service, vehicle and equipment rental, janitorial service, elevator maintenance, fire extinguisher service, appliance repair, electrical repair, HVAC repair, etc.

**Protective Services:** \$47,163 lower than budget. The favorable variance of \$47,163 was because: The expense of outsourced security services was \$24,779 lower. The cost for security equipment installation/maintenance was \$22,384 lower.

**Insurance:** \$37,250 higher than budget. The unfavorable variance of \$37,250 is due to higher property insurance premium was paid for FY 2024. The insurance policies and premiums are administered by the State Risk Management Office.

**Bad Debt Expense:** \$354,035 lower than budget. The favorable variance of \$354,035 was the result of month-end reconciliation of tenant accounts receivable and adjustments of allowances for doubtful accounts.

**General Expenses:** \$160,607 higher than budget. The unfavorable variance of \$160,607 was due to: \$124,893 of undistributed Pcard purchase amounts. Any amount of Pcard purchases which have not been identified and distributed to related projects and programs is temperately accounted on this line, \$3,569 paid for admin fees of Port-Out Vouchers, \$46,640 charged by Section 8 late annual certification, and \$14,496 lower on other general expenses.

### **Revenue year-to-date**

**CFP Grant Income:** \$104,326 higher than budget. CFP drawdowns for expenditures that are not capitalized are reported on this line as operating income. \$104,326 of CFP drawdowns year-to-date was for the expenditures not to be capitalized.

**COCC Fee Income:** \$488,814 lower than budget. The unfavorable variance of \$488,814 was because the numbers of Unit Month Leased (UML) of Public Housing units, State Rent Supplement Program, and Section 8 Voucher programs were lower than anticipated.

**State CIP Fund:** \$213,210 higher than budget. The State of Hawaii appropriates the Capital Improvement Project fund (CIP). An expenditure of the CIP fund on capital project below the capitalization threshold of \$100,000 is recognized as operation income under this line, whereas the amount equal to or exceed the threshold is capitalized and reported in the Balance Sheet under construction in progress. Out of the CIP expenditures during the month, \$213,210 was not capitalized and was reported as income on this line.

**Grant Income:** \$1,872,104 higher than budget. The favorable variance of \$1,872,104 was because of unbudgeted funding received for vacant unit repairs.

**Other Income:** \$1,684,428 lower than budget. The unfavorable variance was because the front-line service fees generated by the Multi-Skilled Workers Pilot Program and other COCC branches were much lower than the amount budgeted.

## **Expenses year to date**

**Administrative:** \$4,513,742 lower than budget

The favorable variance of \$4,513,742 was due to:

\$2,835,356 lower payroll expenses of HPHA administrative employees,  
\$87,861 higher administrative payroll expenses of the private management company,  
\$63,826 audit fee budgeted but not paid yet,  
\$534,738 lower front-line service fees charged by the Application Services Unit,  
Hearings, and Compliance offices,  
\$121,065 less legal service expenses,  
\$60,769 lower travel expenses,  
\$37,815 higher management agent fees,  
\$25,347 lower consultant and other professional service expenses,  
\$99,684 lower expenses on office supplies, and  
\$898,634 lower expenses of the items not specified above (training, computer software,  
automobile, RSP contract administrative fees, etc.)

**Management Fees:** \$469,181 lower than budget

The favorable variance of \$469,181 was because the numbers of Unit Month Lease (UML) of Public Housing units, State Rent Supplement Program, and Section 8 Voucher programs were lower than anticipated, and thus the amounts of the management fees paid to COCC were less.

**Utilities** \$1,063,247 lower than budget

The favorable variance of \$1,063,247 was because utility costs were overall lower than budget.

Electricity cost lower by \$607,728, Gas expense lower by \$173,620, Water cost \$113,329 lower, and \$168,570 lower on sewer.

**Insurance:** \$300,888 higher than budget

The unfavorable variance of \$300,888 was because property insurance premium paid for FY 2024 was much higher. The insurance policies and premiums are administrated by the State Risk Management Office.

**Bad Debt Expense:** \$1,499,010 higher than budget

The unfavorable variance of \$1,499,010 was the result of the reconciliation of accounts receivable and adjustments of allowances for bad debt.

**General Expenses:** \$491,442 higher than budget

The unfavorable variance of \$491,442 was due to:  
\$444,817 of undistributed Pcard purchase amounts. Any amount of Pcard purchases which has not been identified and distributed to related projects and programs are temperately accounted on this line,

\$52,855 paid for admin fees of Port-Out Vouchers,  
\$86,220 charged by Section 8 late annual certification, and  
\$92,450 lower on other general expenses. Procurement



Hawaii Public Housing Authority  
 Summary of Capital Projects  
 Report As Of 02/29/24

**FEDERAL BUDGET/OBLIGATION: Capital Fund Program (CFP) (Operations, Admin, Mgt Improv)**

|                          | Total CFP<br>Appropriation | Budget<br>Construction<br>Activities<br>(BLI 1480) | Budget<br>Operations<br>(BLI 1406) | Budget<br>Management<br>Improvements<br>(BLI 1408) | Budget<br>Administration<br>(BLI 1410) | Moving to Work<br>Demo<br>(BLI 1492) | Budget<br>Contingency<br>(BLI 1502) | CFP Obligated     | % Obligated   | Unobligated<br>Balance | Obligation<br>Deadline | Notes                                   |
|--------------------------|----------------------------|--|------------------------------------|--|--|--------------------------------------|-------------------------------------|-------------------|---------------|------------------------|------------------------|---|
| CFP 728                  | \$13,501,112               | 9,250,778  | 2,700,222                          | 200,000  | 1,350,111                              | -                                    | -                                   | 13,501,112        | 100.00%       | -                      | 5/28/22                | LOCCS created 05-22-18                  |
| CFP 729                  | \$13,394,883               | 9,376,418  | 2,678,977                          | -  | 1,339,488                              | -                                    | -                                   | 13,394,883        | 100.00%       | 0                      | 4/15/23                | LOCCS created 04-11-19                  |
| CFP 730                  | \$13,799,958               | 9,639,195  | 2,759,992                          | -  | 1,379,996                              | -                                    | 20,776                              | 12,730,805        | 92.25%        | 1,069,153              | 3/25/24                | LOCCS created 04-06-20                  |
| CFP 731                  | \$13,862,820               | 3,351,930  | 3,478,009                          | -  | 1,391,204                              | -                                    | 194,754                             | 13,411,099        | 96.74%        | 451,721                | 2/22/24                | LOCCS created 02-23-21                  |
| CFP 732                  | \$14,983,151               | 1,184,156  | -                                  | -  | 1,503,716                              | 3,759,291                            | -                                   | -                 | 0.00%         | 14,983,151             | 5/11/24                | LOCCS created 05-12-22                  |
| CFP 733                  | \$14,844,329               | 10,011,969   | -                                  | -  | 1,489,105                              | 2,978,211                            | 411,768                             | -                 | 0.00%         | 14,844,329             | 2/16/25                | LOCCS created 02-17-23                  |
| <b>CFP Budget Totals</b> | <b>\$84,386,253</b>        | <b>42,814,446</b>                                  | <b>11,617,200</b>                  | <b>200,000</b>                                     | <b>8,453,621</b>                       | <b>6,737,501</b>                     | <b>627,297</b>                      | <b>53,037,899</b> | <b>62.85%</b> | <b>31,348,354</b>      |                        | <b>TOTALS FOR ALL ACTIVE CFP GRANTS</b> |

**FEDERAL EXPENDITURE: Capital Fund Program (CFP) (Operations, Admin, Mgt Improv)**

|                               | Total CFP<br>Appropriation | Expended<br>Construction<br>Activities<br>(BLI 1480) | Expended<br>Operations<br>(BLI 1406) | Expended<br>Management<br>Improvements<br>(BLI 1408) | Expended<br>Administration<br>(BLI 1410) | Moving to Work<br>Demo<br>(BLI 1492) | Expended<br>Contingency<br>(BLI 1502) | Expended to<br>Date Total<br>Funds | % Expended    | Unexpended<br>Balance | Expenditure<br>Deadline | Notes                                   |
|-------------------------------|----------------------------|--|--------------------------------------|--|--|--------------------------------------|---------------------------------------|------------------------------------|---------------|-----------------------|-------------------------|---|
| CFP 728                       | \$13,501,112               | 9,250,778  | 2,676,264                            | 200,000  | 1,338,132                                | -                                    | -                                     | 13,465,174                         | 99.73%        | 35,938                | 5/8/24                  | LOCCS created 05-22-18                  |
| CFP 729                       | \$13,394,883               | 3,011,270  | 2,665,614                            | -  | 1,332,807                                | -                                    | -                                     | 7,009,691                          | 52.33%        | 6,385,192             | 4/15/25                 | LOCCS created 04-11-19                  |
| CFP 730                       | \$13,799,958               | 637,767  | 2,744,698                            | -  | 1,372,349                                | -                                    | -                                     | 4,754,814                          | 34.46%        | 9,045,144             | 3/25/26                 | LOCCS created 04-06-20                  |
| CFP 731                       | \$13,862,820               | 1,447,756  | 2,772,564                            | -  | -  | -                                    | -                                     | 4,551,278                          | 32.83%        | 9,311,542             | 2/22/26                 | LOCCS created 02-23-21                  |
| CFP 732                       | \$14,983,151               | -  | -                                    | -  | -  | -                                    | -                                     | -                                  | 0.00%         | 14,983,151            | 5/11/26                 | LOCCS created 05-12-22                  |
| CFP 733                       | \$14,844,329               | -  | -                                    | -  | -  | -                                    | -                                     | -                                  | 0.00%         | 14,844,329            | 2/16/27                 | LOCCS created 02-17-23                  |
| <b>CFP Expenditure Totals</b> | <b>\$84,386,253</b>        | <b>14,347,572</b>                                    | <b>10,859,139</b>                    | <b>200,000</b>                                       | <b>4,043,288</b>                         | <b>-</b>                             | <b>-</b>                              | <b>29,780,956</b>                  | <b>35.29%</b> | <b>54,605,297</b>     |                         | <b>TOTALS FOR ALL ACTIVE CFP GRANTS</b> |

**STATE: Capital Improvement Program (CIP)**

|   | State<br>Appropriation | HPHA<br>Budget        | HPHA<br>Encumbered    | HPHA<br>Expended      | HPHA<br>%<br>Expended/Budget | MOF | HPHA<br>Balance<br>Expended/Budget | CIP<br>Contract<br>Encumbrance<br>Deadline | Notes             | ACT/SLH                                      |
|---|------------------------|-----------------------|-----------------------|-----------------------|------------------------------|-----|------------------------------------|--|-------------------|--|
| FY 22-23 Hale Poai Modernization            | 500,000                | 500,000               | 279,845.00            | -                     | 0.00%                        | C   | 500,000.00                         | 6/30/24                                    | Allotment Granted | ACT 88/2021 as amended by ACT 248/2022       |
| FY 22-23 Lump Sum                           | 10,000,000             | 10,000,000            | -                     | -                     | 0.00%                        | C   | 10,000,000.00                      | 6/30/24                                    |                   | ACT 88/2021 as amended by ACT 248/2022       |
| FY 22-23 Palolo Valley Homes                | 3,970,000              | 3,970,000             | -                     | -                     | 0.00%                        | C   | 3,970,000.00                       | 6/30/24                                    | Allotment Granted | ACT 88/2021 as amended by ACT 248/2022       |
| FY 22-23 Kahale Mua                         | 650,000                | 650,000               | -                     | -                     | 0.00%                        | C   | 650,000.00                         | 6/30/24                                    | Allotment Granted | ACT 88/2021 as amended by ACT 248/2022       |
| FY 22-23 Puahala Homes                      | 600,000                | 600,000               | -                     | -                     | 0.00%                        | C   | 600,000.00                         | 6/30/24                                    | Allotment Granted | ACT 88/2021 as amended by ACT 248/2022       |
| FY 22-23 Kaheki Terrace                     | 4,280,000              | 4,280,000             | 4,199,700.00          | -                     | 0.00%                        | C   | 4,280,000.00                       | 6/30/24                                    | Allotment Granted | ACT 88/2021 as amended by ACT 248/2022       |
| FY 22-23 TOD Statewide                      | 350,000                | 350,000               | -                     | -                     | 0.00%                        | C   | 350,000.00                         | 6/30/24                                    | Allotment Granted | ACT 88/2021 as amended by ACT 248/2022       |
| FY 22-23 ACT 253 Vacant Units (Cash)        | 5,000,000              | 5,000,000             | 5,000,000.00          | 4,573,531.15          | 91.47%                       | A   | 426,468.85                         | 6/30/23                                    | Allotment Granted | ACT 253/2022                                 |
| FY 23-24 Lump Sum CIP                       | 5,000,000              | 5,000,000             | -                     | -                     | 0.00%                        | C   | 5,000,000.00                       | 6/30/26                                    |                   | ACT 164/2023                                 |
| FY 23-24 Lump Sum CIP (Cash)                | 5,000,000              | 5,000,000             | -                     | -                     | 0.00%                        | A   | 5,000,000.00                       | 6/30/26                                    |                   | ACT 164/2023                                 |
| FY 23-24 Kalihi Valley Homes (Cash)         | 400,000                | 400,000               | -                     | -                     | 0.00%                        | A   | 400,000.00                         | 6/30/26                                    |                   | ACT 164/2023                                 |
| FY 23-24 Kalihi Valley Homes                | 4,400,000              | 4,400,000             | -                     | -                     | 0.00%                        | C   | 4,400,000.00                       | 6/30/26                                    |                   | ACT 164/2023                                 |
| FY 23-24 Kapaa                              | 2,000,000              | 2,000,000             | -                     | -                     | 0.00%                        | C   | 2,000,000.00                       | 6/30/26                                    |                   | ACT 164/2023                                 |
| FY 23-24 Coronavirus State and Local Fiscal | 7,000,000              | 7,000,000             | 4,320,906.79          | 386,165.82            | 5.52%                        | V   | 6,613,834.18                       | 6/30/26                                    |                   | SLFRP0134 (FAIN)                             |
| FY 24-25 Lump Sum CIP                       | 5,000,000              | 5,000,000             | -                     | -                     | 0.00%                        | C   | 5,000,000.00                       | 6/30/26                                    |                   | ACT 164/2023                                 |
| FY 24-25 Lump Sum CIP (Cash)                | 5,000,000              | 5,000,000             | #REF!                 | #REF!                 | #REF!                        | A   | #REF!                              | 6/30/26                                    |                   | ACT 164/2023                                 |
| FY 24-25 Kalihi Valley Homes (Cash)         | 800,000                | 800,000               | -                     | -                     | 0.00%                        | A   | 800,000.00                         | 6/30/26                                    |                   | ACT 164/2023                                 |
| <b>STATE CIP TOTALS</b>                     | <b>362,747,000</b>     | <b>352,388,290.56</b> | <b>319,227,298.93</b> | <b>278,480,980.85</b> | <b>79.03%</b>                |     | <b>73,907,309.71</b>               |  |                   | <b>TOTAL ACTIVE STATE CIP APPROPRIATIONS</b> |

|  |                                 |
|--|---------------------------------|
| <b>K<br/>E<br/>Y</b>   | 1406 - Operations               |
|  | 1408 - Management Improvements  |
|  | 1410 - Administration           |
|  | 1480 - General Capital Activity |
|  | 1492 - Moving to Work Demo      |
|  | 1501 - Collater Exp/Debt Srv    |
|  | 1502 - Contingency              |
|  | 1503 - RAD-CFP                  |
|  | 1504 - RAD Investment Activity  |
|  | 1505 - RAD-CPT                  |
| 1509 - Preparing for, Preventing and Responding to Coronavirus |                                 |

**Federal Capital Fund Program Budget**

These are HPHA CFP budget numbers a/o the upper left corner date. The rows reflect the CFP fund grant, the columns represent the manner in which the funds are currently budgeted. The obligation deadline indicates the date by which these funds must be at least 92% obligated.

**Federal Capital Fund Program Actual**

These are HPHA CFP actual expenditures a/o the upper left corner date. The rows reflect the CFP fund grant, the columns represent the manner in which these funds are currently being expended. The expenditure deadline indicates the date by which these funds must be expended.

**State Capital Improvement Program Budget and Expenditure**

These are HPHA CIP budget and actual expenditures a/o the upper left corner date. The rows reflect the CIP fund appropriation, the columns represent budget, encumbrance and expenditures. The encumbrance deadline indicates the date by which the funds must be encumbered.

**HAWAII PUBLIC HOUSING AUTHORITY**  
**Agency Total**  
**Actual vs Budget Comparison**  
**For the Month of February 2024, and the 8 Months ended February 29, 2024**  
(Amounts in Full Dollars)

| <b>Month of February 2024</b> |                    |                    |                 | <b>Year To Date ended February 29, 2024</b> |                        |                     |                    |                 |                    |                    |             |  |
|-------------------------------|--------------------|--------------------|-----------------|---|------------------------|---------------------|--------------------|-----------------|--------------------|--------------------|-------------|--|
| <b>Actual</b>                 | <b>Budget</b>      | <b>Variance</b>    |                 |   | <b>Actual</b>          | <b>Budget</b>       | <b>Variance</b>    |                 | <b>Prior Year</b>  | <b>Variance</b>    |             |  |
|                               |                    | <b>Amount</b>      | <b>%</b>        |   |                        |                     | <b>Amount</b>      | <b>%</b>        |                    | <b>Amount</b>      | <b>%</b>    |  |
| <b>REVENUES</b>               |                    |                    |                 |   |                        |                     |                    |                 |                    |                    |             |  |
| 2,291,850                     | 2,133,011          | 158,839            | 7%              | Dwelling Rental Income                      | 18,574,020             | 17,052,314          | 1,521,706          | 9%              | 16,789,709         | 1,784,311          | 11%         |  |
| 12,382,157                    | 12,178,388         | 203,769            | 2%              | HUD Operating Grants                        | 97,195,107             | 97,418,539          | (223,432)          | 0%              | 92,005,997         | 5,189,110          | 6%          |  |
| 67,261                        | -                  | 67,261             | 100%            | CFP Grant Income                            | 104,326                | -                   | 104,326            | 100%            | 7,103,877          | (6,999,551)        | -99%        |  |
| 508,374                       | 581,423            | (73,049)           | -13%            | COCC Fee Income                             | 4,160,248              | 4,649,062           | (488,814)          | -11%            | 5,513,784          | (1,353,537)        | -25%        |  |
| -                             | -                  | -                  | 0%              | State CIP Fund                              | 213,210                | -                   | 213,210            | 100%            | 61,859             | 151,351            | >100%       |  |
| 980,982                       | 1,045,707          | (64,725)           | -6%             | Grant Income                                | 10,237,760             | 8,365,656           | 1,872,104          | 22%             | 3,750,612          | 6,487,148          | >100%       |  |
| 238,765                       | 551,987            | (313,222)          | -57%            | Other Income                                | 2,615,172              | 4,299,600           | (1,684,428)        | -39%            | 2,485,979          | 129,193            | 5%          |  |
| <b>\$ 16,469,389</b>          | <b>16,490,516</b>  | <b>(21,127)</b>    | <b>0%</b>       | <b>Total Revenues</b>                       | <b>\$ 133,099,842</b>  | <b>131,785,171</b>  | <b>1,314,671</b>   | <b>1%</b>       | <b>127,711,819</b> | <b>5,388,024</b>   | <b>4%</b>   |  |
| <b>EXPENSES</b>               |                    |                    |                 |   |                        |                     |                    |                 |                    |                    |             |  |
| 1,840,368                     | 2,490,559          | (650,191)          | -26%            | Administrative                              | 15,228,496             | 19,742,238          | (4,513,742)        | -23%            | 15,274,576         | (46,080)           | 0%          |  |
| -                             | -                  | -                  | 0%              | Asset Management Fees                       | -                      | -                   | -                  | 0%              | -                  | -                  | 0%          |  |
| 440,781                       | 511,049            | (70,268)           | -14%            | Management Fees                             | 3,617,135              | 4,086,316           | (469,181)          | -11%            | 4,968,189          | (1,351,054)        | -27%        |  |
| 67,593                        | 70,382             | (2,789)            | -4%             | Bookkeeping Fees                            | 543,113                | 562,816             | (19,703)           | -4%             | 545,595            | (2,483)            | 0%          |  |
| 9,324,365                     | 9,166,121          | 158,244            | 2%              | Housing Assistance Payments                 | 73,034,758             | 73,320,403          | (285,645)          | 0%              | 67,249,612         | 5,785,146          | 9%          |  |
| 60,297                        | 47,095             | 13,202             | 28%             | Tenant Services                             | 392,036                | 370,911             | 21,125             | 6%              | 350,503            | 41,533             | 12%         |  |
| 1,100,266                     | 1,317,661          | (217,395)          | -16%            | Utilities                                   | 9,478,041              | 10,541,288          | (1,063,247)        | -10%            | 9,841,785          | (363,744)          | -4%         |  |
| 2,148,111                     | 2,484,012          | (335,901)          | -14%            | Maintenance                                 | 19,960,570             | 20,248,468          | (287,898)          | -1%             | 16,030,094         | 3,930,476          | 25%         |  |
| 295,281                       | 342,444            | (47,163)           | -14%            | Protective Services                         | 2,570,849              | 2,739,552           | (168,703)          | -6%             | 2,321,655          | 249,194            | 11%         |  |
| 97,876                        | 60,626             | 37,250             | 61%             | Insurance                                   | 785,896                | 485,008             | 300,888            | 62%             | 497,490            | 288,406            | 58%         |  |
| 1,900,834                     | 1,900,834          | -                  | 0%              | Depreciation Expense                        | 15,331,236             | 15,331,236          | -                  | 0%              | 15,874,923         | (543,687)          | -3%         |  |
| (324,592)                     | 29,443             | (354,035)          | <-100%          | Bad Debt Expense                            | 1,734,554              | 235,544             | 1,499,010          | >100%           | 887,346            | 847,207            | 95%         |  |
| 175,256                       | 14,649             | 160,607            | >100%           | General Expenses                            | 608,634                | 117,192             | 491,442            | >100%           | 347,655            | 260,979            | 75%         |  |
| <b>17,126,438</b>             | <b>18,434,875</b>  | <b>(1,308,437)</b> | <b>-7%</b>      | <b>Total Expenses</b>                       | <b>143,285,317</b>     | <b>147,780,972</b>  | <b>(4,495,655)</b> | <b>3%</b>       | <b>134,189,423</b> | <b>9,095,895</b>   | <b>7%</b>   |  |
| <b>\$ (657,049)</b>           | <b>(1,944,359)</b> | <b>1,287,310</b>   | <b>66%</b>      | <b>Net Income(Loss)</b>                     | <b>\$ (10,185,475)</b> | <b>(15,995,801)</b> | <b>5,810,326</b>   | <b>36%</b>      | <b>(6,477,604)</b> | <b>(3,707,871)</b> | <b>-57%</b> |  |
| <b>CASH BASIS</b>             |                    |                    |                 |   |                        |                     |                    |                 |                    |                    |             |  |
| <b>(657,049)</b>              | <b>(1,944,359)</b> | <b>1,287,310</b>   | <b>66%</b>      | Net Income(loss) per Above                  | <b>(10,185,475)</b>    | <b>(15,995,801)</b> | <b>5,810,326</b>   | <b>36%</b>      | <b>(6,477,604)</b> | <b>(3,707,871)</b> | <b>-57%</b> |  |
| Add back non cash items:      |                    |                    |                 |   |                        |                     |                    |                 |                    |                    |             |  |
| 1,900,834                     | -                  | 1,900,834          | n/a             | Depreciation Expense                        | 15,331,236             | -                   | 15,331,236         | n/a             | 15,874,923         | (543,687)          | -3%         |  |
| (324,592)                     | 29,443             | (354,035)          | <-100%          | Bad Debt Expense                            | 1,734,554              | 235,544             | 1,499,010          | >100%           | 887,346            | 847,207            | 95%         |  |
| <b>\$ 919,194</b>             | <b>(1,914,916)</b> | <b>2,834,110</b>   | <b>&gt;100%</b> | <b>TOTAL CASH BASIS</b>                     | <b>\$ 6,880,315</b>    | <b>(15,760,257)</b> | <b>22,640,572</b>  | <b>&gt;100%</b> | <b>10,284,666</b>  | <b>(3,404,351)</b> | <b>-33%</b> |  |

**HAWAII PUBLIC HOUSING AUTHORITY**  
**Consolidated Balance Sheet**  
**Agency Total**  
**As of February 29, 2024 and January 31, 2024**

|   | <u>As of February 29,<br/>2024</u> | <u>As of January 31, 2024</u> | <u>Increase<br/>(Decrease)</u> |
|---|------------------------------------|-------------------------------|--------------------------------|
| <b>ASSETS:</b>  |                                    |                               |                                |
| Cash  | 195,572,248                        | 199,666,466                   | (4,094,219)                    |
| Receivables:  |                                    |                               |                                |
| Tenant Receivables  | 8,492,537                          | 8,253,043                     | 239,495                        |
| Other   | 1,352,954                          | 1,341,748                     | 11,206                         |
| Less Allowance for Doubtful Accounts                                      | (7,660,936)                        | (7,814,228)                   | 153,293                        |
| Accounts receivable (net of allowance)                                    | 2,184,555                          | 1,780,562                     | 403,993                        |
| Accrued Interest  | 440,383                            | 473,507                       | (33,124)                       |
| Prepaid Expenses  | 389,684                            | 488,436                       | (98,752)                       |
| Inventories   | 743,332                            | 746,013                       | (2,681)                        |
| <b>Total Current Assets</b>   | <b><u>199,330,203</u></b>          | <b><u>203,154,985</u></b>     | <b><u>(3,824,782)</u></b>      |
| Property, Plant & Equipment:  |                                    |                               |                                |
| Land  | 25,518,054                         | 25,518,054                    | -                              |
| Buildings   | 805,784,162                        | 805,784,162                   | -                              |
| Furniture & Equipment   | 8,846,284                          | 8,827,280                     | 19,004                         |
| Motor vehicles  | 5,429,726                          | 5,429,726                     | -                              |
| Construction in Progress  | 66,032,564                         | 62,768,398                    | 3,264,166                      |
| Less: Accumulated Depreciation  | (554,763,056)                      | (552,862,222)                 | (1,900,834)                    |
| Notes, Loans & Mortgage Receivable-Non Current                            | 7,452,009                          | 7,413,650                     | 38,359                         |
| Other Long Term Assets  | -                                  | -                             | -                              |
| Deferred Outflows of Resources  | 6,999,222                          | 6,999,222                     | -                              |
| <b>Total Assets &amp; Deferred Outflow of Resources</b>                   | <b><u>\$ 570,629,169</u></b>       | <b><u>\$ 573,033,255</u></b>  | <b><u>(2,404,086)</u></b>      |
| <b>LIABILITIES AND NET POSITION</b>                                       |                                    |                               |                                |
| Accounts Payable  | 4,112,941                          | 4,913,159                     | (800,218)                      |
| Accrued Salaries & Wages  | 987,550                            | 987,550                       | -                              |
| Tenant Security Deposits  | 1,616,111                          | 1,619,146                     | (3,035)                        |
| Other Liabilities & Deferred Income                                       | 6,181,989                          | 7,489,027                     | (1,307,038)                    |
| <b>Total Current Liabilities</b>  | <b><u>12,898,591</u></b>           | <b><u>15,008,882</u></b>      | <b><u>(2,110,291)</u></b>      |
| Net Pension Liability   | 37,965,808                         | 37,965,808                    | -                              |
| Net OPEB Liability  | 33,424,214                         | 33,424,214                    | -                              |
| Other Long Term Liabilities   | 2,028,114                          | 2,047,524                     | (19,411)                       |
| Deferred Inflows of Resources   | 9,984,253                          | 9,984,253                     | -                              |
| <b>Net Assets</b>   |                                    |                               |                                |
| Investment in capital assets  | 356,847,735                        | 355,465,398                   | 1,382,337                      |
| Restricted Net Assets   | 1,537,373                          | 1,537,373                     | -                              |
| Unrestricted Net Assets   | 126,128,555                        | 127,128,228                   | (999,673)                      |
| Net Income Year to Date   | (10,185,475)                       | (9,528,426)                   | (657,049)                      |
| <b>Total Net Assets</b>   | <b><u>474,328,189</u></b>          | <b><u>474,602,573</u></b>     | <b><u>(274,385)</u></b>        |
| <b>Total Liabilities, Deferred Inflow of Resources &amp; Net Position</b> | <b><u>\$ 570,629,169</u></b>       | <b><u>573,033,255</u></b>     | <b><u>(2,404,086)</u></b>      |

HAWAII PUBLIC HOUSING AUTHORITY  
Federal Low Rent Program

Actual vs Budget Comparison

For the Month of February 2024, and the 8 Months ended February 29, 2024

(Amounts in Full Dollars)

| Month of February 2024 |                  |                    |                  | Year To Date ended February 29, 2024 |                    |                   |                    |                  |                    |                    |                  |
|------------------------|------------------|--------------------|------------------|--------------------------------------|--------------------|-------------------|--------------------|------------------|--------------------|--------------------|------------------|
| Actual                 | Budget           | Variance           |                  | Actual                               | Budget             | Variance          |                    | Prior Year       | Variance           |                    |                  |
|                        |                  | Amount             | %                |                                      |                    | Amount            | %                  |                  | Amount             | %                  |                  |
| <b>REVENUES</b>        |                  |                    |                  |                                      |                    |                   |                    |                  |                    |                    |                  |
| 1,936,071              | 1,805,657        | 130,414            | 7%               | Dwelling Rental Income               | 15,641,848         | 14,436,570        | 1,205,278          | 8%               | 13,954,109         | 1,687,739          | 12%              |
| 2,081,890              | 2,811,131        | (729,242)          | -26%             | HUD Operating Grants                 | 20,184,808         | 22,489,048        | (2,304,241)        | -10%             | 21,050,349         | (865,542)          | -4%              |
| 67,261                 | -                | 67,261             | 100%             | CFP Grant Income                     | 104,326            | -                 | 104,326            | 100%             | 7,103,877          | (6,999,551)        | -99%             |
| -                      | -                | -                  | 0%               | COCC Fee Income                      | -                  | -                 | -                  | 0%               | -                  | -                  | 0%               |
| -                      | -                | -                  | 0%               | State CIP Fund                       | 191,291            | -                 | 191,291            | 100%             | 61,859             | 129,432            | >100%            |
| 160,723                | -                | 160,723            | 100%             | Grant Income                         | 4,783,790          | -                 | 4,783,790          | 100%             | 1,028,014          | 3,755,776          | >100%            |
| 42,671                 | 52,135           | (9,464)            | -18%             | Other Income                         | 501,886            | 417,080           | 84,806             | 20%              | 468,613            | 33,273             | 7%               |
| <b>\$ 4,288,616</b>    | <b>4,668,923</b> | <b>(380,307)</b>   | <b>-8%</b>       | <b>Total Revenues</b>                | <b>41,407,949</b>  | <b>37,342,698</b> | <b>4,065,251</b>   | <b>11%</b>       | <b>43,666,822</b>  | <b>(2,258,873)</b> | <b>-5%</b>       |
| <b>EXPENSES</b>        |                  |                    |                  |                                      |                    |                   |                    |                  |                    |                    |                  |
| 752,125                | 917,403          | (165,278)          | -18%             | Administrative                       | 6,024,237          | 7,317,899         | (1,293,662)        | -18%             | 6,009,078          | 15,159             | 0%               |
| -                      | -                | -                  | 0%               | Asset Management Fees                | -                  | -                 | -                  | 0%               | -                  | -                  | 0%               |
| 309,309                | 340,598          | (31,289)           | -9%              | Management Fees                      | 2,482,386          | 2,723,508         | (241,122)          | -9%              | 3,885,153          | (1,402,767)        | -36%             |
| 33,308                 | 35,281           | (1,974)            | -6%              | Bookkeeping Fees                     | 267,173            | 282,128           | (14,956)           | -5%              | 269,175            | (2,003)            | -1%              |
| 697                    | 232              | 465                | >100%            | Housing Assistance Payments          | 5,576              | 1,856             | 3,720              | >100%            | 14,517             | (8,941)            | -62%             |
| 59,477                 | 15,664           | 43,813             | >100%            | Tenant Services                      | 321,779            | 118,463           | 203,316            | >100%            | 41,877             | 279,902            | >100%            |
| 921,692                | 1,054,367        | (132,675)          | -13%             | Utilities                            | 7,773,445          | 8,434,936         | (661,491)          | -8%              | 7,934,625          | (161,180)          | -2%              |
| 1,694,221              | 1,902,870        | (208,649)          | -11%             | Maintenance                          | 16,161,473         | 15,539,683        | 621,790            | 4%               | 12,368,139         | 3,793,334          | 31%              |
| 279,646                | 325,870          | (46,224)           | -14%             | Protective Services                  | 2,449,328          | 2,606,960         | (157,632)          | -6%              | 2,305,563          | 143,765            | 6%               |
| 78,871                 | 47,056           | 31,815             | 68%              | Insurance                            | 630,401            | 376,448           | 253,953            | 67%              | 389,199            | 241,202            | 62%              |
| 1,557,961              | -                | 1,557,961          | 100%             | Depreciation Expense                 | 12,588,257         | -                 | 12,588,257         | 100%             | 13,167,894         | (579,637)          | -4%              |
| (307,438)              | 26,950           | (334,388)          | <-100%           | Bad Debt Expense                     | 1,628,066          | 215,600           | 1,412,466          | >100%            | 837,757            | 790,309            | 94%              |
| 96,579                 | 110              | 96,469             | >100%            | General Expenses                     | 373,575            | 880               | 372,695            | >100%            | 198,954            | 174,621            | 88%              |
| <b>5,476,447</b>       | <b>4,666,401</b> | <b>810,046</b>     | <b>17%</b>       | <b>Total Expenses</b>                | <b>50,705,696</b>  | <b>37,618,361</b> | <b>13,087,335</b>  | <b>-35%</b>      | <b>47,421,933</b>  | <b>3,283,764</b>   | <b>7%</b>        |
| <b>\$ (1,187,832)</b>  | <b>2,522</b>     | <b>(1,190,354)</b> | <b>&lt;-100%</b> | <b>Net Income(Loss)</b>              | <b>(9,297,747)</b> | <b>(275,663)</b>  | <b>(9,022,084)</b> | <b>&lt;-100%</b> | <b>(3,755,111)</b> | <b>(5,542,637)</b> | <b>&lt;-100%</b> |
| <b>CASH BASIS:</b>     |                  |                    |                  |                                      |                    |                   |                    |                  |                    |                    |                  |
| <b>(1,187,832)</b>     | <b>2,522</b>     | <b>(1,190,354)</b> | <b>&lt;-100%</b> | Net Income(loss) per Above           | <b>(9,297,747)</b> | <b>(275,663)</b>  | <b>(9,022,084)</b> | <b>&lt;-100%</b> | <b>(3,755,111)</b> | <b>(5,542,637)</b> | <b>&lt;-100%</b> |
| 1,557,961              | -                | 1,557,961          | 100%             | Add back non cash items:             |                    |                   |                    |                  |                    |                    |                  |
| (307,438)              | 26,950           | (334,388)          | <-100%           | Depreciation Expense                 | 12,588,257         | -                 | 12,588,257         | 100%             | 13,167,894         | (579,637)          | -4%              |
|                        |                  |                    |                  | Bad Debt Expense                     | 1,628,066          | 215,600           | 1,412,466          | >100%            | 837,757            | 790,309            | 94%              |
| <b>\$ 62,691</b>       | <b>29,472</b>    | <b>33,219</b>      | <b>&gt;100%</b>  | <b>Total</b>                         | <b>4,918,576</b>   | <b>(60,063)</b>   | <b>4,978,639</b>   | <b>&gt;100%</b>  | <b>10,250,540</b>  | <b>(5,331,964)</b> | <b>-52%</b>      |

HAWAII PUBLIC HOUSING AUTHORITY  
Federal Low Rent Program

Actual vs Budget Comparison

For the Month of February 2024, and the 8 Months ended February 29, 2024

(Amounts in Full Dollars)

| Month of February 2024 |                  |                  |                  | ACCRUAL BASIS                 | Year To Date ended February 29, 2024 |                   |                    |                  |                    |                    |                  |
|------------------------|------------------|------------------|------------------|-------------------------------|--------------------------------------|-------------------|--------------------|------------------|--------------------|--------------------|------------------|
| Actual                 | Budget           | Variance         |                  |                               | Actual                               | Budget            | Variance           |                  | Prior Year         | Variance           |                  |
|                        |                  | Amount           | %                |                               |                                      | Amount            | %                  |                  | Amount             | %                  |                  |
|                        |                  |                  |                  | <b>REVENUES</b>               |                                      |                   |                    |                  |                    |                    |                  |
| 334,909                | 354,853          | (19,944)         | -6%              | Asset Management Project - 30 | 3,042,373                            | 2,833,108         | 209,265            | 7%               | 3,048,823          | (6,450)            | 0%               |
| 443,517                | 443,839          | (322)            | 0%               | Asset Management Project - 31 | 4,236,629                            | 3,550,712         | 685,917            | 19%              | 3,835,735          | 400,894            | 10%              |
| 374,789                | 449,135          | (74,346)         | -17%             | Asset Management Project - 32 | 5,657,440                            | 3,593,080         | 2,064,360          | 57%              | 3,703,946          | 1,953,494          | 53%              |
| 287,797                | 352,842          | (65,045)         | -18%             | Asset Management Project - 33 | 2,768,484                            | 2,822,736         | (54,252)           | -2%              | 2,996,663          | (228,178)          | -8%              |
| 536,864                | 514,347          | 22,517           | 4%               | Asset Management Project - 34 | 4,656,882                            | 4,114,776         | 542,106            | 13%              | 5,832,072          | (1,175,191)        | -20%             |
| 436,326                | 526,132          | (89,806)         | -17%             | Asset Management Project - 35 | 4,230,845                            | 4,209,056         | 21,789             | 1%               | 5,361,365          | (1,130,520)        | -21%             |
| 243,545                | 254,387          | (10,842)         | -4%              | Asset Management Project - 37 | 2,169,048                            | 2,035,096         | 133,952            | 7%               | 2,508,093          | (339,044)          | -14%             |
| 324,445                | 294,457          | 29,988           | 10%              | Asset Management Project - 38 | 4,009,350                            | 2,355,656         | 1,653,694          | 70%              | 2,982,620          | 1,026,730          | 34%              |
| 157,177                | 190,502          | (33,325)         | -17%             | Asset Management Project - 39 | 1,609,879                            | 1,521,900         | 87,979             | 6%               | 3,476,674          | (1,866,795)        | -54%             |
| 214,143                | 246,263          | (32,120)         | -13%             | Asset Management Project - 40 | 1,932,282                            | 1,968,152         | (35,870)           | -2%              | 2,154,020          | (221,738)          | -10%             |
| 231,909                | 192,955          | 38,954           | 20%              | Asset Management Project - 43 | 1,644,872                            | 1,544,738         | 100,134            | 6%               | 1,669,910          | (25,038)           | -1%              |
| 422,852                | 264,635          | 158,217          | 60%              | Asset Management Project - 44 | 2,175,663                            | 2,117,080         | 58,583             | 3%               | 1,983,533          | 192,129            | 10%              |
| 315,547                | 209,119          | 106,428          | 51%              | Asset Management Project - 45 | 1,892,434                            | 1,672,952         | 219,482            | 13%              | 1,642,329          | 250,105            | 15%              |
| 85,961                 | 92,719           | (6,758)          | -7%              | Asset Management Project - 46 | 762,000                              | 741,752           | 20,248             | 3%               | 1,151,227          | (389,227)          | -34%             |
| 141,702                | 153,404          | (11,702)         | -8%              | Asset Management Project - 49 | 1,251,089                            | 1,227,232         | 23,857             | 2%               | 1,544,783          | (293,694)          | -19%             |
| 119,797                | 129,334          | (9,537)          | -7%              | Asset Management Project - 50 | 1,061,334                            | 1,034,672         | 26,662             | 3%               | 2,379,208          | (1,317,873)        | -55%             |
| -                      | -                | -                | 0%               | Asset Management Project - 52 | -                                    | -                 | -                  | 0%               | -                  | -                  | 0%               |
| <b>\$ 4,671,280</b>    | <b>4,668,923</b> | <b>2,357</b>     | <b>0%</b>        | <b>Total Revenues</b>         | <b>\$ 43,100,605</b>                 | <b>37,342,698</b> | <b>5,757,907</b>   | <b>15%</b>       | <b>46,271,001</b>  | <b>(3,170,396)</b> | <b>-7%</b>       |
|                        |                  |                  |                  | <b>NET INCOME(LOSS)</b>       |                                      |                   |                    |                  |                    |                    |                  |
| (122,920)              | (9,762)          | (113,158)        | <-100%           | Asset Management Project - 30 | (822,874)                            | (74,568)          | (748,306)          | <-100%           | (163,038)          | (659,836)          | <-100%           |
| (135,726)              | 6,173            | (141,899)        | <-100%           | Asset Management Project - 31 | (1,324,795)                          | 25,550            | (1,350,345)        | <-100%           | (1,053,314)        | (271,481)          | -26%             |
| (25,337)               | 14,805           | (40,142)         | <-100%           | Asset Management Project - 32 | 231,600                              | (36,012)          | 267,612            | >100%            | 263,897            | (32,297)           | -12%             |
| (7,738)                | 3,751            | (11,489)         | <-100%           | Asset Management Project - 33 | (350,312)                            | 66,359            | (416,671)          | <-100%           | 78,590             | (428,902)          | <-100%           |
| (63,402)               | (29,464)         | (33,938)         | <-100%           | Asset Management Project - 34 | (150,828)                            | (260,431)         | 109,603            | 42%              | 1,249,437          | (1,400,265)        | <-100%           |
| (197,093)              | (60,632)         | (136,461)        | <-100%           | Asset Management Project - 35 | (1,009,301)                          | (480,658)         | (528,643)          | <-100%           | 152,654            | (1,161,954)        | <-100%           |
| (199,073)              | (19,476)         | (179,597)        | <-100%           | Asset Management Project - 37 | (1,504,011)                          | (158,271)         | (1,345,740)        | <-100%           | (1,079,572)        | (424,439)          | -39%             |
| (68,199)               | (5,396)          | (62,803)         | <-100%           | Asset Management Project - 38 | 61,087                               | (24,337)          | 85,424             | >100%            | (330,401)          | 391,488            | >100%            |
| (26,654)               | (11,739)         | (14,915)         | <-100%           | Asset Management Project - 39 | (567,491)                            | (195,343)         | (372,148)          | <-100%           | 1,009,762          | (1,577,252)        | <-100%           |
| (29,187)               | (11,719)         | (17,468)         | <-100%           | Asset Management Project - 40 | (302,613)                            | (91,522)          | (211,091)          | <-100%           | (163,359)          | (139,254)          | -85%             |
| (22,684)               | 24,333           | (47,017)         | <-100%           | Asset Management Project - 43 | (288,359)                            | 189,503           | (477,862)          | <-100%           | (34,369)           | (253,990)          | <-100%           |
| 162,510                | 63,597           | 98,913           | >100%            | Asset Management Project - 44 | (154,151)                            | 511,192           | (665,343)          | <-100%           | (185,147)          | 30,997             | 17%              |
| 89,292                 | 35,945           | 53,347           | >100%            | Asset Management Project - 45 | 81,936                               | 248,898           | (166,962)          | -67%             | (190,556)          | 272,492            | >100%            |
| (57,259)               | (9,435)          | (47,824)         | <-100%           | Asset Management Project - 46 | (540,116)                            | (74,917)          | (465,199)          | <-100%           | (110,614)          | (429,502)          | <-100%           |
| (26,270)               | 1,112            | (27,382)         | <-100%           | Asset Management Project - 49 | (378,196)                            | 12,259            | (390,455)          | <-100%           | (55,401)           | (322,795)          | <-100%           |
| (75,426)               | 10,429           | (85,855)         | <-100%           | Asset Management Project - 50 | (586,668)                            | 66,635            | (653,303)          | <-100%           | (539,499)          | (47,170)           | -9%              |
| -                      | -                | -                | 0%               | Asset Management Project - 52 | -                                    | -                 | -                  | 0%               | -                  | -                  | 0%               |
| <b>\$ (805,167)</b>    | <b>2,522</b>     | <b>(807,689)</b> | <b>&lt;-100%</b> | <b>Total Net Income(Loss)</b> | <b>\$ (7,605,092)</b>                | <b>(275,663)</b>  | <b>(7,329,429)</b> | <b>&lt;-100%</b> | <b>(1,150,932)</b> | <b>(6,454,160)</b> | <b>&lt;-100%</b> |

HAWAII PUBLIC HOUSING AUTHORITY  
Federal Low Rent Program

Actual vs Budget Comparison

For the Month of February 2024, and the 8 Months ended February 29, 2024

(Amounts in Full Dollars)

| Month of February 2024  |                  |                |                 | CASH BASIS                    | Year To Date ended February 29, 2024 |                   |                  |                 |                   |                    |             |
|-------------------------|------------------|----------------|-----------------|-------------------------------|--------------------------------------|-------------------|------------------|-----------------|-------------------|--------------------|-------------|
| Actual                  | Budget           | Variance       |                 |                               | Actual                               | Budget            | Variance         |                 | Prior Year        | Variance           |             |
|                         |                  | Amount         | %               |                               |                                      | Amount            | %                |                 | Amount            | %                  |             |
| <b>REVENUES</b>         |                  |                |                 |                               |                                      |                   |                  |                 |                   |                    |             |
| 334,909                 | 354,853          | (19,944)       | -6%             | Asset Management Project - 30 | 3,042,373                            | 2,833,108         | 209,265          | 7%              | 3,048,823         | (6,450)            | 0%          |
| 443,517                 | 443,839          | (322)          | 0%              | Asset Management Project - 31 | 4,236,629                            | 3,550,712         | 685,917          | 19%             | 3,835,735         | 400,894            | 10%         |
| 374,789                 | 449,135          | (74,346)       | -17%            | Asset Management Project - 32 | 5,657,440                            | 3,593,080         | 2,064,360        | 57%             | 3,703,946         | 1,953,494          | 53%         |
| 287,797                 | 352,842          | (65,045)       | -18%            | Asset Management Project - 33 | 2,768,484                            | 2,822,736         | (54,252)         | -2%             | 2,996,663         | (228,178)          | -8%         |
| 536,864                 | 514,347          | 22,517         | 4%              | Asset Management Project - 34 | 4,656,882                            | 4,114,776         | 542,106          | 13%             | 5,832,072         | (1,175,191)        | -20%        |
| 436,326                 | 526,132          | (89,806)       | -17%            | Asset Management Project - 35 | 4,230,845                            | 4,209,056         | 21,789           | 1%              | 5,361,365         | (1,130,520)        | -21%        |
| 243,545                 | 254,387          | (10,842)       | -4%             | Asset Management Project - 37 | 2,169,048                            | 2,035,096         | 133,952          | 7%              | 2,508,093         | (339,044)          | -14%        |
| 324,445                 | 294,457          | 29,988         | 10%             | Asset Management Project - 38 | 4,009,350                            | 2,355,656         | 1,653,694        | 70%             | 2,982,620         | 1,026,730          | 34%         |
| 157,177                 | 190,502          | (33,325)       | -17%            | Asset Management Project - 39 | 1,609,879                            | 1,521,900         | 87,979           | 6%              | 3,476,674         | (1,866,795)        | -54%        |
| 214,143                 | 246,263          | (32,120)       | -13%            | Asset Management Project - 40 | 1,932,282                            | 1,968,152         | (35,870)         | -2%             | 2,154,020         | (221,738)          | -10%        |
| 231,909                 | 192,955          | 38,954         | 20%             | Asset Management Project - 43 | 1,644,872                            | 1,544,738         | 100,134          | 6%              | 1,669,910         | (25,038)           | -1%         |
| 422,852                 | 264,635          | 158,217        | 60%             | Asset Management Project - 44 | 2,175,663                            | 2,117,080         | 58,583           | 3%              | 1,983,533         | 192,129            | 10%         |
| 315,547                 | 209,119          | 106,428        | 51%             | Asset Management Project - 45 | 1,892,434                            | 1,672,952         | 219,482          | 13%             | 1,642,329         | 250,105            | 15%         |
| 85,961                  | 92,719           | (6,758)        | -7%             | Asset Management Project - 46 | 762,000                              | 741,752           | 20,248           | 3%              | 1,151,227         | (389,227)          | -34%        |
| 141,702                 | 153,404          | (11,702)       | -8%             | Asset Management Project - 49 | 1,251,089                            | 1,227,232         | 23,857           | 2%              | 1,544,783         | (293,694)          | -19%        |
| 119,797                 | 129,334          | (9,537)        | -7%             | Asset Management Project - 50 | 1,061,334                            | 1,034,672         | 26,662           | 3%              | 2,379,208         | (1,317,873)        | -55%        |
| -                       | -                | -              | 0%              | Asset Management Project - 52 | -                                    | -                 | -                | 0%              | -                 | -                  | 0%          |
| <b>\$ 4,671,280</b>     | <b>4,668,923</b> | <b>2,357</b>   | <b>0%</b>       | <b>Total Revenues</b>         | <b>\$ 43,100,605</b>                 | <b>37,342,698</b> | <b>5,757,907</b> | <b>15%</b>      | <b>46,271,001</b> | <b>(3,170,396)</b> | <b>-7%</b>  |
| <b>NET INCOME(LOSS)</b> |                  |                |                 |                               |                                      |                   |                  |                 |                   |                    |             |
| (36,734)                | (6,252)          | (30,482)       | <-100%          | Asset Management Project - 30 | 127,791                              | (46,488)          | 174,279          | >100%           | 750,999           | (623,208)          | -83%        |
| 8,039                   | 7,840            | 199            | 3%              | Asset Management Project - 31 | 572,979                              | 38,886            | 534,093          | >100%           | 753,802           | (180,823)          | -24%        |
| 3,451                   | 16,472           | (13,021)       | -79%            | Asset Management Project - 32 | 724,365                              | (22,676)          | 747,041          | >100%           | 763,737           | (39,372)           | -5%         |
| 57,425                  | 5,001            | 52,424         | >100%           | Asset Management Project - 33 | 519,791                              | 76,359            | 443,432          | >100%           | 901,534           | (381,743)          | -42%        |
| 29,246                  | (27,797)         | 57,043         | >100%           | Asset Management Project - 34 | 696,336                              | (247,095)         | 943,431          | >100%           | 2,291,695         | (1,595,359)        | -70%        |
| (101,955)               | (58,857)         | (43,098)       | -73%            | Asset Management Project - 35 | 57,531                               | (466,458)         | 523,989          | >100%           | 1,251,876         | (1,194,345)        | -95%        |
| 5,999                   | (15,725)         | 21,724         | >100%           | Asset Management Project - 37 | 345,271                              | (128,263)         | 473,534          | >100%           | 720,574           | (375,303)          | -52%        |
| 49,090                  | (3,728)          | 52,818         | >100%           | Asset Management Project - 38 | 1,362,494                            | (10,993)          | 1,373,487        | >100%           | 927,402           | 435,092            | 47%         |
| 36,244                  | (10,072)         | 46,316         | >100%           | Asset Management Project - 39 | 349,119                              | (182,007)         | 531,126          | >100%           | 1,969,986         | (1,620,866)        | -82%        |
| (23,334)                | (10,939)         | (12,395)       | <-100%          | Asset Management Project - 40 | (68,441)                             | (85,282)          | 16,841           | 20%             | 8,502             | (76,943)           | <-100%      |
| 31,379                  | 28,474           | 2,905          | 10%             | Asset Management Project - 43 | 269,662                              | 222,631           | 47,031           | 21%             | 470,046           | (200,384)          | -43%        |
| 229,474                 | 64,014           | 165,460        | >100%           | Asset Management Project - 44 | 683,662                              | 514,528           | 169,134          | 33%             | 584,196           | 99,466             | 17%         |
| 152,548                 | 36,361           | 116,187        | >100%           | Asset Management Project - 45 | 661,729                              | 252,226           | 409,503          | >100%           | 434,314           | 227,415            | 52%         |
| (11,487)                | (8,436)          | (3,051)        | -36%            | Asset Management Project - 46 | 77,953                               | (66,925)          | 144,878          | >100%           | 444,141           | (366,188)          | -82%        |
| 8,074                   | 2,237            | 5,837          | >100%           | Asset Management Project - 49 | 37,461                               | 21,259            | 16,202           | 76%             | 346,579           | (309,118)          | -89%        |
| 7,896                   | 10,879           | (2,983)        | -27%            | Asset Management Project - 50 | 193,529                              | 70,235            | 123,294          | >100%           | 235,338           | (41,810)           | -18%        |
| -                       | -                | -              | 0%              | Asset Management Project - 52 | -                                    | -                 | -                | 0%              | -                 | -                  | 0%          |
| <b>\$ 445,355</b>       | <b>29,472</b>    | <b>415,883</b> | <b>&gt;100%</b> | <b>Total Net Income(Loss)</b> | <b>\$ 6,611,232</b>                  | <b>(60,063)</b>   | <b>6,671,295</b> | <b>&gt;100%</b> | <b>12,854,719</b> | <b>(6,243,488)</b> | <b>-49%</b> |

**HAWAII PUBLIC HOUSING AUTHORITY  
Housing Assistance Voucher Programs**

**Actual vs Budget Comparison**

For the Month of February 2024, and the 8 Months ended February 29, 2024

(Amounts in Full Dollars)

| Month of February 2024 |                  |                  |                 | Year To Date ended February 29, 2024 |                   |                   |                  |             |                   |                  |            |
|------------------------|------------------|------------------|-----------------|--------------------------------------|-------------------|-------------------|------------------|-------------|-------------------|------------------|------------|
| Actual                 | Budget           | Variance         |                 | Actual                               | Budget            | Variance          |                  | Prior Year  | Variance          |                  |            |
|                        |                  | Amount           | %               |                                      |                   | Amount            | %                |             | Amount            | %                |            |
| <b>REVENUES</b>        |                  |                  |                 | <b>REVENUES</b>                      |                   |                   |                  |             |                   |                  |            |
| -                      | -                | -                | 0%              | Dwelling Rental Income               | -                 | -                 | -                | 0%          | -                 | -                | 0%         |
| 5,812,154              | 5,606,298        | 205,856          | 4%              | HUD Operating Grants                 | 44,065,414        | 44,841,819        | (776,405)        | -2%         | 40,867,979        | 3,197,435        | 8%         |
| 0                      | -                | 0                | 100%            | CFP Grant Income                     | (0)               | -                 | (0)              | -100%       | 0                 | (0)              | <-100%     |
| -                      | -                | -                | 0%              | COCC Fee Income                      | -                 | -                 | -                | 0%          | -                 | -                | 0%         |
| -                      | -                | -                | 0%              | State CIP Fund                       | -                 | -                 | -                | 0%          | -                 | -                | 0%         |
| -                      | -                | -                | 0%              | Grant Income                         | -                 | -                 | -                | 0%          | -                 | -                | 0%         |
| 3,760                  | 6,873            | (3,113)          | -45%            | Other Income                         | 38,447            | 54,984            | (16,537)         | -30%        | 107,860           | (69,413)         | -64%       |
| <b>\$ 5,815,914</b>    | <b>5,613,171</b> | <b>202,743</b>   | <b>4%</b>       | <b>Total Revenues</b>                | <b>44,103,861</b> | <b>44,896,803</b> | <b>(792,942)</b> | <b>-2%</b>  | <b>40,975,839</b> | <b>3,128,022</b> | <b>8%</b>  |
| <b>EXPENSES</b>        |                  |                  |                 | <b>EXPENSES</b>                      |                   |                   |                  |             |                   |                  |            |
| 191,429                | 269,599          | (78,170)         | -29%            | Administrative                       | 1,443,455         | 2,141,834         | (698,379)        | -33%        | 1,469,919         | (26,465)         | -2%        |
| -                      | -                | -                | 0%              | Asset Management Fees                | -                 | -                 | -                | 0%          | -                 | -                | 0%         |
| 97,720                 | 116,190          | (18,470)         | -16%            | Management Fees                      | 866,220           | 929,520           | (63,300)         | -7%         | 797,212           | 69,008           | 9%         |
| 27,960                 | 28,388           | (428)            | -2%             | Bookkeeping Fees                     | 225,420           | 227,059           | (1,639)          | -1%         | 225,302           | 118              | 0%         |
| 4,903,043              | 5,024,374        | (121,331)        | -2%             | Housing Assistance Payments          | 40,529,257        | 40,186,427        | 342,830          | 1%          | 37,607,228        | 2,922,029        | 8%         |
| -                      | 29,723           | (29,723)         | -100%           | Tenant Services                      | 56,430            | 237,784           | (181,354)        | -76%        | 302,288           | (245,858)        | -81%       |
| 2,893                  | 2,479            | 414              | 17%             | Utilities                            | 27,014            | 19,832            | 7,182            | 36%         | 17,646            | 9,368            | 53%        |
| 4,799                  | 775              | 4,024            | >100%           | Maintenance                          | 14,727            | 6,200             | 8,527            | >100%       | 7,850             | 6,877            | 88%        |
| 662                    | 216              | 446              | >100%           | Protective Services                  | 6,026             | 1,728             | 4,298            | >100%       | 1,701             | 4,325            | >100%      |
| 1,437                  | 1,340            | 97               | 7%              | Insurance                            | 11,499            | 10,720            | 779              | 7%          | 10,723            | 776              | 7%         |
| 4,783                  | -                | 4,783            | 100%            | Depreciation Expense                 | 38,264            | -                 | 38,264           | 100%        | 20,106            | 18,158           | 90%        |
| -                      | -                | -                | 0%              | Bad Debt Expense                     | -                 | -                 | -                | 0%          | -                 | -                | 0%         |
| 50,210                 | 14,379           | 35,831           | >100%           | General Expenses                     | 163,115           | 115,032           | 48,083           | 42%         | 120,094           | 43,021           | 36%        |
| <b>5,284,935</b>       | <b>5,487,463</b> | <b>(202,528)</b> | <b>-4%</b>      | <b>Total Expenses</b>                | <b>43,381,426</b> | <b>43,876,136</b> | <b>(494,710)</b> | <b>1%</b>   | <b>40,580,069</b> | <b>2,801,357</b> | <b>7%</b>  |
| <b>\$ 530,979</b>      | <b>125,708</b>   | <b>405,271</b>   | <b>&gt;100%</b> | <b>Net Income(Loss)</b>              | <b>722,435</b>    | <b>1,020,667</b>  | <b>(298,232)</b> | <b>-29%</b> | <b>395,770</b>    | <b>326,665</b>   | <b>83%</b> |
| <b>CASH BASIS:</b>     |                  |                  |                 | <b>CASH BASIS:</b>                   |                   |                   |                  |             |                   |                  |            |
| 530,979                | 125,708          | 405,271          | >100%           | Net Income(loss) per Above           | 722,435           | 1,020,667         | (298,232)        | -29%        | 395,770           | 326,665          | 83%        |
| 4,783                  | -                | 4,783            | 100%            | Add back non cash items:             |                   |                   |                  |             |                   |                  |            |
| -                      | -                | -                | 0%              | Depreciation Expense                 | 38,264            | -                 | 38,264           | 100%        | 20,106            | 18,158           | 90%        |
|                        |                  |                  |                 | Bad Debt Expense                     | -                 | -                 | -                | 0%          | -                 | -                | 0%         |
| <b>\$ 535,762</b>      | <b>125,708</b>   | <b>410,054</b>   | <b>&gt;100%</b> |                                      | <b>760,699</b>    | <b>1,020,667</b>  | <b>(259,968)</b> | <b>-25%</b> | <b>415,876</b>    | <b>344,823</b>   | <b>83%</b> |

HAWAII PUBLIC HOUSING AUTHORITY

State Low Rent

Actual vs Budget Comparison

For the Month of February 2024, and the 8 Months ended February 29, 2024

(Amounts in Full Dollars)

| Month of February 2024   |                 |                 |             | Year To Date ended February 29, 2024 |                    |                  |                  |             |                  |                  |                  |
|--------------------------|-----------------|-----------------|-------------|--------------------------------------|--------------------|------------------|------------------|-------------|------------------|------------------|------------------|
| Actual                   | Budget          | Variance        |             | Actual                               | Budget             | Variance         |                  | Prior Year  | Variance         |                  |                  |
|                          |                 | Amount          | %           |                                      |                    | Amount           | %                |             | Amount           | %                |                  |
| <b>REVENUES</b>          |                 |                 |             |                                      |                    |                  |                  |             |                  |                  |                  |
| 122,198                  | 111,259         | 10,939          | 10%         | Dwelling Rental Income               | 940,455            | 886,984          | 53,471           | 6%          | 897,825          | 42,630           | 5%               |
| -                        | -               | -               | 0%          | HUD Operating Grants                 | -                  | -                | -                | 0%          | -                | -                | 0%               |
| -                        | -               | -               | 0%          | CFP Grant Income                     | -                  | -                | -                | 0%          | -                | -                | 0%               |
| -                        | -               | -               | 0%          | COCC Fee Income                      | -                  | -                | -                | 0%          | -                | -                | 0%               |
| -                        | -               | -               | 0%          | State CIP Fund                       | 7,306              | -                | 7,306            | 100%        | -                | 7,306            | 100%             |
| 10,222                   | 107,166         | (96,944)        | -90%        | Grant Income                         | 628,117            | 857,328          | (229,211)        | -27%        | 838,686          | (210,569)        | -25%             |
| 17,460                   | 3,785           | 13,675          | >100%       | Other Income                         | 57,370             | 29,272           | 28,098           | 96%         | 36,019           | 21,351           | 59%              |
| <b>\$ 149,880</b>        | <b>222,210</b>  | <b>(72,330)</b> | <b>-33%</b> | <b>Total Revenues</b>                | <b>1,633,248</b>   | <b>1,773,584</b> | <b>(140,336)</b> | <b>-8%</b>  | <b>1,772,530</b> | <b>(139,282)</b> | <b>-8%</b>       |
| <b>EXPENSES</b>          |                 |                 |             |                                      |                    |                  |                  |             |                  |                  |                  |
| 38,965                   | 54,705          | (15,740)        | -29%        | Administrative                       | 337,877            | 431,688          | (93,811)         | -22%        | 313,676          | 24,202           | 8%               |
| -                        | -               | -               | 0%          | Asset Management Fees                | -                  | -                | -                | 0%          | -                | -                | 0%               |
| 19,095                   | 21,238          | (2,143)         | -10%        | Management Fees                      | 155,634            | 169,104          | (13,470)         | -8%         | 159,299          | (3,664)          | -2%              |
| 1,890                    | 1,995           | (105)           | -5%         | Bookkeeping Fees                     | 15,390             | 15,885           | (495)            | -3%         | 15,698           | (308)            | -2%              |
| -                        | -               | -               | 0%          | Housing Assistance Payments          | -                  | -                | -                | 0%          | -                | -                | 0%               |
| 64                       | 43              | 21              | 49%         | Tenant Services                      | 4,400              | 1,344            | 3,056            | >100%       | 341              | 4,058            | >100%            |
| 59,371                   | 79,189          | (19,818)        | -25%        | Utilities                            | 514,593            | 633,512          | (118,919)        | -19%        | 579,206          | (64,613)         | -11%             |
| 89,574                   | 137,274         | (47,700)        | -35%        | Maintenance                          | 871,743            | 1,141,514        | (269,771)        | -24%        | 693,340          | 178,402          | 26%              |
| 10,227                   | 15,000          | (4,773)         | -32%        | Protective Services                  | 86,177             | 120,000          | (33,823)         | -28%        | 3,279            | 82,898           | >100%            |
| 4,636                    | 2,967           | 1,669           | 56%         | Insurance                            | 37,063             | 23,736           | 13,327           | 56%         | 23,016           | 14,047           | 61%              |
| 106,340                  | -               | 106,340         | 100%        | Depreciation Expense                 | 850,709            | -                | 850,709          | 100%        | 850,709          | -                | 0%               |
| (15,341)                 | 2,302           | (17,643)        | <-100%      | Bad Debt Expense                     | 98,915             | 18,416           | 80,499           | >100%       | 47,786           | 51,129           | >100%            |
| -                        | -               | -               | 0%          | General Expenses                     | -                  | -                | -                | 0%          | -                | -                | 0%               |
| <b>314,821</b>           | <b>314,713</b>  | <b>108</b>      | <b>0%</b>   | <b>Total Expenses</b>                | <b>2,972,501</b>   | <b>2,555,199</b> | <b>417,302</b>   | <b>-16%</b> | <b>2,686,350</b> | <b>286,151</b>   | <b>11%</b>       |
| <b>\$ (164,941)</b>      | <b>(92,503)</b> | <b>(72,438)</b> | <b>-78%</b> | <b>Net Income(Loss)</b>              | <b>(1,339,253)</b> | <b>(781,615)</b> | <b>(557,638)</b> | <b>-71%</b> | <b>(913,819)</b> | <b>(425,433)</b> | <b>-47%</b>      |
| <b>CASH BASIS:</b>       |                 |                 |             |                                      |                    |                  |                  |             |                  |                  |                  |
| (164,941)                | (92,503)        | (72,438)        | -78%        | Net Income(loss) per Above           | (1,339,253)        | (781,615)        | (557,638)        | -71%        | (913,819)        | (425,433)        | -47%             |
| Add back non cash items: |                 |                 |             |                                      |                    |                  |                  |             |                  |                  |                  |
| 106,340                  | -               | 106,340         | 100%        | Depreciation Expense                 | 850,709            | -                | 850,709          | 100%        | 850,709          | -                | 0%               |
| (15,341)                 | 2,302           | (17,643)        | <-100%      | Bad Debt Expense                     | 98,915             | 18,416           | 80,499           | >100%       | 47,786           | 51,129           | >100%            |
| <b>\$ (73,942)</b>       | <b>(90,201)</b> | <b>16,259</b>   | <b>18%</b>  |                                      | <b>(389,629)</b>   | <b>(763,199)</b> | <b>373,570</b>   | <b>49%</b>  | <b>(15,325)</b>  | <b>(374,304)</b> | <b>&lt;-100%</b> |



**HAWAII PUBLIC HOUSING AUTHORITY**  
**State Elderly Program**  
**Actual vs Budget Comparison**  
**For the Month of February 2024, and the 8 Months ended February 29, 2024**

(Amounts in Full Dollars)

| Month of February 2024 |                |                  |                  |                             | Year To Date ended February 29, 2024 |                  |                    |                  |                    |                  |                 |  |
|------------------------|----------------|------------------|------------------|-----------------------------|--------------------------------------|------------------|--------------------|------------------|--------------------|------------------|-----------------|--|
| Actual                 | Budget         | Variance         |                  |                             | Actual                               | Budget           | Variance           |                  | Prior Year         | Variance         |                 |  |
|                        |                | Amount           | %                |                             |                                      |                  | Amount             | %                |                    | Amount           | %               |  |
| <b>REVENUES</b>        |                |                  |                  |                             |                                      |                  |                    |                  |                    |                  |                 |  |
| 193,709                | 184,660        | 9,049            | 5%               | Dwelling Rental Income      | 1,510,780                            | 1,477,280        | 33,500             | 2%               | 1,414,120          | 96,660           | 7%              |  |
| -                      | -              | -                | 0%               | HUD Operating Grants        | -                                    | -                | -                  | 0%               | -                  | -                | 0%              |  |
| -                      | -              | -                | 0%               | CFP Grant Income            | -                                    | -                | -                  | 0%               | -                  | -                | 0%              |  |
| -                      | -              | -                | 0%               | COCC Fee Income             | -                                    | -                | -                  | 0%               | -                  | -                | 0%              |  |
| -                      | -              | -                | 0%               | State CIP Fund              | 14,612                               | -                | 14,612             | 100%             | -                  | 14,612           | 100%            |  |
| -                      | 272,922        | (272,922)        | -100%            | Grant Income                | 1,051,167                            | 2,183,376        | (1,132,209)        | -52%             | -                  | 1,051,167        | 100%            |  |
| 26,930                 | 4,892          | 22,038           | >100%            | Other Income                | 93,249                               | 39,136           | 54,113             | >100%            | 30,699             | 62,550           | >100%           |  |
| <b>\$ 220,639</b>      | <b>462,474</b> | <b>(241,835)</b> | <b>-52%</b>      | <b>Total Revenues</b>       | <b>2,669,809</b>                     | <b>3,699,792</b> | <b>(1,029,983)</b> | <b>-28%</b>      | <b>1,444,819</b>   | <b>1,224,990</b> | <b>85%</b>      |  |
| <b>EXPENSES</b>        |                |                  |                  |                             |                                      |                  |                    |                  |                    |                  |                 |  |
| 59,796                 | 91,517         | (31,721)         | -35%             | Administrative              | 516,443                              | 726,544          | (210,101)          | -29%             | 519,895            | (3,451)          | -1%             |  |
| -                      | -              | -                | 0%               | Asset Management Fees       | -                                    | -                | -                  | 0%               | -                  | -                | 0%              |  |
| 14,102                 | 16,577         | (2,475)          | -15%             | Management Fees             | 108,347                              | 132,616          | (24,269)           | -18%             | 121,860            | (13,513)         | -11%            |  |
| 4,088                  | 4,321          | (234)            | -5%              | Bookkeeping Fees            | 32,280                               | 34,568           | (2,288)            | -7%              | 32,498             | (218)            | -1%             |  |
| -                      | -              | -                | 0%               | Housing Assistance Payments | -                                    | -                | -                  | 0%               | -                  | -                | 0%              |  |
| 756                    | 1,240          | (484)            | -39%             | Tenant Services             | 7,008                                | 9,920            | (2,912)            | -29%             | 693                | 6,315            | >100%           |  |
| 93,116                 | 145,570        | (52,454)         | -36%             | Utilities                   | 956,177                              | 1,164,560        | (208,383)          | -18%             | 1,055,190          | (99,012)         | -9%             |  |
| 104,263                | 152,866        | (48,603)         | -32%             | Maintenance                 | 827,045                              | 1,234,928        | (407,883)          | -33%             | 779,655            | 47,390           | 6%              |  |
| 850                    | 336            | 514              | >100%            | Protective Services         | 3,967                                | 2,688            | 1,279              | 48%              | 2,312              | 1,655            | 72%             |  |
| 7,575                  | 4,778          | 2,797            | 59%              | Insurance                   | 60,602                               | 38,224           | 22,378             | 59%              | 37,905             | 22,697           | 60%             |  |
| 151,429                | -              | 151,429          | 100%             | Depreciation Expense        | 1,211,438                            | -                | 1,211,438          | 100%             | 1,211,438          | -                | 0%              |  |
| (1,812)                | 191            | (2,003)          | <-100%           | Bad Debt Expense            | 7,572                                | 1,528            | 6,044              | >100%            | 1,803              | 5,769            | >100%           |  |
| -                      | -              | -                | 0%               | General Expenses            | -                                    | -                | -                  | 0%               | -                  | -                | 0%              |  |
| <b>434,163</b>         | <b>417,396</b> | <b>16,767</b>    | <b>4%</b>        | <b>Total Expenses</b>       | <b>3,730,880</b>                     | <b>3,345,576</b> | <b>385,304</b>     | <b>-12%</b>      | <b>3,763,249</b>   | <b>(32,368)</b>  | <b>-1%</b>      |  |
| <b>\$ (213,524)</b>    | <b>45,078</b>  | <b>(258,602)</b> | <b>&lt;-100%</b> | <b>Net Income(Loss)</b>     | <b>(1,061,071)</b>                   | <b>354,216</b>   | <b>(1,415,287)</b> | <b>&lt;-100%</b> | <b>(2,318,430)</b> | <b>1,257,358</b> | <b>54%</b>      |  |
| <b>CASH BASIS:</b>     |                |                  |                  |                             |                                      |                  |                    |                  |                    |                  |                 |  |
| <b>(213,524)</b>       | <b>45,078</b>  | <b>(258,602)</b> | <b>&lt;-100%</b> | Net Income(loss) per Above  | <b>(1,061,071)</b>                   | <b>354,216</b>   | <b>(1,415,287)</b> | <b>&lt;-100%</b> | <b>(2,318,430)</b> | <b>1,257,358</b> | <b>54%</b>      |  |
|                        |                |                  |                  | Add back non cash items:    |                                      |                  |                    |                  |                    |                  |                 |  |
| 151,429                | -              | 151,429          | 100%             | Depreciation Expense        | 1,211,438                            | -                | 1,211,438          | 100%             | 1,211,438          | -                | 0%              |  |
| (1,812)                | 191            | (2,003)          | <-100%           | Bad Debt Expense            | 7,572                                | 1,528            | 6,044              | >100%            | 1,803              | 5,769            | >100%           |  |
| <b>\$ (63,907)</b>     | <b>45,269</b>  | <b>(109,176)</b> | <b>&lt;-100%</b> |                             | <b>157,939</b>                       | <b>355,744</b>   | <b>(197,805)</b>   | <b>-56%</b>      | <b>(1,105,188)</b> | <b>1,263,127</b> | <b>&gt;100%</b> |  |

**HAWAII PUBLIC HOUSING AUTHORITY**  
**State Rent Supplement Program**  
**Actual vs Budget Comparison**  
**For the Month of February 2024, and the 8 Months ended February 29, 2024**

(Amounts in Full Dollars)

| Month of February 2024 |                |                  |                 |                             | Year To Date ended February 29, 2024 |                  |                    |                 |                |                  |                 |  |
|------------------------|----------------|------------------|-----------------|-----------------------------|--------------------------------------|------------------|--------------------|-----------------|----------------|------------------|-----------------|--|
| Actual                 | Budget         | Variance         |                 |                             | Actual                               | Budget           | Variance           |                 | Prior Year     | Variance         |                 |  |
|                        |                | Amount           | %               |                             |                                      |                  | Amount             | %               |                | Amount           | %               |  |
| <b>REVENUES</b>        |                |                  |                 |                             |                                      |                  |                    |                 |                |                  |                 |  |
| -                      | -              | -                | 0%              | Dwelling Rental Income      | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| -                      | -              | -                | 0%              | HUD Operating Grants        | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| -                      | -              | -                | 0%              | CFP Grant Income            | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| -                      | -              | -                | 0%              | COCC Fee Income             | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| -                      | -              | -                | 0%              | State CIP Fund              | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| 563,343                | 629,257        | (65,914)         | -10%            | Grant Income                | 4,489,903                            | 5,034,056        | (544,153)          | -11%            | 920,475        | 3,569,428        | >100%           |  |
| -                      | -              | -                | 0%              | Other Income                | 158                                  | -                | 158                | 100%            | 48             | 110              | >100%           |  |
| <b>\$ 563,343</b>      | <b>629,257</b> | <b>(65,914)</b>  | <b>-10%</b>     | <b>Total Revenues</b>       | <b>4,490,061</b>                     | <b>5,034,056</b> | <b>(543,995)</b>   | <b>-11%</b>     | <b>920,523</b> | <b>3,569,538</b> | <b>&gt;100%</b> |  |
| <b>EXPENSES</b>        |                |                  |                 |                             |                                      |                  |                    |                 |                |                  |                 |  |
| 6,644                  | 88,434         | (81,790)         | -92%            | Administrative              | 61,211                               | 702,330          | (641,119)          | -91%            | 62,847         | (1,636)          | -3%             |  |
| -                      | -              | -                | 0%              | Asset Management Fees       | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| 555                    | 16,446         | (15,891)         | -97%            | Management Fees             | 4,548                                | 131,568          | (127,020)          | -97%            | 4,665          | (117)            | -3%             |  |
| 348                    | 397            | (49)             | -12%            | Bookkeeping Fees            | 2,850                                | 3,176            | (326)              | -10%            | 2,923          | (73)             | -3%             |  |
| 82,163                 | 525,048        | (442,885)        | -84%            | Housing Assistance Payments | 671,571                              | 4,200,384        | (3,528,813)        | -84%            | 696,130        | (24,559)         | -4%             |  |
| -                      | -              | -                | 0%              | Tenant Services             | 68                                   | -                | 68                 | 100%            | -              | 68               | 100%            |  |
| 107                    | 79             | 28               | 36%             | Utilities                   | 1,002                                | 632              | 370                | 59%             | 717            | 285              | 40%             |  |
| 177                    | 18             | 159              | >100%           | Maintenance                 | 542                                  | 144              | 398                | >100%           | 287            | 254              | 89%             |  |
| 4                      | 7              | (3)              | -38%            | Protective Services         | 243                                  | 56               | 187                | >100%           | 70             | 172              | >100%           |  |
| 54                     | 37             | 17               | 46%             | Insurance                   | 432                                  | 296              | 136                | 46%             | 332            | 100              | 30%             |  |
| -                      | -              | -                | 0%              | Depreciation Expense        | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| -                      | -              | -                | 0%              | Bad Debt Expense            | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| -                      | -              | -                | 0%              | General Expenses            | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| <b>90,052</b>          | <b>630,466</b> | <b>(540,414)</b> | <b>-86%</b>     | <b>Total Expenses</b>       | <b>742,466</b>                       | <b>5,038,586</b> | <b>(4,296,120)</b> | <b>85%</b>      | <b>767,972</b> | <b>(25,506)</b>  | <b>-3%</b>      |  |
| <b>\$ 473,291</b>      | <b>(1,209)</b> | <b>474,500</b>   | <b>&gt;100%</b> | <b>Net Income(Loss)</b>     | <b>3,747,595</b>                     | <b>(4,530)</b>   | <b>3,752,125</b>   | <b>&gt;100%</b> | <b>152,551</b> | <b>3,595,043</b> | <b>&gt;100%</b> |  |
| <b>CASH BASIS:</b>     |                |                  |                 |                             |                                      |                  |                    |                 |                |                  |                 |  |
| 473,291                | (1,209)        | 474,500          | >100%           | Net Income(loss) per Above  | 3,747,595                            | (4,530)          | 3,752,125          | >100%           | 152,551        | 3,595,043        | >100%           |  |
| -                      | -              | -                | 0%              | Add back non cash items:    |                                      |                  |                    |                 |                |                  |                 |  |
| -                      | -              | -                | 0%              | Depreciation Expense        | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| -                      | -              | -                | 0%              | Bad Debt Expense            | -                                    | -                | -                  | 0%              | -              | -                | 0%              |  |
| <b>\$ 473,291</b>      | <b>(1,209)</b> | <b>474,500</b>   | <b>&gt;100%</b> |                             | <b>3,747,595</b>                     | <b>(4,530)</b>   | <b>3,752,125</b>   | <b>&gt;100%</b> | <b>152,551</b> | <b>3,595,043</b> | <b>&gt;100%</b> |  |

**HAWAII PUBLIC HOUSING AUTHORITY**  
**Section 8 Contract Administration**  
**Actual vs Budget Comparison**  
**For the Month of February 2024, and the 8 Months ended February 29, 2024**

(Amounts in Full Dollars)

| Month of February 2024 |                  |                |                 |                             | Year To Date ended February 29, 2024 |                   |                  |             |                   |                  |            |    |   |  |
|------------------------|------------------|----------------|-----------------|-----------------------------|--------------------------------------|-------------------|------------------|-------------|-------------------|------------------|------------|----|---|--|
| Actual                 | Budget           | Variance       |                 | %                           |                                      | Actual            | Budget           | Variance    |                   | Prior Year       | Variance   |    | % |  |
|                        |                  | Amount         | %               |                             |                                      |                   |                  | Amount      | %                 |                  |            |    |   |  |
| -                      | -                | -              | 0%              |                             | <b>REVENUES</b>                      |                   |                  |             |                   |                  |            |    |   |  |
| 4,488,113              | 3,760,959        | 727,154        | 19%             | Dwelling Rental Income      | -                                    | -                 | -                | 0%          | -                 | -                | -          | 0% |   |  |
| -                      | -                | -              | 0%              | HUD Operating Grants        | 32,944,886                           | 30,087,672        | 2,857,214        | 9%          | 30,087,669        | 2,857,216        | 9%         |    |   |  |
| -                      | -                | -              | 0%              | CFP Grant Income            | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | COCC Fee Income             | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | State CIP Fund              | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | Grant Income                | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| 39                     | 35               | 4              | 12%             | Other Income                | 319                                  | 280               | 39               | 14%         | 281               | 39               | 14%        |    |   |  |
| <b>\$ 4,488,152</b>    | <b>3,760,994</b> | <b>727,158</b> | <b>19%</b>      | <b>Total Revenues</b>       | <b>32,945,205</b>                    | <b>30,087,952</b> | <b>2,857,253</b> | <b>9%</b>   | <b>30,087,950</b> | <b>2,857,255</b> | <b>9%</b>  |    |   |  |
|                        |                  |                |                 | <b>EXPENSES</b>             |                                      |                   |                  |             |                   |                  |            |    |   |  |
| 225                    | 100,264          | (100,039)      | -100%           | Administrative              | 743,786                              | 791,460           | (47,674)         | -6%         | 823,879           | (80,094)         | -10%       |    |   |  |
| -                      | -                | -              | 0%              | Asset Management Fees       | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | Management Fees             | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | Bookkeeping Fees            | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| 4,338,463              | 3,616,467        | 721,996        | 20%             | Housing Assistance Payments | 31,828,354                           | 28,931,736        | 2,896,618        | 10%         | 28,931,737        | 2,896,618        | 10%        |    |   |  |
| -                      | -                | -              | 0%              | Tenant Services             | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | Utilities                   | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | Maintenance                 | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | Protective Services         | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| 1,037                  | 604              | 433            | 72%             | Insurance                   | 8,299                                | 4,832             | 3,467            | 72%         | 4,830             | 3,468            | 72%        |    |   |  |
| -                      | -                | -              | 0%              | Depreciation Expense        | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | Bad Debt Expense            | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | General Expenses            | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| <b>4,339,725</b>       | <b>3,717,335</b> | <b>622,390</b> | <b>17%</b>      | <b>Total Expenses</b>       | <b>32,580,439</b>                    | <b>29,728,028</b> | <b>2,852,411</b> | <b>-10%</b> | <b>29,760,446</b> | <b>2,819,992</b> | <b>9%</b>  |    |   |  |
| <b>\$ 148,427</b>      | <b>43,659</b>    | <b>104,768</b> | <b>&gt;100%</b> | <b>Net Income(Loss)</b>     | <b>364,766</b>                       | <b>359,924</b>    | <b>4,842</b>     | <b>1%</b>   | <b>327,504</b>    | <b>37,262</b>    | <b>11%</b> |    |   |  |
|                        |                  |                |                 | <b>CASH BASIS:</b>          |                                      |                   |                  |             |                   |                  |            |    |   |  |
| 148,427                | 43,659           | 104,768        | >100%           | Net Income(loss) per Above  | 364,766                              | 359,924           | 4,842            | 1%          | 327,504           | 37,262           | 11%        |    |   |  |
| -                      | -                | -              | 0%              | Add back non cash items:    |                                      |                   |                  |             |                   |                  |            |    |   |  |
| -                      | -                | -              | 0%              | Depreciation Expense        | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| -                      | -                | -              | 0%              | Bad Debt Expense            | -                                    | -                 | -                | 0%          | -                 | -                | 0%         |    |   |  |
| <b>\$ 148,427</b>      | <b>43,659</b>    | <b>104,768</b> | <b>&gt;100%</b> |                             | <b>364,766</b>                       | <b>359,924</b>    | <b>4,842</b>     | <b>1%</b>   | <b>327,504</b>    | <b>37,262</b>    | <b>11%</b> |    |   |  |

**HAWAII PUBLIC HOUSING AUTHORITY**  
**Central Office Cost Center**  
**Actual vs Budget Comparison**  
**For the Month of February 2024, and the 8 Months ended February 29, 2024**  
(Amounts in Full Dollars)

| <b>Month of February 2024</b> |                  |                  |                  |
|-------------------------------|------------------|------------------|------------------|
| Actual                        | Budget           | Variance         |                  |
|                               |                  | Amount           | %                |
| -                             | -                | -                | 0%               |
| -                             | -                | -                | 0%               |
| -                             | -                | -                | 0%               |
| 508,374                       | 581,423          | (73,049)         | -13%             |
| -                             | -                | -                | 0%               |
| 30,682                        | 36,362           | (5,680)          | -16%             |
| 129,535                       | 473,625          | (344,090)        | -73%             |
| <b>\$ 668,591</b>             | <b>1,091,410</b> | <b>(422,819)</b> | <b>-39%</b>      |
| 767,244                       | 949,245          | (182,001)        | -19%             |
| -                             | -                | -                | 0%               |
| -                             | -                | -                | 0%               |
| -                             | -                | -                | 0%               |
| -                             | -                | -                | 0%               |
| -                             | 425              | (425)            | -100%            |
| 11,382                        | 18,218           | (6,836)          | -38%             |
| 247,367                       | 281,478          | (34,111)         | -12%             |
| 3,892                         | 1,015            | 2,877            | >100%            |
| 3,101                         | 2,924            | 177              | 6%               |
| 15,028                        | -                | 15,028           | 100%             |
| -                             | -                | -                | 0%               |
| 28,467                        | 160              | 28,307           | >100%            |
| <b>1,076,482</b>              | <b>1,253,465</b> | <b>(176,983)</b> | <b>-14%</b>      |
| <b>\$ (407,891)</b>           | <b>(162,055)</b> | <b>(245,836)</b> | <b>&lt;-100%</b> |
| <b>(407,891)</b>              | <b>(162,055)</b> | <b>(245,836)</b> | <b>&lt;-100%</b> |
| 15,028                        | -                | 15,028           | 100%             |
| -                             | -                | -                | 0%               |
| <b>\$ (392,863)</b>           | <b>(162,055)</b> | <b>(230,808)</b> | <b>&lt;-100%</b> |

| <b>Year To Date ended February 29, 2024</b> |                    |                    |             |                  |                    |                  |
|---|--------------------|--------------------|-------------|------------------|--------------------|------------------|
| Actual                                      | Budget             | Variance           |             | Prior Year       | Variance           |                  |
|   |                    | Amount             | %           |                  | Amount             | %                |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| 4,160,248                                   | 4,649,062          | (488,814)          | -11%        | 5,513,784        | (1,353,537)        | -25%             |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| 208,215                                     | 290,896            | (82,681)           | -28%        | 4,895            | 203,320            | >100%            |
| 1,821,568                                   | 3,673,712          | (1,852,144)        | -50%        | 1,765,854        | 55,714             | 3%               |
| <b>6,190,031</b>                            | <b>8,613,670</b>   | <b>(2,423,639)</b> | <b>-28%</b> | <b>7,284,534</b> | <b>(1,094,503)</b> | <b>-15%</b>      |
| 5,881,863                                   | 7,477,181          | (1,595,319)        | -21%        | 5,708,674        | 173,189            | 3%               |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| 2,351                                       | 3,400              | (1,049)            | -31%        | 5,304            | (2,953)            | -56%             |
| 101,562                                     | 145,744            | (44,182)           | -30%        | 127,437          | (25,875)           | -20%             |
| 2,013,942                                   | 2,262,785          | (248,843)          | -11%        | 2,095,276        | (81,333)           | -4%              |
| 25,109                                      | 8,120              | 16,989             | >100%       | 8,730            | 16,380             | >100%            |
| 24,809                                      | 23,392             | 1,417              | 6%          | 23,495           | 1,314              | 6%               |
| 120,216                                     | -                  | 120,216            | 100%        | 100,355          | 19,861             | 20%              |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| 71,944                                      | 1,280              | 70,664             | >100%       | 28,608           | 43,337             | >100%            |
| <b>8,241,796</b>                            | <b>9,921,902</b>   | <b>(1,680,106)</b> | <b>17%</b>  | <b>8,097,878</b> | <b>143,919</b>     | <b>2%</b>        |
| <b>(2,051,766)</b>                          | <b>(1,308,232)</b> | <b>(743,534)</b>   | <b>-57%</b> | <b>(813,344)</b> | <b>(1,238,422)</b> | <b>&lt;-100%</b> |
| <b>(2,051,766)</b>                          | <b>(1,308,232)</b> | <b>(743,534)</b>   | <b>-57%</b> | <b>(813,344)</b> | <b>(1,238,422)</b> | <b>&lt;-100%</b> |
| 120,216                                     | -                  | 120,216            | 100%        | 100,355          | 19,861             | 20%              |
| -   | -                  | -                  | 0%          | -                | -                  | 0%               |
| <b>(1,931,550)</b>                          | <b>(1,308,232)</b> | <b>(623,318)</b>   | <b>-48%</b> | <b>(712,989)</b> | <b>(1,218,561)</b> | <b>&lt;-100%</b> |

**CASH BASIS:**

|                            |             |             |           |      |           |             |        |
|----------------------------|-------------|-------------|-----------|------|-----------|-------------|--------|
| Net Income(loss) per Above | (2,051,766) | (1,308,232) | (743,534) | -57% | (813,344) | (1,238,422) | <-100% |
| Add back non cash items:   |             |             |           |      |           |             |        |
| Depreciation Expense       | 120,216     | -           | 120,216   | 100% | 100,355   | 19,861      | 20%    |
| Bad Debt Expense           | -           | -           | -         | 0%   | -         | -           | 0%     |

**Solicitation(s) Issued in March 2024:**

| Title   | Due Date       |
|---|----------------|
| Solicitation No. IFB PMB-01-2024: Furnish Solar Hot Water System Tune Up and Maintenance Services for Kalihi Valley Homes Under Asset Management Project 31 on Oahu | April 10, 2024 |

**Contract(s) Executed in March 2024:**

**MEI Corporation Contract No.:** CMS 23-11-SC01

No-Cost Time Extension of 292 Calendar Days to provide Labor, Material and Equipment for Replacement of Sewage Pump Station at Wahiawa Terrace (AMP 49) on Oahu

Completion Date: January 13, 2025

Suppl Amount: n/a

Total Amount: \$1,468,000.00

**Artistic Builders Corporation Contract No.:** CMS 23-04-CO01

Provide Additional Labor, Material and Equipment for Lead-Based Paint Abatement at Kapaa and Hui O Hanamaulu (AMP 38) on Kauai

Completion Date: February 2, 2024

Suppl Amount: \$24,863.86

Total Amount: \$994,863.86

**T. Iida Contracting, Ltd. Contract No.:** CMS 20-07-SC05

Provide Additional Labor, Material and Equipment for Accessibility and Site Improvements at Hookipa Kahaluu (AMP 45) on Oahu

Completion Date: June 6, 2024

Suppl Amount: \$24,615.00

Total Amount: \$2,819,462.00

**Brown and Caldwell & Subs Contract No.:** CMS 19-18-SC03, dba Brown and Caldwell

No-Cost Time Extension of 325 Calendar Days to Provide Design and Consultant Services for Upgrade to Emergency Generators at Kalakaua Homes, Makua Alii,

Paoakalani (AMP 34), Kalanihuia, Punchbowl Homes, Pumehana (AMP 35), Hale Poai, Kamalu, Hoolulu, and Laiola (MU 42) on Oahu

End Date: January 25, 2025

Suppl Amount: n/a

Total Amount: \$540,388.00

**Planned Solicitation/Contract Activities for March / April 2024**

**Solicitation(s):**

Invitation for Bids for Preventive Maintenance Services to Fire Alarm Systems at

AMPs 34, 35, 45 and MU 42 on Oahu

Invitation for Bids for Operation and Maintenance Services to Individual Wastewater Systems at AMP 38 on Kauai

Invitation for Bids for Operation and Maintenance Services to Individual Wastewater Systems at AMP 37, 43 and 46 on Hawaii Island

Invitation for Bids for Operation and Maintenance Services to Elevators at the Ka Hale O Kamehaikana Community Resource Center on Oahu

Request for Proposals for Property Management, Maintenance and Resident Services at AMPs 40, 44, 45, 49, 50, and MU 42 on Oahu and AMPs 43, 46 and Ke Kumu Ekahi on Hawaii Island

**Contract(s):**

Execute New/Supplemental Contracts for various services on an ongoing basis as determined necessary and in the best interest of the State. Contract extensions may include services such as property management, preventive maintenance, security, refuse collection, and custodial services.

**Development**

**Kuhio Park Terrace Low-Rises and Kuhio Homes Redevelopment**

On March 7, HPHA submitted the Section 18 Disposition application to HUD for the redevelopment. Upon further consideration, the developer and HPHA determined not to include a construction laydown area for this phase and, as a result, will not be submitting a Section 18 Demolition application.

On March 12, HUD approved the Authorization to Use Grant Funds for the redevelopment.

**School Street Elderly Housing Redevelopment**

HPHA is on track to close on financing in April 2024. The redevelopment is expected to receive HHFDC's approval to close at its April 11<sup>th</sup> Board Meeting.

Building M was relocated to the makai side of Building E and HPHA's Fiscal Management Office has moved back into the building. The construction barricade is being installed to secure the perimeter of the jobsite. The interior of buildings D and H are being prepared for demolition in April.

**Ka Lei Momi**

Planning is on-going for both Kapaa and Mayor Wright Homes as the team awaits financing award and prepares for an anticipate late 2025 construction start.

On March 13<sup>th</sup>, HPHA’s executive director and the developer team met with Hawaii Island Mayor Mitch Roth and his cabinet to update them on the Lanakila redevelopment.

**Property Management and Maintenance Services Branch**

20 units Move Ins and 16 units Move Outs for March

In the month of March, HPHA completed 535 annual reexaminations, 513 interim reexaminations, and 14 new admissions.

Maui Wildfires Update: we continue to assist our residents with relocation to permanent housing which included offers to transfer to another public housing unit or a Section 8 Tenant Protection Voucher. As of March 27, 2024, there are a total of four (2) families still pending relocation to permanent housing.

AMP 34 Makua Alii: Exterior and interior clean-up efforts continue.

**Construction Management**

Program Activities and Major Projects

Vacant Units Undergoing Modernization as of March 22, 2024:

State 35 units; Federal 186 units

Summary status of total Vacant Units overseen by the Construction Management Branch by units made vacant for Modernization projects including demolition/disposition and vacant units by Type C (repairs requiring more than routine maintenance):

|          | Modernization           |               |                           |              |                | Sub Total | Type C                                    | TOTAL |
|----------|-------------------------|---------------|---------------------------|--------------|----------------|-----------|---|-------|
|          | Demolition/<br>Disposal | Casualty Loss | Holding for<br>Relocation | Construction | Design\Bidding |           | Emergency<br>Proclamation<br>Vacant Units |       |
| O’ahu    | 4                       | 12            | 10                        | 50           | 0              | 76        | 83  | 159   |
| Kaua’i   | 0                       | 0             | 0                         | 0            | 0              | 0         | 10  | 10    |
| Maui     | 0                       | 43            | 0                         | 0            | 0              | 43        | 4   | 47    |
| Hawai’i  | 0                       | 0             | 0                         | 0            | 0              | 0         | 5   | 5     |
| Subtotal | 4                       | 55            | 10                        | 50           | 0              | 119       | 102                                       | 221   |

**Multi-Site Projects:**

Lead-Based Paint (LBP) Risk Assessment and Abatement:

Maintaining an updated LBP risk assessment reports until all LBP has been removed is a HUD requirement. The consultant has received lead assessment questionnaires from

most of the properties with positive lead-based paint test results. The Consultant can now proceed with scheduling the targeted sampling based on the responses.

#### Upgrade to Emergency Generators at AMP 34, 35 and 42 Projects:

The construction contract is executed. The contractor is currently working on submittals. The building permit is ready for pickup. The contractor is gathering signatures to pull the permit. The consultant is working on the Post Contract Drawings from the building permit comments. A pre-construction meeting is in the process of being scheduled.

#### Emergency Proclamation – Vacant Units Repairs

In order to expedite getting vacant units back on line, the large number of vacant units in each AMP are being grouped into smaller batches for a quicker turn than if one contractor worked on all the AMP units. There are a total of 106 units that were procured under the Governor's latest Emergency Proclamation.

A pre-construction meeting was held with four contractors for 41 vacant units. Contracts were executed for 28 additional vacant units on O'ahu, Kaua'i, and Molokai. Contracts were routed for final execution for 32 additional vacant units on O'ahu, Hawai'i and Kaua'i and 2 supplemental change orders for the 5 added vacant units on Oahu.

A total of four (4) units have been returned to HPHA on O'ahu, [three (3) units at Kamehameha Homes and one (1) unit at Ka'ahumanu Homes].

#### **State Elderly Projects (MU 42):**

Hale Po'ai –

Site and Building Improvements: Phase 2 (20 units) is complete. The Phase 3 tenants are currently vacating their units and moving into the Phase 2 units. Once vacated, the contractor will start construction on Phase 3.

Ho'olulu and Kamalu

Re-Roofing and Site Improvements: HPHA is reviewing design consultant's revised proposal for the revised scope removing the Fire Alarm System upgrade that is now being done under the Emergency Proclamation.

Fire Alarm System Improvements The Contract for the design-build contractor under the Emergency Proclamation is executed.

#### **Oahu Projects:**

Punchbowl Homes – Upgrade to the Fire Alarm System

The drawings are currently with the City and County Building Permit review branch for further permit processing. The project is scheduled to go out to bid in April 2024 to meet the State CIP (Capital Improvement Project) encumbrance deadline of June 30, 2024.

Waipahu I & II – Building Improvements



The project is scheduled to go out to bid in April or early May 2024.

AMP 33 – Upgrade to water heating systems at Ka’ahumanu Homes and Kamehameha Homes

Water heater installation is complete at Kamehameha Homes and Ka’ahumanu Homes is complete. Final punch list walk and inspection was completed. The contractor is working to correct the punch list items.

Palolo Valley Homes

Major Modernization, Phase 4 (Buildings 1, 2, 7, 8, and 9 – 29 Units

After an initial request in December 2023, the Hawaiian Electric crews removed power to the building on March 15, 2024. The Hawaii Gas was unable to find underground shut off valves to the buildings and elected to cap the gas line instead. The contractor is now able to start underground utility work.

Major Modernization, Phase 5 (Buildings 3, 4, 5 and 6 – 24 units

The consultant contract is executed, and the consultant is working on the drawings.

Puahala Homes – Re-Roofing of 4 Buildings

HPHA has selected a contractor to reroof 4 buildings and repair the plumbing in one building. The Contract is being routed for approval and execution.

**Hawai`i County Projects:**

Pahala – Utility Improvements

Field work is scheduled to resume in April 2024.

**Mau`i County Projects:**

AMP 39 Maui

Makani Kai Hale – Burned unit and Site Utility Improvements

The submittal review process has started. A pre-construction meeting is scheduled for early April. The Notice to Proceed will be issued for April 22, 2024.

Environmental Review – Pi`ilani Homes and David Malo Circle

A consultant has been selected to conduct an Environmental Review for the Section 18 demolition and disposition application of these two Lahaina properties. HPHA has provided scope clarification to the consultant. The consultant is revising their proposal.

Kahekili Terrace – Utility Improvements

The Design/Build Contractor has been selected and the contract is executed. A pre-construction meeting is scheduled for mid-April.

AMP 39 Molokai

Kahale Mua (State) – Utility Improvements

The project is out to Bid. The bid schedule has been changed to open on May 15, 2024

to add the approved demolition of the vacant buildings.

**Section 8 Subsidy Programs Branch**

HPHA manages the Housing Choice Voucher Program (HCV), Project Based Voucher Program, Veteran’s Affairs Supportive Housing (VASH), Non-Elderly Disabled Vouchers (NED), Mainstream Vouchers (MS), Performance Based Contract Administration (PBCA), State Rent Supplement Program (RSP), and Family Self-Sufficiency (FSS) Program.

**Program Activities for March 2024**

Voucher:

HPHA expended a total of \$4,453,486 in Housing Assistance Payments (HAP) to private landlords on behalf of 3,476 voucher holders; including 487 VASH families assisted with \$448,500 housing assistance payments.

HPHA leased a total of 234 vouchers for Mainstream, EHV and Port-Ins, and paid \$302,511 for Housing Assistance Payments for these programs.

**Inspections update:**

|   |            |
|---|------------|
| <b>March 2024</b>   |            |
| Housing Quality Standards (HQS) Inspections                 | 249        |
| HQS Inspections Failed                                      | 93         |
| Quality Control Inspections                                 | 0          |
| <b>Total Inspection completed from 3/1/2024 – 3/20/2024</b> | <b>249</b> |
| Total Rent comparable requests received                     | 73         |
| Approved  | 73         |
| Denied  | 0          |

Landlords are provided 30 days to correct failed items during the annual inspection. Failed items are generally easy to fix. Historically, failed inspections have not been a cause for landlords to end program participation. Landlords have reported positive feedback to inspections as tenants do not always properly report issues with the unit.

**Family Self-Sufficiency (FSS) Program:**

The FSS Program continues to offer employment case management, resources, and escrow savings to its 38 active participants. During the month of March 2024, the FSS Program had 0 new enrollments, 0 discharges, and 1 graduate. The current total number of Section 8 graduates is 156, and the total number of LIPH graduates is 30 since the program’s inception. Currently, there are 8 of the 32 Section 8 participants and 3 of 6 LIPH participants eligible to receive monthly escrow credits. The total monthly escrow deposits for March 2024 totaled \$4,544.

**Rent Supplement Program (RSP):** RSP made a payment of \$84,650 to 195 Families. New

lease ups were paid \$3,054 for the initial HAPS for February 2024. Actual March 2024 payments were \$81,596 (195 Families).

**Tenant Protection Vouchers:** The HPHA was awarded tenant protection vouchers for families in Maui Public Housing units that were affected by the wildfires. To date, one voucher is in the process of being issued, and one additional application was recently received.

### Compliance

#### **Program Activities:**

Review programs for compliance with Federal and State requirements, and agency and Board policies and procedures.

Review and process tenant requests and phone inquiries for reasonable accommodation and modification under the Fair Housing Act and Section 504 of the Rehabilitation Act. Requests include Installations of air conditioning; Approvals for a live-in aide; Transfers to accessible and/or ground floor units; Approvals for assistance animals; and Modifications.

Continue evaluation of forms used to process reasonable accommodation and modification requests.

Review construction reports for ADA and compliance related issues.

#### **Planned activities for May 2024**

Review and process tenant requests for and questions about reasonable accommodations and modifications

Review programs for compliance, respond to program inquiries, and review construction reports for compliance related issues.

Update the HPHA Language Access Plan and review issues regarding Declaration of Trust documentation.

### I **Human Resources**

|  |     |
|--|-----|
| Summary of Staffing: Filled positions FTE: | 316 |
| Tenant Aide Program:                       | 15  |
| Other Vacancies                            | 67  |

#### **Program Activities:**

Agency-wide interviews were conducted and/or hired for the following positions:

Hearings Officer, Program Specialist, Housing Human Resources Specialist IV, Housing Building Construction Inspector II, Public Housing Specialist II, Building Maintenance Worker II, Housing Painter I, Secretary I, Office Assistant IV/III's, Housing General Laborer Is.

HPHA received the following internal and external applicants of twenty-nine (29) for Civil Service positions.

Purchasing Technician, I (PO) – three (3) external applicants referred and three (3) interested in the interview process.

Office Assistant IV (Section 8) – twenty-six (26) external applicants referred and two (2) interested in the interview process.

HPHA received and screened applications for the following exempt positions:

Redevelopment Officer, 9 applicants; Housing Development Specialist, 10 applicants; Project Engineer, 25 applicants; Compliance Specialist, 2 applicants; Housing Contract Specialist, 7 applicants; Housing Public Housing Supervisor VI (civil service to exempt), 14 applicants; Housing Public Housing Supervisor V (civil service to exempt), 12 ; applicants; Housing Public Housing Supervisor IV (civil service to exempt), 15 applicants; Housing Social Service Assistant IV, 12 applicants; Housing General Construction and Maintenance Supervisor (civil service to exempt), 16 applicants; Housing Painter I (civil service to exempt), 20 applicants; Housing Building Maintenance Worker I (civil service to exempt), 21 applicants; Housing General Laborer I (civil service to exempt), 5 applicants

Training: Small Purchase Order Webinar, INSPIRE Training for AMP 30.

Continue to work with HGEA relating to consultation on School Street Campus relocation and safety matters due to redevelopment.

Workers Compensation: Two (2) injuries reported. One (1) injury reported from MSW with eleven (11) days lost time and one (1) injury reported from Applications Unit with one (1) day lost time.