

**STATE OF HAWAII**  
**CONTRACT FOR GOODS OR SERVICES**  
**BASED UPON**  
**COMPETITIVE SEALED PROPOSALS**

This Contract, executed on the respective dates indicated below, is effective as of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ Department of Hawaiian Home Lands \_\_\_\_\_,  
*(Insert name of state department, agency, board or commission)*  
 State of Hawaii ("STATE"), by its \_\_\_\_\_ Chairman, Hawaiian Homes Commission \_\_\_\_\_,  
*(Insert title of person signing for State)*  
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is \_\_\_\_\_ P.O. Box 1879, Honolulu, Hawaii 96805 \_\_\_\_\_  
 \_\_\_\_\_ and \_\_\_\_\_  
 ("CONTRACTOR"), a \_\_\_\_\_  
*(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)*  
 under the laws of the State of \_\_\_\_\_, whose business address and federal and state taxpayer identification numbers are as follows: \_\_\_\_\_

**RECITALS**

- A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.
- B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.
- C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").
- D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.
- E. Pursuant to \_\_\_\_\_ 103D-303, HRS \_\_\_\_\_, the STATE  
*(Legal authority to enter into this Contract)*  
 is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:  
 (1) \_\_\_\_\_  
*(Identify state sources)*  
 or (2) \_\_\_\_\_  
*(Identify federal sources)*  
 or both, in the following amounts: State \$ \_\_\_\_\_  
 Federal \$ \_\_\_\_\_

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

- 1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number \_\_\_\_\_ RFP-16-HHL-001 \_\_\_\_\_ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.
- 2. Compensation. The CONTRACTOR shall be compensated for goods supplied

or services performed, or both, under this Contract in a total amount not to exceed \_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR  is required to provide or  is not required to provide:  a performance bond,  a payment bond,  a performance and payment bond **each** in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

**STATE**

\_\_\_\_\_  
*(Signature)*

**Jobie M. K. Masagatani**

\_\_\_\_\_  
*(Print Name)*

**Chairman, Hawaiian Homes Commission**

\_\_\_\_\_  
*(Print Title)*

\_\_\_\_\_  
*(Date)*

**CONTRACTOR**

\_\_\_\_\_  
*(Name of Contractor)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*(Print Title)*

\_\_\_\_\_  
*(Date)*

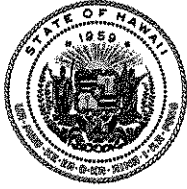
**CORPORATE SEAL**

(If available)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy Attorney General

\* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

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

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me appeared
\_\_\_\_\_ and \_\_\_\_\_, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
\_\_\_\_\_ and \_\_\_\_\_ of
\_\_\_\_\_, the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument
as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of \_\_\_\_\_

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

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

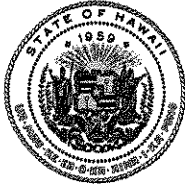
Doc. Description: Contract for Goods or Services

Based on Competitive Sealed Proposals

(Notary Stamp or Seal)

Notary Signature \_\_\_\_\_ Date \_\_\_\_\_

NOTARY CERTIFICATION



**STATE OF HAWAII**  
**CONTRACTOR'S**  
**STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of \_\_\_\_\_, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR  is\*  is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

\* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

**CONTRACTOR**

By \_\_\_\_\_  
(Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_

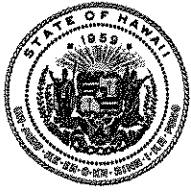


STATE OF HAWAII  
SCOPE OF SERVICES

**Project:** Kakaina Subdivision House Construction  
**Location:** Waimanalo, Oahu  
**Contractor:**

The CONTRACTOR shall design, construct, finance, and market 28 single-family houses in the Kakaina Subdivision, located in Waimanalo, Koolaupoko, Oahu.

The scope of work required of the CONTRACTOR is more fully detailed in Request for Proposals RFP-16-HHL-001 and in CONTRACTOR's proposal submitted January 15, 2016, both of which are incorporated by reference.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

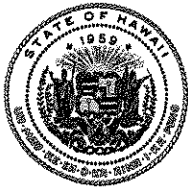
**Project:** Kakaina Subdivision House Construction  
**Location:** Waimanalo, Oahu  
**Contractor:**

The CONTRACTOR shall be paid from the proceeds of the sales of turn-key homes through escrow. The STATE shall not be obligated to pay any compensation directly to the CONTRACTOR. CONTRACTOR’s compensation for each home shall consist of the base price plus the price of any optional up-grades selected by the lessee, as indicated below:

Model	Bedrooms	Bathrooms	Price
A	2		\$
B	2		\$
C	3		\$
D	4		\$

Optional up-grade prices shall be:

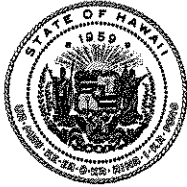
Feature	Model	A	B	C	D
Enclosed Garage, including electronic roll-up door		\$	\$	\$	\$
Rain Gutters		\$	\$	\$	\$
Irrigation Catchment System		\$	\$	\$	\$
Fire-protection Sprinkler System		\$	\$	\$	\$
Ceiling Fans		\$	\$	\$	\$
Central air conditioning		\$	\$	\$	\$
Photovoltaic system		\$	\$	\$	\$
[other]					
		\$	\$	\$	\$



STATE OF HAWAII  
TIME OF PERFORMANCE

Project: Kakaina Subdivision House Construction  
Location: Waimanalo, Oahu  
Contractor:

1. The Time of Performance for this Contract shall be THREE HUNDRED SIXTY-FIVE (365) Calendar Days from the effective date specified in the Notice to Proceed, unless extended by delays excused by the STATE as documented in writing. The Notice to Proceed shall be issued by the STATE separately to the CONTRACTOR.
2. This Contract shall expire on the date on which the later of the following occurs:
  - (a) the STATE makes final payment to the CONTRACTOR in accordance with (1) paragraph 17(d) of the General Conditions (AG-008 103D General Conditions) and (2) no dispute between the parties hereto as to the Work or other obligations of the CONTRACTOR hereunder is outstanding, or
  - (b) the STATE issues a Final Acceptance letter to the CONTRACTOR.
3. The Contract expiration date is for administrative purposes only and not to be confused with the Time of Performance which refers to the time in which the CONTRACTOR is required to complete the work, or with any continuing obligations on the part of the CONTRACTOR.
4. Unless terminated, the STATE may extend the term of the contract for an additional period of up to one year or portions thereof without the necessity of re-bidding, upon mutual agreement in writing at least sixty (60) days prior to the expiration of the contract. The house prices for the extended period shall remain the same as described in the offer.
5. When interests of the State so require, the State may terminate the contract for convenience by providing six (6) weeks prior written notice to the CONTRACTOR.



STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).\*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)
Jobie M. K. Masagatani
(Print Name)
Chairman, Hawaiian Homes Commission
(Print Title)

(Date)

\* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
(2) There is no employee-employer relationship; and
(3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature)
(Print Name)
(Print Title, if designee of the Director of DHRD)

(Date)





STATE OF HAWAII  
SPECIAL CONDITIONS

**Project:** Kakaina Subdivision House Construction  
**Location:** Waimanalo, Oahu  
**Contractor:**

**SC-01 INTERCHANGEABLE TERMS**

The following terms are one and the same:

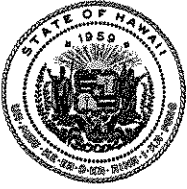
- a. “Contract” and “Agreement”.
- b. “Department of Hawaiian Home Lands” “Department” “DHHL” and “STATE”.
- c. “Contractor” and “Developer”

**SC-02 INSURANCE COVERAGE**

The CONTRACTOR shall obtain separate insurance coverage for this project that complies with the requirements set forth in the DHHL Construction General Conditions, Article 7, Section 7.3, as amended. Payment for all work required to comply with this item will not be paid for separately but shall be considered incidental to the various contract items.

CONTRACTOR shall maintain insurance acceptable to the STATE in full force and effect throughout the term of this Contract. The policies of insurance maintained by CONTRACTOR shall provide the following minimum coverage:

<u>Coverage</u>	<u>Limit</u>
<b>General Liability Insurance</b> (occurrence form)	Bodily Injury and Property Damage (combined single limit): <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate  Personal Injury: <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate
<b>Automobile Insurance</b> (covering all owned, non-owned and hired automobiles)	Bodily Injury: <u>\$1,000,000</u> per person and <u>\$1,000,000</u> per occurrence.  Property Damage: <u>\$1,000,000</u> per accident or combined single limit of <u>\$2,000,000</u> .
<b>Workers Compensation</b> (statutory limit is required by laws of the State of Hawaii)	Insurance to include Employer’s Liability. Both such coverages shall apply to all employees of the CONTRACTOR and, in case any sub-contractor fails to provide adequate similar protection for all his employees, to all employees of subcontractors.
<b>Builder’s Risk covering the CONTRACTOR and all subcontractors</b>	100% Replacement Value



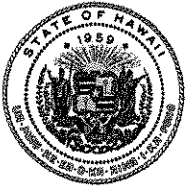
STATE OF HAWAII  
**SPECIAL CONDITIONS**

<b>Fire and extended coverage</b>	100% Replacement Value
<b>Malicious Mischief</b>	100% Replacement Value
<b>Flood Insurance</b> , if applicable	Maximum Coverage available

- a. The State of Hawaii, Department of Hawaiian Home Lands, its elected and appointed officials, officers, employees, and agents shall be named as additional insured with respect to operations, services or products provided to the State of Hawaii. CONTRACTOR agrees to provide to the DHHL, before the effective date of the Contract, certificate(s) of insurance necessary to evidence compliance with insurance provisions of this Contract. CONTRACTOR shall keep such insurance in effect and the certificate(s) on deposit with DHHL during the entire term of this Contract. Upon request by the STATE, CONTRACTOR shall furnish a copy of the policy or policies.
- b. Failure of CONTRACTOR to provide and keep in force such insurance shall be regarded as a material default under this Contract. The STATE shall be entitled to exercise any or all of the remedies provided in this Contract for default of CONTRACTOR.
- c. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability under this Contract or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.
- d. CONTRACTOR shall immediately provide written notice to the contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.
- e. DHHL is a self insured State agency. CONTRACTOR's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by CONTRACTOR.
- f. The CONTRACTOR shall require all subcontractors to have in full force and effect the same insurance coverage as required of the CONTRACTOR. Such insurance shall name the State of Hawaii, Department of Hawaiian Home Lands, its elected and appointed officials, officers, employees, and agents as additional insured with respect to operations, services or products provided to the State of Hawaii. The CONTRACTOR shall be responsible to enforce its subcontractors' compliance with these insurance requirements and CONTRACTOR shall, upon request, provide the STATE a copy of the policy or policies of insurance for any subcontractor.

**SC-03 COMPLETION SCHEDULE AND LIQUIDATED DAMAGES**

The CONTRACTOR shall complete all work as specified or indicated in the Contract Documents on or before 365 calendar days after receiving written Notice to Proceed,



STATE OF HAWAII  
**SPECIAL CONDITIONS**

subject to extensions, as may be granted.

In case of failure on the part of the CONTRACTOR to complete the work within the time specified, the CONTRACTOR shall pay to DHHL as liquidated damages, and not as a penalty, \$1,000.00 per calendar day for each day that the project, in its entirety, remains incomplete.

**SC-04 PROCESS THROUGH DHHL**

Any and all submittals, reports, requests, claims and notices under the contract shall be processed through Land Development Division Project Manager, at Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707.

**SC-06 PERMITS AND FEES**

Contractor shall apply and pay for all permits and inspection fees as required by all governmental agencies having jurisdiction over this project.

**SC-07 COORDINATION WITH OTHER PARTIES**

The CONTRACTOR shall coordinate all the necessary work for temporary utility services, permanent service and appurtenances with the appropriate agencies, including but not limited to the Honolulu Board of Water Supply, Hawaiian Electric Company, and Sandwich Isles Communications.

**SC-08 CONTRACTOR'S LICENSING**

It is the CONTRACTOR's sole responsibility to review the requirements of this project and determine the appropriate contractor's licenses that are required to complete the project.

**SC-09 WATER CHARGES AND REQUIREMENTS**

The CONTRACTOR shall be solely responsible for obtaining water to meet any requirements of the contract. Unless otherwise indicated or provided for, any work, costs, charges and fees necessary to obtain water for this contract shall not be paid for separately but shall be considered incidental to the various contract items; no separate or additional payment will be made therefore.



STATE OF HAWAII  
**SPECIAL CONDITIONS**

**SC-10 SOIL AND DUST CONTROL**

To control the dust during construction, the CONTRACTOR shall have an adequate supply of water for dust control and if necessary, moisture conditioning of fill material at all times. The CONTRACTOR shall institute an erosion control program and dust control program to minimize soil erosion and wind erosion and airborne fugitive dust nuisance, respectively for the entire duration of this project.

**SC-11 GENERAL CONDITIONS**

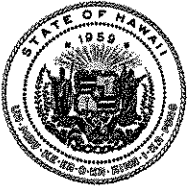
In the event of conflicts and/or discrepancies, the DHHL Construction General Conditions shall govern over Form AG-008, 103D General Conditions (eff. 10/17/13)

**SC-12 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

Contractor is hereby notified of the applicability of Section 11-355, HRS, which states that campaign contributions from specified State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

**SC-13 APPRENTICESHIP AGREEMENT PREFERENCE – CONTRACTOR'S RESPONSIBILITY**

1. For the duration of the contract awarded utilizing the Hawai'i Apprenticeship Preference, the CONTRACTOR shall certify each month that work is being conducted on the project, that it continues to be a participant in the relevant apprenticeship program for each trade it employs.
2. Monthly certification shall be made on *MONTHLY REPORT OF CONTRACTOR'S PARTICIPATION IN APPROVED APPRENTICESHIP PROGRAM UNDER ACT 17 (Monthly Certification Form 2)* prepared and made available by the DLIR. *Monthly Certification Form 2* shall be a signed original by the respective apprenticeship program sponsor's authorized official, and submitted by the Contractor with its monthly payment requests. *Monthly Certification Form 2* is available on the DLIR website at: <http://hawaii.gov/labor/wdd>
3. Should the Contractor fail or refuse to submit its monthly certification forms, or at any time during the construction of the project, cease to be a party to a registered apprenticeship agreement for each apprenticeable trade the Contractor employs, the Contractor will be subject to the following sanctions:
  - a. Withholding of the requested payment until the required form(s) are submitted;
  - b. Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the Contractor; provided the DHHL shall be entitled to restitution for nonperformance or liquidated damages claims; or



STATE OF HAWAII  
SPECIAL CONDITIONS

- c. Proceed to debar pursuant to HRS §103D-702.
4. If events such as “acts of God,” acts of a public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the Contractor from submitting the certification forms, the Contractor shall not be penalized as provided herein, provided the Contractor completely and expeditiously complies with the certification process when the event is over.

**SC-29 FEDERAL LABOR STANDARDS**

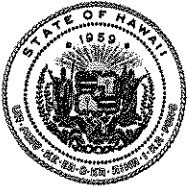
The CONTRACTOR shall comply with U.S. Department of Housing and Urban Development (HUD) Federal Labor Standards Provisions (form HUD -4010) attached as Exhibit A.

**SC-15 ENERGY EFFICIENCY**

The Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.

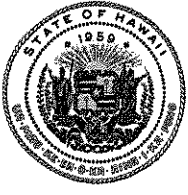
**18. DEFAULT**

- A. Developer shall be in default under this Agreement if:
  - (1) Developer shall fail to timely pay, perform and/or complete Developer’s obligations under this Agreement, which shall include the failure to build the Homes according to the Home Plans.
  - (2) Developer shall become insolvent, or shall become voluntarily or involuntarily dissolved or shall make any assignment for the benefit of creditors or shall generally fail to pay Developer’s debts as they become due.
  - (3) Developer shall become the subject of an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted and such order shall remain in effect and unstayed for a period of sixty (60) consecutive days.
  - (4) Developer shall commence a voluntary case under the bankruptcy laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law, or regulation.
  - (5) Developer shall file any answer admitting the material allegations of any petition filed against Developer in any such proceedings.
  - (6) Developer shall seek or consent to or acquiesce in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of developer or of all or a substantial part of Developer’s property(ies) or assets.
  - (7) Developer shall take action looking to Developer’s dissolution or liquidation, or within sixty (60) days after commencement of any proceedings against Developer seeking any arrangement, composition, adjustment, liquidation, dissolution or



STATE OF HAWAII  
SPECIAL CONDITIONS

- similar relief to which Developer may be entitled under any present or future statute, law or regulation and such proceedings shall not have been dismissed.
- (8) Within sixty (60) days after the appointment of, or taking possession by, any custodian, trustee, receiver or liquidator of any or of all or a substantial part of the properties or assets of Developer, without DHHL's consent or acquiescence, any such appointment or possession shall not have been vacated or terminated.
  - (9) There shall be any attachment, execution or other judicial seizure of, or otherwise materially affecting all or any part of Developer's rights under this Agreement or the Homes, or any similar action on account of Developer's acts or failure to act, unless, in any such case, such attachment, execution or seizure is set aside, dissolved, bonded off or otherwise eliminated within thirty (30) days of its occurrence.
  - (10) Any third person shall obtain an order or decree in any court of competent jurisdiction enjoining or prohibiting Developer from performing this Agreement and such proceedings shall not be discontinued and such order or decree shall not be vacated within thirty (30) days after the granting thereof.
  - (11) There shall be a sale, transfer, hypothecation, assignment or conveyance of all or any part of this Agreement other than as allowed hereunder.
  - (12) Any representation or warranty made by or on behalf of Developer herein, shall prove to have been false or incorrect in any material respect on the date as of which such representation or warranty was made.
  - (13) A final judgment is entered which alone or with other outstanding final judgments against Developer would have a material adverse effect on its financial ability to perform its obligations in connection with this Agreement and (i) such judgment shall not be discharged, or (ii) within thirty (30) days after entry of such judgment the execution thereof shall not be stayed pending appeal, or (iii) such judgment shall not be discharged within thirty (30) days after the expiration of any such stay.
- B. Notice of Default. If Developer shall be in default, DHHL shall notify Developer of such default in writing to Developer's address shown above by any means, including without limitation personal delivery or certified or registered mail. No failure, forbearance or delay on the part of DHHL in exercising any power or right under this Agreement shall operate as a waiver of the same or any other power or right, and no single or partial exercise of any such power or right shall preclude any other or further exercise thereof or the exercise of any other such power or right. No action taken by DHHL pursuant to this Agreement to proceed with the development of the Project despite Developer's default shall constitute a waiver of any of the conditions precedent which Developer is required to perform to proceed with the development of the Project. If Developer fails, refuses, neglects or is unable to perform or satisfy any such condition, DHHL shall not be precluded from thereafter declaring such failure, refusal, neglect or inability to be an event of default as provided in this Agreement.
- C. Cure Period. Developer shall have thirty (30) calendar days to cure a default which can be remedied and cured by the payment of money. If a default cannot be remedied by the payment of money, Developer shall have sixty (60) calendar days in which to cure such default. Developer shall immediately proceed with



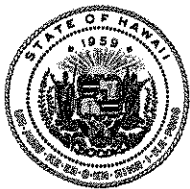
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taking all action necessary to cure the default. During such period of default, Developer shall protect the Project from loss, damage, vandalism, waste or other destruction and shall maintain the Project Schedule to the extent that it is practicable to do so. Developer shall provide DHHL with progress reports upon reasonable request.

Upon the occurrence of such default, DHHL may, but shall not be required to, advance funds or agree to undertake to advance funds over and above any undisbursed loan proceeds to any third party or for any reason to eliminate or reduce the risk of loss resulting from such default. Such agreement or agreements by DHHL shall be in such form and have such content the funds advanced shall be in such amount, and such advances shall be made at such time or times and upon such terms and conditions as DHHL, in its judgment deems appropriate, necessary or useful to eliminate, reduce or indemnify DHHL or the Project against any such danger. All sums paid or agreed to be paid by DHHL pursuant to such agreements or undertakings shall be for the account of Developer. Developer shall reimburse DHHL upon demand, for any such sums paid by DHHL together with interest computed at seven and one-half percent (7.5%) until the date of reimbursement.

D. DHHL's Rights. If Developer has been declared to be in default and fails to cure such default within the time period allowed hereunder, Developer agrees that DHHL shall have all legal and equitable rights to which DHHL may be entitled under the law including without limitation the following rights and remedies:

- (1) Terminate all of Developer's right, title and interest under this Agreement and take over the completion of the Project.  
Notwithstanding such termination, Developer shall not be released from the obligation to pay and perform all outstanding obligations under this Agreement, including payment of any unpaid Developer's Equity and damages arising out of delays and cost overruns incurred to complete the Project lien free.
- (2) Retain all deposits, funds or security that have been paid or delivered to DHHL or escrow.
- (3) Keep and use all Home Plans and other Project documents and work product over which Developer can exercise legal control and transfer, whether prepared by Developer or Developer's consultants and, in DHHL's sole discretion, negotiate with Developer's consultants and contractors to complete the Project.
- (4) Enter into negotiations with other developers and enter into a development agreement with another developer to complete the development of the Project pursuant to development rights afforded to such person under a development agreement.
- (5) Complete the development of the Project and use the Developer's Equity and any funds or security which Developer has paid or deposited with DHHL to complete the Project.
- (6) Require Developer to put up additional security in an amount necessary to pay for the completion of the Project lien-free and to repay the Interim Loan. DHHL may require such additional capital to be in the form of cash or a letter of credit (or equivalent) or bond.
- (7) Sue for damages including architectural and engineering fees and costs and attorney's fees and costs.



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- (8) Seek specific performance.
- (9) Stop all disbursement of any interim loan.

All rights, powers and remedies herein given to DHHL are cumulative and not alternative and are in addition to all rights, powers and remedies afforded by statutes or rules of law and may be exercised concurrently, independently or successively in any order whatsoever.

- E. Limitation of Developer's Remedies in the Event of DHHL's Default. DHHL shall be in default under this Agreement if DHHL does not timely perform DHHL's respective obligations under this Agreement or any related agreements. In the event of DHHL's default, Developer, including any of Developer's successors or assigns, agrees that Developer's rights and remedies shall be expressly limited to (1) termination of this Agreement, (2) entitlement of Developer to complete and sell all Homes as to which, as of the date of termination, Developer had commenced work, and (3) payment to Developer of an amount, if any, equal to Developer's net Project costs that are not recovered within six (6) months after termination from the sale of Homes as to which, as of the date of termination, Developer had commenced work.