

County of Kauai
DEPARTMENT of Affordable Housing

Lihue, Hawaii 96766

January 26, 2024 Meeting

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Kauai

Consent to Lease of Lands under Governor's Executive Order Nos. 4636 and 4647 to Qualifying Kauai County Homebuyer Program Participants or other income qualified Kauai residents:

<u>E.O. 4636</u>	
Waimea Town Lots, Waimea (Kona), Kauai	TMK (4) 1-6-004:003
Hanapepe Town Lots, Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-9-009:006
Hanapepe Town Lots, Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-9-009:007
Hanapepe Town Lots, Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-9-009:008
Hanapepe Town Lots, Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-9-009:009
Wailua Houselots, Wailua, Kawaihau (Puna), Kauai	TMK(4) 4-1-009:054
Wailua Houselots, Wailua, Kawaihau (Puna), Kauai	TMK(4) 4-1-011:016
Wailua Houselots, Wailua, Kawaihau (Puna), Kauai	TMKs(4) 4-1-009:020
<u>E.O. 4647</u>	
Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-8-012:032

And Consent to Divide Lots via Condominium Property Regime:

Wailua Houselots, Wailua, Kawaihau (Puna), Kauai	TMK(4) 4-1-009:054
Wailua Houselots, Wailua, Kawaihau (Puna), Kauai	TMK(4) 4-1-009:016
Wailua Houselots, Wailua, Kawaihau (Puna), Kauai	TMK(4) 4-1-009:020
Waimea Town Lots, Waimea (Kona), Kauai	TMK (4) 1-6-004:003
Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-8-012:032

CONTROLLING AGENCY (of subject executive order):

County of Kauai

APPLICANT (requesting lease):

Qualifying Kauai County Homebuyer Program Participants To Be Determined

LEGAL REFERENCE:

Sections 171-11, 36 and 73 Hawaii Revised Statutes (HRS), as amended.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Residential/Urban

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Governor's Executive Order (EO) Nos. 4636 and 4647 to the County of Kauai for Affordable Housing purposes.

LEASE TERMS & CONDITIONS:

See Attached Kauai County Limited Appreciation Lease Template labeled Exhibit A.

LOCATION:

Various parcels of State lands identified in the table below, as shown on the attached maps labeled Exhibit B.

<u>E.O. 4636</u>	
Waimea Town Lots, Waimea (Kona), Kauai	TMK (4) 1-6-004:003
Hanapepe Town Lots, Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-9-009:006
Hanapepe Town Lots, Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-9-009:007

Hanapepe Town Lots, Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-9-009:008
Hanapepe Town Lots, Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-9-009:009
Wailua Houselots, Wailua, Kawaihau (Puna), Kauai	TMK(4) 4-1-009:054
Wailua Houselots, Wailua, Kawaihau (Puna), Kauai	TMK(4) 4-1-0011:016
Wailua Houselots, Wailua, Kawaihau (Puna), Kauai	TMKs(4) 4-1-009:020
<u>E.O. 4647</u>	
Hanapepe, Waimea (Kona), Kauai	TMK (4) 1-8-012:032

AREA:

TMK (4) 1-6-004:003	13,539 sq. ft.
TMK (4) 1-9-009:006	7,017 sq. ft.
TMK (4) 1-9-009:007	6,451 sq. ft.
TMK (4) 1-9-009:008	6,172 sq. ft.
TMK (4) 1-9-009:009	6,851 sq. ft.
TMK (4) 4-1-009:054	26,572 sq. ft.
TMK (4) 4-1-011:016	22,749 sq. ft.
TMK (4) 4-1-011:020	38,500 sq. ft.
TMK (4) 1-8-012:032	14,516 sq. ft.

CHARACTER OF USE:

Affordable Housing purposes.

TERM:

75 years, commencing within 5-years and expiring on 75 years thereafter.

RENT AMOUNT:

Up to \$1,152 per annum dependent on lessee income.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15(c)(10), the project is exempt from the preparation of an EA as an affordable housing project compliant with existing state land use classifications and county zoning.

Additionally, in accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the

Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 3 that states, "Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small, equipment and facilities and the alteration and modification of the equipment or facilities, including but not limited to: (A) Single family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units; (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures; (C) Stores, offices and restaurants designed for total occupant load of twenty individuals or fewer per structure, if not in conjunction with the building of two or more such structures; and (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and acquisition of utility easements."

DCCA VERIFICATION:

Not applicable. Applicants are individual private property owners and are not required to register with DCCA for this purpose.

The proposed leases are solely for "owner-occupant" residential use by qualifying Kauai County Homebuyer Program Participants or other income qualified Kauai residents. Business use will not be permitted.

REMARKS:

The nine parcels described in this submission are all vacant residential lots within existing residential communities. Prior to being EO'd to the County of Kauai, the lots were generally overgrown with vegetation, unmaintained, and to varying degrees subject to illegal dumping and occupancy by homeless individuals.

The County accepted management and control of these vacant lots with the intention of developing single-family homes to be "sold" as long-term leaseholds to income qualified buyers under the County's existing Affordable Home Buyer Program.

Under the County's Homebuyer Program, the County typically

purchases existing homes, rehab them as required, and then resells them as Limited Appreciation 99-year renewable leaseholds to families on the County's Affordable Homebuyers List who earn 120% or less of the Kauai County Median Income. The County retains ownership of the land and sells the vertical structure to the qualified homebuyer at a subsidized price. To date, we have just under thirty homes in this County leasehold program.

This collection of state parcels presents an opportunity to develop new affordable homes rather than acquire and rehabilitate existing homes. However, this opportunity also presents Kauai County with the challenge of financing new home construction.

We propose to answer this challenge by partnering with United States Department of Agriculture (USDA) to "pre-sell" homes to qualified buyers under the USDA's Direct or Guaranteed Loan Programs. These Loan Programs will fund the construction of the homes, and upon completion automatically convert to a permanent low interest rate 30 or 35-year home loan.

To take advantage of these USDA Programs, the selected pre-qualified buyer must have "site control" of the lot in question via the proposed county ground lease. The proposed ground leases would be executed with qualified Homebuyers in parallel with the closing of their respective USDA construction-to-permanent home loans. Accordingly, the County requests the Board of Land and Natural Resources' (Board) pre-approval to enter into future lease agreements with qualified buyers using the Lease Template we have provided for your review.

Additionally, the County requests the Board's express consent to divide the larger lots noted above via Condominium Property Regime (CPR). This will enable the County to construct multiple homes on these lots and offer them as legally separate leasehold properties to qualified homebuyers. Per the Hawaii Real Estate Commission, the EO's conveying "control and management" of the state parcels is insufficient authority for the County to CPR the parcels.

RECOMMENDATION:

That the Board consent to the lease between County of Kauai and Qualifying Kauai County Homebuyer Program Participants or other income qualified Kauai residents, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:

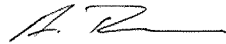
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 1-200-1, HAR, this project will probably have

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minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;

2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Adam P. Roversi
Kaua'i County Housing Agency, Director

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

EXHIBIT A

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COUNTY OF KAUA‘I GROUND LEASE

THIS LEASE (“this Lease” or “the Lease”) entered into this _____ day of _____, 2023 between the County of Kaua‘i, a political subdivision of the State of Hawai‘i, through its Kaua‘i County Housing Agency, whose place of business and mailing address is 4444 Rice Street, Suite 330, Lihue, Hawai‘i 96766 (“COUNTY”) and _____, whose residence address is _____ and mailing address is _____ (“Homeowner”).

RECITALS

- A. The COUNTY, through the Kaua‘i County Housing Agency, is engaged in providing homeownership opportunities for low and moderate income residents who would otherwise be unable to afford homeownership.
- B. A goal of the COUNTY is to preserve affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes.
- C. The Leased Land described in this Lease has been acquired and is being leased by the COUNTY in furtherance of this goal.
- D. The Homeowner shares the purposes of the COUNTY and has agreed to enter into this Lease not only to obtain the benefits of homeownership, but also to further the COUNTY’s goal preserving affordable homeownership opportunities.
- E. Homeowner and COUNTY recognize the special nature of the terms of this Lease, and each of them accepts these terms, including those terms that affect the marketing and resale price of the property now being purchased by the Homeowner.
- F. Homeowner and COUNTY agree that the terms of this Lease further their shared goals over an extended period of time.

NOW THEREFORE, Homeowner and COUNTY agree on all of the terms and conditions of this Lease as set forth below.

DEFINITIONS: Homeowner and COUNTY agree on the following definitions of key terms used in this Lease.

Leased Land: the parcel of land, described in Exhibit A: LEASED LAND that is leased to the Homeowner.

Home: the residential structure and other permanent improvements located on or to be constructed on the Leased Land by Homeowner at Homeowner’s expense.

Base Price: the total price that is paid for the Home by the Homeowner (including the amount provided by a first mortgage loan but not including subsidy in the form of deferred loans to the Homeowner).

Purchase Option Price: the maximum price the Homeowner is allowed to receive for the sale of the Home and the Homeowner’s right to possess, occupy and use the Leased Land, as defined in Article 10 of this Lease.

Lease Fee: The monthly fee that the Homeowner pays to the COUNTY for the continuing use of the Leased Land and any additional amounts that the COUNTY charges to the Homeowner for reasons permitted by this Lease.

Permitted Mortgage: A mortgage or deed of trust on the Home and the Homeowner's right to possess, occupy and use the Leased Land granted to a lender by the Homeowner with the COUNTY's Permission. The Homeowner may not mortgage the COUNTY's interest in the Leased Land, and may not grant any mortgage or deed of trust without COUNTY's Permission.

Event of Default: Any violation of the terms of the Lease unless it has been corrected ("cured") by Homeowner or the holder of a Permitted Mortgage in the specified period of time after a written Notice of Default has been given by COUNTY.

ARTICLE 1: Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment are attached as Exhibits.

Attached hereto as Exhibit B: LETTERS OF AGREEMENT AND ATTORNEY'S ACKNOWLEDGMENT and made part of this Lease by reference are a Letter of Agreement from the Homeowner, describing the Homeowner's understanding and acceptance of this Lease (including the parts of the Lease that affect the resale of the Home), and a Letter of Acknowledgment from the Homeowner's attorney which describes the attorney's review of the Lease with the Homeowner.

ARTICLE 2: Leasing of Rights to the Land

2.1 COUNTY LEASES THE LAND TO HOMEOWNER: The COUNTY hereby leases to the Homeowner, and Homeowner hereby accepts, the rights to possess, occupy, and use the Leased Land (described in the attached Exhibit A: LEASED LAND) in accordance with the terms of this Lease. COUNTY has furnished to Homeowner a copy of the most current title report, if any, obtained by COUNTY for the Leased Land, and Homeowner accepts title to the Leased Land in "as is" condition as of the signing of this Lease.

2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER: COUNTY does not lease to Homeowner the right to remove from the Leased Land any minerals lying beneath the Leased Land's surface. Ownership of such minerals was reserved by the State of Hawai'i prior to the acquisition of the Lease Land by COUNTY.

ARTICLE 3: Term of Lease, Change of Land Owner

3.1 TERM OF LEASE IS 75-YEARS: This Lease shall remain in effect for 75-years, beginning on the _____ day of _____, 20 _____ and ending on the _____ day of _____, 20 _____ unless ended sooner or renewed as provided below.

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3.3 WHAT HAPPENS IF COUNTY DECIDES TO SELL THE LEASED LAND: If ownership of the Leased Land is ever transferred by COUNTY (whether voluntarily or involuntarily) to any other person or institution, this Lease shall not cease, but shall remain binding on the new landowner as well as the Homeowner. If COUNTY agrees to transfer the Leased Land to any person or institution other than a non-profit corporation, charitable trust, government agency or

other similar institution sharing the goals described in the Recitals above, the Homeowner shall have a right of first refusal to purchase the Leased Land. The details of this right shall be as stated in the attached Exhibit FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void.

ARTICLE 4: Use of Leased Land

4.1 HOMEOWNER MAY USE THE HOME ONLY FOR RESIDENTIAL AND RELATED PURPOSES: Homeowner shall use, and allow others to use, the Home and Leased Land only for residential purposes and any activities related to residential use that were permitted by local zoning law when the Lease was signed.

4.2 HOMEOWNER MUST USE THE HOME AND LEASED LAND RESPONSIBLY AND IN COMPLIANCE WITH THE LAW: Homeowner shall use the Home and Leased Land in a way that will not cause harm to others or create any public nuisance. Homeowner shall dispose of all waste in a safe and sanitary manner. Homeowner shall maintain all parts of the Home and Leased Land in safe, sound and habitable condition, in full compliance with all laws and regulations, including those found in Sections 7.5 and 9.4 of this Lease.

4.3 HOMEOWNER IS RESPONSIBLE FOR USE BY OTHERS: Homeowner shall be responsible for the use of the Home and Leased Land by all residents and visitors and anyone else using the Leased Land with Homeowner's permission and shall make all such people aware of the restrictions on use set forth in this Lease.

4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST 10 MONTHS EACH YEAR: Homeowner shall occupy the Home for at least 10 months of each year of this Lease, unless Homeowner requests and receives prior written consent from the COUNTY. Homeowner agrees that COUNTY shall have the right to withhold such consent in order to further the purposes of this Lease and to ensure compliance with COUNTY ordinances and COUNTY housing regulations. Occupancy by Homeowner's child, spouse, reciprocal beneficiary, partner to a civil union, or other persons approved by COUNTY shall be considered occupancy by Homeowner. Neither compliance with the occupancy requirement nor COUNTY's permission for an extended period of non-occupancy constitutes permission to sublease the Leased Land and Home, per the requirements of Section 4.5 below.

4.5 LEASED LAND MAY NOT BE SUBLEASED WITHOUT COUNTY'S PERMISSION. Except as otherwise provided in Article 8 and Article 10, Homeowner shall not sublease, sell, or otherwise convey any of Homeowner's rights under this Lease for any period of time without the prior, written permission of COUNTY. Homeowner agrees that COUNTY shall have the right to withhold such consent in order to further the purposes of this Lease and to ensure compliance with COUNTY ordinances and COUNTY housing regulations.

If the COUNTY grants Homeowner permission to sublease, the sublease shall be subject to the following conditions:

- a) Any sublease shall be subject to all of the terms of this Lease.
- b) The rental or occupancy fee charged the sub-lessee shall not be more than the amount of the Lease Fee charged the Homeowner by the COUNTY, plus an amount approved by

COUNTY to cover Homeowner's costs in owning the Home, including but not limited to the cost of taxes, insurance, and mortgage interest.

4.6 COUNTY HAS A RIGHT TO INSPECT THE LEASED LAND: The COUNTY may inspect any part of the Leased Land except the interiors of fully enclosed buildings, at any reasonable time, after notifying the Homeowner at least 24 hours before the planned inspection. No more than one (1) regular inspection may be carried out in a single year, except in the case of an emergency. In an emergency, the COUNTY may inspect any part of the Leased Land except the interiors of fully enclosed buildings, after making reasonable efforts to inform the Homeowner before the inspection.

If the COUNTY has received an Intent-To-Sell Notice (as described in Section 10.4 below), then the COUNTY has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. The COUNTY must notify the Homeowner at least 24 hours before carrying out such inspection.

4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT: Homeowner has the right to quiet enjoyment of the Leased Land. The COUNTY has no desire or intention to interfere with the personal lives, associations, expressions, or actions of the Homeowner in any way not permitted by this Lease.

ARTICLE 5: Lease Fee

5.1 AMOUNT OF LEASE FEE: The Homeowner shall pay a monthly Lease Fee in an amount equal to the sum of (a) a Land Use Fee of _____ to be paid in return for the continuing right to possess, occupy and use the Leased Land, plus (b) a Repair Reserve Fee of \$ N/A to be held by the COUNTY and used for the purpose of preserving the physical quality of the Home for the long term in accordance with Section 7.5 below.

5.2 WHEN THE LEASE FEE IS TO BE PAID: The Lease Fee shall be payable to COUNTY on the first day of each month for as long as this Lease remains in effect, unless the Lease Fee is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by that Mortgagee.

5.3 HOW THE AMOUNT OF THE LAND USE FEE HAS BEEN DETERMINED: The amount of the Land Use Fee stated in Section 5.1 above has been determined as follows. First, the approximate monthly fair rental value of the Leased Land has been established, as of the beginning of the Lease term, recognizing that the fair rental value is reduced by certain restrictions imposed by the Lease on the use of the Land. Then the affordability of this monthly amount, plus the amount of the Repair Reserve Fee, for the Homeowner has been analyzed and, if necessary, the Land Use has been reduced to an amount considered to be affordable for Homeowner.

5.4 COUNTY MAY REDUCE OR SUSPEND THE LEASE FEE TO IMPROVE AFFORDABILITY: COUNTY may reduce or suspend the total amount of the Lease Fee for a period of time for the purpose of improving the affordability of the Homeowner's monthly housing costs. Any such reduction or suspension must be in writing and signed by COUNTY.

5.5 FEES MAY BE INCREASED FROM TIME TO TIME: The COUNTY may increase the amount of the Land Use Fee and/or the Repair Reserve Fee from time to time, but not more often than once every five years. Each time such amounts are increased, the total percentage of increase since the date this Lease was signed shall not be greater than the percentage of increase, over the same period of time, in the Consumer Price Index for urban wage earners and clerical workers for the urban area in which the Leased Land is located, or, if none, for the City and County of Honolulu.

5.6 LAND USE FEE WILL BE INCREASED IF RESTRICTIONS ARE REMOVED: If, for any reason, the provisions of Article 10 regarding transfers of the Home or Sections 4.4 and 4.5 regarding occupancy and subleasing are suspended or invalidated for any period of time, then during that time the Land Use Fee shall be increased to an amount calculated by COUNTY. Such an amount shall be equal to the fair rental value of the Leased Land for use not restricted by the suspended provisions, but initially an amount not exceeding Five Hundred Dollars per quarter. Such increase shall become effective upon COUNTY's written notice to Homeowner. Thereafter, for so long as these restrictions are not reinstated in the Lease, the COUNTY may, from time to time, further increase the amount of such Land Use Fee, provided that the amount of the Land Use Fee does not exceed the fair rental value of the property, and provided that such increases do not occur more often than once in every five (5) years.

5.7 IF PAYMENT IS LATE, INTEREST CAN BE CHARGED: If the COUNTY has not received any monthly installment of the Lease Fee on or before the date on which the such installment first becomes payable under this Lease (the "Due Date"), the COUNTY may require Homeowner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by COUNTY, at a rate not to exceed 12% per annum.

Although interest will accrue beginning on the first date the payment is deemed late, the COUNTY may choose not to collect said interest if such payment of the Lease Fee is received by COUNTY on or before the thirtieth (30th) day after the Due Date. Such a choice is at the sole discretion of the COUNTY. If Homeowner fails to make such payment on or before the thirtieth (30th) day following the Due Date, said accrued interest will be due in full plus accruing rent and interest thereon.

5.8 COUNTY CAN COLLECT UNPAID FEES WHEN HOME IS SOLD: In the event that any amount of payable Lease Fee remains unpaid when the Home is sold, the outstanding amount of payable Lease Fee, including any interest as provided above, shall be paid to COUNTY out of any proceeds from the sale that would otherwise be due to Homeowner. The COUNTY shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Lease, (b) Permitted Mortgages as defined in section 8.1 below; and (c) liens for real property taxes and other governmental assessments or charges against the Home.

ARTICLE 6: Taxes and Assessments

6.1 HOMEOWNER IS RESPONSIBLE FOR PAYING ALL TAXES AND ASSESSMENTS: Homeowner shall pay directly, when due, all taxes and governmental assessments that relate to the Home and the Leased Land (including any taxes relating to the COUNTY's interest in the Leased Land).

6.2 COUNTY WILL PASS ON ANY TAX BILLS IT RECEIVES TO HOMEOWNER: In the event that the local taxing authority bills COUNTY for any portion of the taxes on the Home or Leased Land, COUNTY shall pass the bill to Homeowner and Homeowner shall promptly pay this bill.

6.3 HOMEOWNER HAS A RIGHT TO CONTEST TAXES: Homeowner shall have the right to contest the amount or validity of any taxes relating to the Home and Leased Land. Upon receiving a reasonable request from Homeowner for assistance in this matter, COUNTY shall join in contesting such taxes. All costs of such proceedings shall be paid by Homeowner.

6.4 IF HOMEOWNER FAILS TO PAY TAXES, COUNTY MAY INCREASE LEASE FEE: In the event that Homeowner fails to pay the taxes or other charges described in Section 6.1 above, COUNTY may increase Homeowner's Lease Fee to offset the amount of taxes and other charges owed by Homeowner. Upon collecting any such amount, COUNTY shall pay the amount collected to the taxing authority in a timely manner.

6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF: When either party pays taxes relating to the Home or Leased Land, that party shall furnish satisfactory evidence of the payment to the other party. A photocopy of a receipt shall be the usual method of furnishing such evidence.

ARTICLE 7: The Home

7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND: All structures, including the house, fixtures, and other improvements purchased, constructed, or installed by the Homeowner on or under any part of the Leased Land at any time during the term of this Lease (collectively, the "Home") shall be property of the Homeowner. Such structures or fixtures may include, but are not limited to, additional buildings of any size or construction, concrete slabs for parking or access, irrigation systems such as in-ground sprinklers, architectural or other landscaping of any kind, decks, porches, in-ground plants, shrubbery, or trees. Title to the Home shall be and remain vested in the Homeowner. However, Homeowner's rights of ownership are limited by certain provisions of this Lease, including provisions regarding the sale or leasing of the Home by the Homeowner and the COUNTY's option to purchase the Home. In addition, Homeowner shall not remove any part of the Home from the Leased Land without COUNTY's prior written consent.

7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE: Upon the signing of this Lease, Homeowner is simultaneously purchasing the Home to be constructed on the Leased Land.

7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS: Any construction in connection with the Home is permitted only

if the following requirements are met: (a) all costs shall be paid for by the Homeowner; (b) all construction shall be performed in a professional manner and shall comply with all applicable laws and regulations; (c) all changes in the Home shall be consistent with the permitted uses described in Article 4; (d) the footprint, square-footage, or height of the house shall not be increased and new structures shall not be built or installed on the Leased Land without the prior written consent of COUNTY.

For any construction requiring COUNTY's prior written consent, Homeowner shall submit a written request to the COUNTY. Such request shall include:

- a) a written statement of the reasons for undertaking the construction;
- b) a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
- c) a list of the necessary materials, with quantities needed;
- d) a statement of who will do the work;

If the COUNTY finds it needs additional information it shall request such information from Homeowner within two weeks of receipt of Homeowner's request. The COUNTY then, within two weeks of receiving all necessary information (including any additional information it may have requested) shall give Homeowner either its written consent or a written statement of its reasons for not consenting. Before construction can begin, Homeowner shall provide COUNTY with copies of all necessary building permits, if not previously provided.

7.4 HOMEOWNER MAY NOT ALLOW STATUTORY LIENS TO REMAIN AGAINST LEASED LAND OR HOME: Except for a lien imposed by the County as described in Section 5.8 above, no lien of any type shall attach to the COUNTY's title to the Leased Land. Homeowner shall not permit any statutory or similar lien to be filed against the Leased Land or the Home which remains more than 60 days after it has been filed. Homeowner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If Homeowner fails to discharge such lien within the 60-day period, then Homeowner shall immediately notify COUNTY of such failure. COUNTY shall have the right to discharge the lien by paying the amount in question. Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Leased Land from such lien. Any amounts paid by COUNTY to discharge such liens shall be treated as an additional Lease Fee payable by Homeowner upon demand.

7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS: Homeowner hereby assumes responsibility for furnishing all services or facilities on the Leased Land, including but not limited to heat, electricity, air conditioning and water. COUNTY shall not be required to furnish any services or facilities or to make any repairs to the Home. Homeowner shall maintain the Home and Leased Land as required by Section 4.2 above and shall see that all necessary repairs and replacements are accomplished when needed.

7.6. HOMEOWNER BEARS THE BURDEN OF ALL REPAIRS AND REPLACEMENTS: Homeowner hereby assumes responsibility for ensuring that all repairs and replacements related to the condition of the Home are made in accordance with all sections of this Lease, including 7.5 above. In addition to repairing and replacing non-structural parts of the Home and leased

premises, Homeowner shall be responsible for repairing and replacing all structural portions of the Home and leased premises, including but not limited to: the foundation, pile caps, floor slabs, basements or bunkers of any kind, interior and exterior load bearing walls, columns, beams, struts, ties, plates, joists, trusses, and any other items of similar character. In addition, Homeowner shall be responsible for repairing and replacing all structural and non-structural portions of the roofing and roofing material including but not limited to: decking, sheathing, flashing, joists, insulation, membrane, as well as any outer covering such as metal, tiles, shingles, or the like. Nothing in this Lease should be construed as the County of Kaua'i taking responsibility for any level of maintenance, repair, or replacement to any part of the Home during the duration of the Lease. This Section is to be read in conjunction with Article 9, below.

7.7 WHEN LEASE ENDS, OWNERSHIP REVERTS TO COUNTY, WHICH SHALL REIMBURSE HOMEOWNER: Upon the expiration or termination of this Lease, ownership of the Home shall revert to COUNTY. Upon thus assuming title to the Home, COUNTY shall promptly pay Homeowner and Permitted Mortgagee(s), as follows:

FIRST, COUNTY shall pay any Permitted Mortgagee(s) the full amount owed to such mortgagee(s) by Homeowner;

SECOND, COUNTY shall pay the Homeowner the balance of the Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the COUNTY under the terms of this Lease. The Homeowner shall be responsible for any costs necessary to clear any additional liens or other charges related to the Home which may be assessed against the Home. If the Homeowner fails to clear such liens or charges, the balance due the Homeowner shall also be reduced by the amount necessary to release such liens or charges, including reasonable attorneys' fees incurred by the COUNTY.

ARTICLE 8: Financing

8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT COUNTY'S PERMISSION: The Homeowner may mortgage the Home only with the prior, written permission of COUNTY. Any mortgage or deed of trust permitted in writing by the COUNTY is defined as a Permitted Mortgage, and the holder of such a mortgage or deed of trust is defined as a Permitted Mortgagee.

If, at any time subsequent to the purchase of the Home and signing of the Lease, the Homeowner seeks a loan that is to be secured by a mortgage on the Home (to refinance an existing Permitted Mortgage or to finance home repairs or for any other purpose), Homeowner must inform COUNTY, in writing, of the proposed terms and conditions of such mortgage loan at least 30 business days prior to the expected closing of the loan. The information to be provided to the COUNTY must include:

- a. the name of the proposed lender;
- b. Homeowner's reason for requesting the loan;
- c. the principal amount of the proposed loan and the total mortgage debt that will result from the combination of the loan and existing mortgage debt, if any;

- d. expected closing costs;
- e. the rate of interest;
- f. the repayment schedule;
- g. a copy of the appraisal commissioned in connection with the loan request.

COUNTY may also require Homeowner to submit additional information. COUNTY will not permit such a mortgage loan if the loan increases Homeowner's total mortgage debt to an amount greater than 95% of the then current Purchase Option Price, calculated in accordance with Article 10 below, or if the terms of the transaction otherwise threaten the interests of either the Homeowner or the COUNTY.

8.2 BY SIGNING LEASE, COUNTY GIVE PERMISSION FOR ORIGINAL MORTGAGE. By signing this Lease, COUNTY gives written permission for Homeowner to obtain a mortgage or deed of trust effective on the day this Lease is signed for the purpose of financing Homeowner's construction of the Home. Consistent with Section 8.1, above, any further mortgage or deed of trust requires prior, written consent by the County.

8.3 COUNTY SHALL ALLOW A "STANDARD PERMITTED MORTGAGE." The COUNTY shall permit any mortgage for which the mortgagee has signed a "Standard Permitted Mortgage Agreement" as set forth in Part C of Exhibit D: "Permitted Mortgages". The loan secured thereby shall not increase Homeowner's total mortgage debt to an amount greater than 95% of the then current Purchase Option Price, calculated in accordance with Article 10 below.

8.4 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE. Any Permitted Mortgagee shall be bound by each of the requirements stated in Exhibit D, Part A: "Obligations of Permitted Mortgage," which is made a part of this Lease by reference. The requirements of Exhibit D, Part A may be accepted, only if the particular requirements are removed, contradicted, or modified by a Rider to this Lease signed by the Homeowner and the COUNTY, thus modifying the terms of the Lease during the term of the Permitted Mortgage.

8.5 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE. Any Permitted Mortgagee shall have all of the rights and protections stated in Exhibit D: Part B, "Rights of Permitted Mortgagee," which is made a part of this Lease by reference.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 HOMEOWNER ASSUMES ALL LIABILITY. Homeowner assumes all responsibility and liability related to Homeowner's possession, occupancy and use of the Leased Land.

9.2 HOMEOWNER MUST DEFEND COUNTY AGAINST ALL CLAIMS OF LIABILITY. Homeowner shall defend, indemnify and hold COUNTY harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Land. Homeowner waives all claims against COUNTY for injury or damage on or about the Leased Land.

9.3 HOMEOWNER MUST REIMBURSE COUNTY. In the event the COUNTY shall be required to pay any sum that is the Homeowner's responsibility or liability, the Homeowner shall reimburse the COUNTY for such payment and for reasonable expenses caused thereby.

9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND. Homeowner shall, at Homeowner's expense, keep the Home continuously insured against all risks of physical loss, using Insurance Services Office (ISO) Form HO 00 03, or its equivalent, for the full replacement value of the Home. Such insurance coverage must be in an amount that will not incur a coinsurance penalty. The amount of such insured replacement value must be approved by the COUNTY prior to the commencement of the Lease.

Thereafter, if the COUNTY determines that the replacement value to be insured should be increased, the COUNTY shall inform the Homeowner of such required increase at least 30 days prior to the next date on which the insurance policy is to be renewed. Such a requested increase by the County may occur from time to time, but not more often than once in any one-year period. The amount of such increase in coverage shall be based on current trends in homeowner's liability insurance coverage in the area in which the Home is located. The Homeowner shall assure that the renewal includes such change by providing the County with a copy of the adjusted insurance coverage.

If Homeowner wishes to decrease the amount of replacement value to be insured, Homeowner shall obtain written consent from the County approving such change at least 30 days prior to the time such change would take effect. The change shall not take effect without COUNTY's approval.

Should the Home lie in a flood hazard zone as defined by the National Flood Insurance Plan, the Homeowner shall keep in full force and effect flood insurance in the maximum amount available.

The Homeowner shall also, at its sole expense, maintain in full force and effect public liability insurance using ISO Form HO 00 03 or its equivalent in the amount of \$ 300,000.00 per occurrence and in the aggregate. The COUNTY shall be named as an additional insured using ISO Form HO 04 41 or its equivalent, and certificates of insurance shall be delivered to the COUNTY prior to the commencement of the Lease and at each anniversary date thereof.

9.5 WHAT HAPPENS IF HOME IS DAMAGED OR DESTROYED. Except as provided below, in the event of fire or other damage to the Home, Homeowner shall take all steps necessary to assure the repair of such damage, the replacement of any damaged, leased property, and the restoration of the Home to its condition immediately prior to the damage. All such repairs, replacements, and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure that the Leased Land is safe and that the damaged Home does not constitute a danger to persons or property.

If Homeowner, based on professional estimates, determines either (a) that full repair and restoration is physically impossible, or (b) that the available insurance proceeds will pay for less

than the full cost of necessary repairs and that Homeowner cannot otherwise afford to cover the balance of the cost of repairs, then Homeowner shall notify COUNTY of this problem, and COUNTY may then help to resolve the problem. Methods used to resolve the problem may include efforts to increase the available insurance proceeds, efforts to reduce the cost of necessary repairs, efforts to arrange affordable financing covering the costs of repair not covered by insurance proceeds, and any other methods agreed upon by both Homeowner and COUNTY.

If Homeowner and COUNTY cannot agree on a way of restoring the Home in the absence of adequate insurance proceeds, then Homeowner may give COUNTY written notice of intent to terminate the Lease. The date of actual termination shall be no less than 60 days after the date of Homeowner's notice of intent to terminate. Upon termination, any insurance proceeds payable to Homeowner for damage to the Home shall be paid as follows:

FIRST, to the expenses of their collection;

SECOND, to any Permitted Mortgagee(s), to the extent required by the Permitted Mortgage(s);

THIRD, to the expenses of enclosing or razing the remains of the Home and clearing debris;

FOURTH, to the COUNTY for any amounts owed under this Lease;

FIFTH, to the Homeowner, up to an amount equal to the Purchase Option Price, as of the day prior to the loss, less any amounts paid with respect to the second, third, and fourth clauses above; SIXTH, the balance, if any, to the COUNTY.

9.6 WHAT HAPPENS IF SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE.

If all of the Leased Land is taken by eminent domain or otherwise for public purposes, or if so much of the Leased Land is taken that the Home is lost or damaged beyond repair, the Lease shall terminate as of the date when Homeowner is required to give up possession of the Leased Land. Upon such termination, the entire amount of any award(s) paid shall be allocated in the way described in Section 9.5 above for insurance proceeds.

In the event of a taking of a portion of the Leased Land that does not result in damage to the Home or significant reduction in the usefulness or desirability of the Leased Land for residential purposes, then any monetary compensation for such taking shall be allocated entirely to COUNTY.

In the event of a taking of a portion of the Leased Land that results in damage to the Home only to such an extent that the Home can reasonably be restored to a residential use consistent with this Lease, then the damage shall be treated as damage is treated in Section 9.5 above, and monetary compensation shall be allocated as insurance proceeds are to be allocated under Section 9.5.

9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED. In the event of any taking that reduces the size of the Leased Land but does not result in the termination of the Lease, COUNTY shall reassess the fair rental value of the remaining Land and may adjust the Lease Fee as necessary to assure that the monthly fee does not exceed the monthly fair rental value of the Land for use as restricted by the Lease.

9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, COUNTY

WILL TRY TO HELP HOMEOWNER BUY ANOTHER COUNTY HOME. If this Lease is terminated as a result of damage, destruction or taking, COUNTY may take reasonable steps to aid the Homeowner in purchasing another home on leased land owned by COUNTY. Such assistance is subject to the availability of leased land and homes. Should the COUNTY make available to Homeowner another leased premises, Homeowner shall apply any proceeds or award received by Homeowner to the purchase of the home. Homeowner understands that there are numerous reasons why it may not be possible to make such a home available, and shall have no claim against COUNTY if such a home is not made available.

ARTICLE 10: Transfer of the Home

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY: Homeowner and COUNTY agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO COUNTY OR QUALIFIED PERSONS: Homeowner may transfer the Home only to the COUNTY or an Income-Qualified Person as defined below or otherwise explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

Selection of the applicable box below indicates Federal funds are being utilized to X construct and/or N/A finance the residence:

- COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
- HOME INVESTMENT PARTNERSHIP PROGRAM (HOME)
- NEIGHBORHOOD STABILIZATION PROGRAM (NSP)
- NOT APPLICABLE;

then a “Income-Qualified Person” shall mean a person or group of persons whose household income does not exceed _____ (%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor during the _____ () year period of affordability which starts on _____ and ends on _____.

After the _____ () year period of affordability, a “Income-Qualified Person” shall mean a person or group of persons whose household income does not exceed _____ (%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor

If no applicable box indicating Federal Funds is checked on the preceding page, this means that NO Federal Funds are being utilized and an “Income-Qualified Person” shall mean a person or

group of persons whose household income does not exceed 120% of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER: If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner's estate shall notify COUNTY within ninety (90) days of the date of the death. Upon receiving proper notice, COUNTY shall consent to a transfer of the Home and Homeowner's rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as "a," "b," or "c," provided that a Letter of Agreement and a Letter of Attorney's Acknowledgment (as described in Article 1 above) are submitted to COUNTY and attached to the Lease when it is transferred to the heirs:

- a) the spouse, reciprocal beneficiary, or partner to a civil union of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner's household who have resided in the Home for at least one year immediately prior to Homeowner's death.

Any other heirs, legatees, or devisees of Homeowner, in addition to submitting Letters of Agreement and Attorney's Acknowledgment as provided above, must demonstrate to COUNTY's satisfaction that they are Income-Qualified Persons as defined above. If they cannot demonstrate that they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article.

10.4 HOMEOWNER MUST GIVE NOTICE OF INTENT TO SELL: In the event that Homeowner wishes to sell Homeowner's Property, Homeowner shall notify COUNTY, in writing, of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

10.5 AFTER RECEIVING NOTICE, COUNTY SHALL COMMISSION AN APPRAISAL: No later than ten (10) days after COUNTY's receipt of Homeowner's Intent-to-Sell Notice, COUNTY shall commission a market valuation of the Leased Land and the Home (The Appraisal) to be performed by a duly licensed appraiser. COUNTY shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both COUNTY and Homeowner.

10.6 COUNTY HAS AN OPTION TO PURCHASE THE HOME. Upon receipt of an Intent-to-Sell Notice from Homeowner, COUNTY shall have the option to purchase the Home at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment by the Homeowner.

If COUNTY elects to purchase the Home, COUNTY shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within

forty-five (45) days of the receipt of the Appraisal, or the Option shall expire. Having given such notice, COUNTY may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by COUNTY or COUNTY's assignee) must be completed within sixty (60) days of COUNTY's Notice of Exercise of Option, or Homeowner may sell the Home and Homeowner's rights to the Leased Land as provided in Section 10.7 below. The time permitted for the completion of the purchase may be extended by mutual agreement of COUNTY and Homeowner.

Homeowner may recommend to COUNTY a prospective buyer who is an Income-Qualified Person and is prepared to submit Letters of Agreement and Attorney's Acknowledgement indicating informed acceptance of the terms of this Lease. COUNTY may make reasonable efforts to arrange for the assignment of the Purchase Option to such person. The decision to accept or reject Homeowner's prospective buyer is at the sole discretion of the COUNTY; COUNTY may determine that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another party.

10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS: If the Purchase Option has expired or if COUNTY has failed to complete the purchase within the sixty-day period allowed by Section 10.6 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price. If Homeowner has made diligent efforts to sell the Home for at least six months after the expiration of the Purchase Option (or six months after the expiration of such sixty-day period) and the Home still has not been sold, Homeowner may then sell the Home, for a price no greater than the then applicable Purchase Option Price, to any party regardless of whether that party is an Income-Qualified Person.

10.8 AFTER ONE YEAR COUNTY SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE: If COUNTY does not exercise its option and complete the purchase of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home; and (b) continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint COUNTY its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus COUNTY's costs of sale and any other sums which the Homeowner owes the COUNTY.

10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OF HOMEOWNER'S OWNERSHIP INTEREST OR FORMULA PRICE: In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the Appraised Value of Homeowner's Ownership Interest at Resale as calculated in line "d" of Section 10.10 below or (b) the Formula Price calculated in accordance with Section 10.10 below.

10.10 HOW THE FORMULA PRICE IS CALCULATED: The Formula Price shall be equal to (a) the amount of Homeowner's Base Price (as stated below), plus (b) 25% of any increase in the appraised value of Homeowner's Ownership Interest (as calculated below).

a. *Homeowner's Base Price*: The Parties agree that the price paid by Homeowner upon the execution of this lease (Homeowner's Base Price) is \$ _____. (Homeowner's Base Price equals Homeowner's Ownership Interest at time of purchase.)

b. *Initial Appraised Value of Home and Leased Land*: The parties agree that the total appraised value of Home and Leased Land at the time of Homeowner's purchase (the Initial Appraised Value) is \$ _____, as documented by the appraiser's report attached to this Lease as Exhibit F: "INITIAL APPRAISAL."

c. *Ratio of Homeowner's Base Price to Initial Appraised Value*. The parties agree that the Ratio of Homeowner's Base Price to Initial Appraised Value, expressed as a percentage, is 53%.

d. *Appraised Value of Homeowner's Ownership Interest at Resale*. The appraised value of Homeowner's Ownership Interest at time of resale equals the appraised value of Home and Leased Land at resale, determined in accordance with Section 10.5, multiplied by the Ratio of Homeowner's Base Price to Initial Appraised Value (53%) as calculated in line "c" above.

e. *Increase in Appraised Value of Homeowner's Ownership Interest*: The increase in appraised value of Homeowner's Ownership Interest equals the appraised value of Homeowner's Ownership Interest at resale determined in accordance with paragraph "d" above minus the Homeowner's Base Price stated in line "a" above.

f. *Homeowner's share of Increase in Appraised Value of Homeowner's Ownership Interest*: Homeowner's share of the increase in the appraised value of the Homeowner's Ownership Interest equals twenty-five percent (25%) of the increase in the appraised value of Homeowner's Ownership Interest as calculated in line "e" above.

Formula Price: The Formula Price equals Homeowner's Base Price (line "a") plus Homeowner's share of Increase in the appraised value of the Homeowner's Ownership Interest (line "f").

10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE: The COUNTY shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. The terms of such lease shall be the same as those of new leases issued to homebuyers at that time for land not previously leased by the COUNTY.

10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE. In the event that Homeowner sells the home to a party other than the COUNTY (whether directly to such party or as a result of COUNTY's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include a transfer fee to compensate the COUNTY for carrying out its responsibilities with regard to the transaction. The transfer fee may be waived at the discretion of the COUNTY. The amount of the transfer fee shall be no more than N/A of the Purchase Option Price.

10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER:

The Homeowner is required to make necessary repairs when she voluntarily transfers the Home as follows:

- a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a building inspector to assess the condition of the Home and prepare a

written report of the condition (“Inspection Report”). The Homeowner shall cooperate fully with the inspection.

- b) The Buyer shall provide a copy of the Inspection Report to Buyer’s lender (if any), the Homeowner, and the COUNTY within 10 days after receiving the Inspection Report.
- c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2, 7.5, and 7.6 above prior to transferring the Home.
- d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner’s written request, the COUNTY may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner’s proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner’s proceeds of sale in a COUNTY-approved escrow account.
- e) Homeowner shall allow COUNTY, Buyer, Buyer’s building inspector, and lender’s representative to inspect the repairs and replacements prior to closing to determine that the repairs and replacements have been satisfactorily completed.
- f) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.
- g) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all structures, fixtures, and improvements as discussed in Section 7.1 above, or (ii) reduce the purchase price for any improvements with Homeowner removed without COUNTY approval as discussed in Section 7.1 above.

ARTICLE 11: Memorandum of Lease

Attached hereto as Exhibit “G: Memorandum of Lease,” is a Memorandum of Lease which identifies the parties in interest, the term, and the Premises. All parties in interest shall sign the Memorandum of Lease contemporaneously with the signing of the Lease, and the Memorandum of Lease shall be placed of record on the land records covering the site of the Premises; however, this Lease itself shall not be recorded. Landlord shall pay all transfer taxes, charges, and fees incurred in connection with recording the Memorandum of Lease.

ARTICLE 12: DEFAULT

12.1 WHAT HAPPENS IF HOMEOWNER FAILS TO MAKE PAYMENTS TO THE COUNTY THAT ARE REQUIRED BY THE LEASE: It shall be an event of default if Homeowner fails to pay the Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by COUNTY to Homeowner and Permitted Mortgagee. However, if Homeowner makes a good faith partial payment of at least two-thirds (2/3) of the amount owed during the 30-day cure period, then the cure period shall be extended by an additional 30 days.

12.2 WHAT HAPPENS IF HOMEOWNER VIOLATES OTHER (NONMONETARY) TERMS OF THE LEASE: It shall be an event of default if Homeowner fails to abide by any other requirement or restriction stated in this Lease, and such failure is not cured by Homeowner or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by COUNTY to Homeowner and Permitted Mortgagee. However, if Homeowner or Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure.

12.3 WHAT HAPPENS IF HOMEOWNER DEFAULTS AS A RESULT OF JUDICIAL PROCESS: It shall be an event of default if the estate hereby created is taken on execution or by other process of law, or if Homeowner is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Homeowner for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home or Homeowner's interest in the Leased Land by a court of competent jurisdiction, or if a petition is filed for the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

12.4 A DEFAULT (UNCURED VIOLATION) GIVES COUNTY THE RIGHT TO TERMINATE THE LEASE OR EXERCISE ITS PURCHASE OPTION:

a) TERMINATION: In the case of any of the events of default described above, COUNTY may terminate this lease and initiate summary proceedings under applicable law against Homeowner, and COUNTY shall have all the rights and remedies consistent with such laws and resulting court orders to enter the Leased Land and Home and repossess the entire Leased Land and Home, and expel Homeowner and those claiming rights through Homeowner. In addition, COUNTY shall have such additional rights and remedies to recover from Homeowner arrears of rent and damages from any preceding breach of any covenant of this Lease. If this Lease is terminated by COUNTY pursuant to an Event of Default, then, as provided in Section 7.7 above, upon thus assuming title to the Home, COUNTY shall pay to Homeowner and any Permitted Mortgagee an amount equal to the Purchase Option Price calculated in accordance with Section 10.9 above, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the COUNTY under the terms of this Lease and all reasonable costs (including reasonable attorneys' fees) incurred by COUNTY in pursuit of its remedies under this Lease.

If COUNTY elects to terminate the Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above and the attached Exhibit: Permitted Mortgages) to postpone and extend the specified date for the termination of the Lease for a period sufficient to enable the Permitted Mortgagee or its designee to acquire Homeowner's interest in the Home and the Leased Land by foreclosure of its mortgage or otherwise.

b) **EXERCISE OF OPTION:** In the case of any of the events of default described above, Homeowner hereby grants to the COUNTY (or its assignee) the option to purchase the Home for the Purchase Option Price as such price is defined in Article 10 above. Within thirty (30) days after the expiration of any applicable cure period as established in Sections 12.1 or 12.2 above or within 30 days after any of the events constituting an Event of Default under Section 12.3 above, COUNTY shall notify the Homeowner and the Permitted Mortgagee(s) of its decision to exercise its option to purchase under this Section 12.4(b). Not later than ninety (90) days after the COUNTY gives notice to the Homeowner of the COUNTY's intent to exercise its option under this Section 12.4(a), the COUNTY or its assignee shall purchase the Home for the Purchase Option Price.

12.5 WHAT HAPPENS IF COUNTY DEFAULTS: COUNTY shall in no event be in default in the performance of any of its obligations under the Lease unless and until COUNTY has failed to perform such obligations within sixty (60) days, or such additional time as is reasonably required to correct any default, after notice by Homeowner to COUNTY properly specifying COUNTY's failure to perform any such obligation.

ARTICLE 13: Mediation and Arbitration

13.1 Nothing in this Lease shall be construed as preventing the parties from utilizing any process of mediation or arbitration in which the parties agree to engage for the purpose of resolving a dispute. Nothing in this Lease, however, requires mediation or arbitration. The COUNTY is free to pursue all available remedies if necessary.

13.2 Homeowner and COUNTY shall each pay one half (50%) of any costs incurred in carrying out mediation or arbitration in which the parties have agreed to engage.

ARTICLE 14: GENERAL PROVISIONS

14.1 **HOMEOWNER'S RESIDENCY:** The Homeowner under this Lease shall be a resident of the County.

14.2 **NOTICES:** Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to COUNTY: Kaua'i County Housing Agency
 County of Kaua'i
 4444 Rice Street, Suite 330
 Līhu'e, HI 96766

with a copy to: County Attorney
 County of Kaua'i
 4444 Rice Street, Suite 220
 Līhu'e, HI 96766

If to Homeowner

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

14.3 NO BROKERAGE: Homeowner warrants that it has not dealt with any real estate broker other than NONE in connection with the purchase of the Home. If any claim is made against COUNTY regarding dealings with brokers other than NONE, Homeowner shall defend COUNTY against such claim with counsel of COUNTY's selection and shall reimburse COUNTY for any loss, cost or damage which may result from such claim.

14.4 SEVERABILITY AND DURATION OF LEASE: If any part of this Lease is unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other part of this Lease or give rise to any cause of action of Homeowner or COUNTY against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that COUNTY's option to purchase and all other rights of both parties under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and shall be considered to be coupled with an interest.

In the event any such option or right shall be construed to be subject to any rule of law limiting the duration of such option or right, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the following persons:

The children living as of the date of this Lease of any of the Homeowners under this Lease.

14.5 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION: If the provisions of the Purchase option set forth in Article 10 of this Lease shall, for any reason, become unenforceable, COUNTY shall nevertheless have a right of first refusal to purchase the Home at the highest documented bona fide purchase price offer made to Homeowner. Such right shall be as specified in Exhibit FIRST REFUSAL. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

14.6 WAIVER: The waiver by COUNTY at any time of any requirement or restriction in this Lease, or the failure of COUNTY to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Lease. COUNTY may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by COUNTY before being effective.

The subsequent acceptance of Lease Fee payments by COUNTY shall not be deemed to be a waiver of any preceding breach by Homeowner of any requirement or restriction in this Lease, other than the failure of the Homeowner to pay the particular Lease Fee so accepted, regardless of COUNTY's knowledge of such preceding breach at the time of acceptance of such Lease Fee payment.

14.7 COUNTY'S RIGHT TO PROSECUTE OR DEFEND: COUNTY shall have the right, but shall have no obligation, to prosecute or defend, in its own or the Homeowner's name, any actions or proceedings appropriate to the protection of its own or Homeowner's interest in the Leased Land. Whenever requested by COUNTY, Homeowner shall give COUNTY all reasonable aid in any such action or proceeding.

14.8 CONSTRUCTION: Whenever in this Lease a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

14.9 HEADINGS AND TABLE OF CONTENTS: The headings, subheadings and table of contents appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

14.10 PARTIES BOUND: This Lease, including any exhibits and riders, sets forth the entire agreement between COUNTY and Homeowner with respect to the leasing of the Land; it is binding upon and inures to the benefit of these parties, and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by COUNTY and Homeowner, their legal representatives, or, in accordance with the provisions of this Lease, their successors in interest.

14.11 GOVERNING LAW: This Lease shall be interpreted in accordance with and governed by the laws of Hawai'i. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against COUNTY or Homeowner.

14.12 RECORDING: The parties agree, as an alternative to the recording of this Lease, to execute a so-called Notice of Lease or Short Form Lease in form recordable and complying with applicable law and reasonably satisfactory to COUNTY's attorneys. In no event shall such document state the rent or other charges payable by Homeowner under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

14.13 COUNTERPART SIGNING: The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together institute one and the same agreement, 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 instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties have executed this lease at Līhu'e, Hawai'i,
on the day and year first above written.

RECOMMENDED APPROVAL:

COUNTY OF KAUA'I:

By: _____
ADAM P. ROVERSI
Its: Housing Director

By: _____
BLANCHE R. MATSUYAMA
Its: Director of Finance

APPROVED AS TO FORM AND
LEGALITY

By: _____
Its:

By: _____
JADE K. FOUNTAIN-TANIGAWA
Its: County Clerk

LESSEE:

STATE OF HAWAI'I)
)SS.
COUNTY OF KAUA'I)

On this _____ day of _____, 20____, before me appeared BLANCHE R. MATSUYAMA, to me personally known, who being by me duly sworn, did say that she is the DIRECTOR OF FINANCE of the COUNTY OF KAUA'I, a political subdivision of the State of Hawai'i, and that said person executed the foregoing instrument identified or described as COUNTY OF KAUA'I GROUND LEASE on behalf of said COUNTY OF KAUA'I by authority of its Charter; and said BLANCHE R. MATSUYAMA acknowledged said instrument to be the free act and deed of said COUNTY OF KAUA'I.

Notary Public, State of Hawai'i

My commission expires: _____

Doc. Date: ____ day of _____, 20____		# Pages: _____
Doc. Description: _____		

Notary Name: _____		<u>Fifth</u> Circuit
_____		_____
NOTARY PUBLIC SIGNATURE	Date	
STATE OF HAWAI'I		
My commission expires: _____		
NOTARY CERTIFICATION		

STATE OF HAWAI'I)
)SS.
COUNTY OF KAUA'I)

On this _____ day of _____, 20_____, before me appeared JADE K. FOUNTAIN-TANIGAWA, to me personally known, who being by me duly sworn, did say that she is the COUNTY CLERK of the COUNTY OF KAUA'I, a political subdivision of the State of Hawai'i; that the seal affixed to the foregoing instrument is the seal of said COUNTY OF KAUA'I, and that said person executed the foregoing instrument identified or described as COUNTY OF KAUA'I GROUND LEASE on behalf of said COUNTY OF KAUA'I by authority of its Charter; and said JADE K. FOUNTAIN-TANIGAWA acknowledged said instrument to be the free act and deed of said COUNTY OF KAUA'I.

Notary Public, State of Hawai'i

My commission expires: _____

Doc. Date: ____ day of _____, 20 ____		# Pages: _____
Doc. Description: _____		
Notary Name: _____		<u>Fifth</u> Circuit
_____	_____	
NOTARY PUBLIC SIGNATURE		Date
STATE OF HAWAI'I		
My commission expires: _____		
NOTARY CERTIFICATION		

STATE OF HAWAI'I)
)SS.
COUNTY OF KAUA'I)

On this _____ day of _____, 20_____, before me appeared _____
_____ to me personally known to be the person described in and who executed
the foregoing instrument identified or as COUNTY OF KAUA'I GROUND LEASE and acknowledged
that she executed the same on her free act and deed.

Notary Public, State of Hawai'i

My commission expires: _____

Doc. Date ____ day of _____, 20 ____ # Pages: _____

Doc. Description: _____

Notary Name: _____ Fifth Circuit

NOTARY PUBLIC SIGNATURE

Date

STATE OF HAWAI'I

My commission expires: _____

NOTARY CERTIFICATION

EXHIBIT "A"

Exhibit "B"
LETTERS OF AGREEMENT AND ATTORNEY'S
ACKNOWLEDGMENT

Letter of Agreement

To: Kaua'i County Housing Agency
County of Kaua'i
4444 Rice Street, Suite 330
Lihue, Hawai'i 96766
("COUNTY")

Date: _____

This letter is given to the COUNTY to become an exhibit to a Lease between the COUNTY and me. I will be leasing a parcel of land from the COUNTY and will be buying the home that sits on that parcel of land. I will therefore become what is described in the Lease as a "the Homeowner."

My legal counsel, _____, has explained to me the terms and conditions of the Lease and other legal documents that are part of this transaction. I understand the way these terms and conditions will affect my rights as a COUNTY homeowner, now and in the future.

In particular I understand and agree with the following points.

One of the goals of the COUNTY is to keep COUNTY homes affordable for lower income households from one COUNTY homeowner to the next. I support this goal as a COUNTY homeowner and as a resident of the COUNTY.

The terms and conditions of my Lease will keep my home affordable for future "income qualified persons" (as defined in the Lease). If and when I want to sell my home, the lease requires that I sell it either to the COUNTY or to another income-qualified person. The terms and conditions of the lease also limit the price for which I can sell the home, in order to keep it affordable for such income-qualified persons.

It is also a goal of the COUNTY to promote resident ownership of COUNTY homes. For this reason, my Lease requires that, if I and my family move out of our home permanently, we must sell it. We cannot continue to own it as absentee owners.

I understand that I can leave my home to my child or children or other members of my household and that, after my death, they can own the home for as long as they want to live in it and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.

As a COUNTY homeowner and a resident of the COUNTY, it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to me and others.

Sincerely,

Letter of Attorney’s Acknowledgment

I, _____, have been independently employed by _____, (hereinafter “the Client”) who intends to purchase a home (the “Home”) on land to be leased from the County of Kaua’i. The house and land are located at _____.

In connection with the contemplated purchase of the Home and the leasing of the land, I reviewed with the Client the following documents:

- a) this Letter of Attorney’s Acknowledgment and a Letter of Agreement from the Client;
- b) a proposed Deed conveying the Home to the Client;
- c) a proposed Ground Lease conveying the “Leased Land” to the Client;
- d) other written materials provided by the COUNTY.

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. In my review of these documents my purpose has been to reasonably inform the Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

The Client is entering the aforesaid transaction in reliance on her own judgment and upon her investigation of the facts. The advice and information provided by me was an integral element of such investigation.

Signature

Print Name

Date

Title

Firm/Address

Exhibit "C"
DEED

Between

County of Kaua'i, a political subdivision of the State of Hawai'i, through its Kaua'i County Housing Agency, (Grantor) whose place of business and mailing address is 4444 Rice Street, Suite 330, Lihue, Hawai'i 96766

And

_____, as _____ (Grantee), residing at _____.

Witnesseth

That Grantor, in consideration of one dollar and other good and valuable consideration paid by Grantees, does hereby grant and release unto Grantees, their heirs, or successors and assigns forever,

THE BUILDINGS AND OTHER IMPROVEMENTS ONLY, as presently erected on the Land described in Schedule "A" attached hereto and made a part hereof.

It is the intention of the parties that the real property underlying the buildings and other improvements conveyed herein remain vested in Grantor and that this warranty deed convey only such buildings and other improvements as are presently erected upon the subject Land.

In witness whereof, as authorized agent of Grantor, I hereunto set my hand this ____ day of _____, _____.

RECOMMENDED APPROVAL:

COUNTY OF KAUA'I

By: _____
ADAM P. ROVERSI
Its: Housing Director

By: _____
DEREK S.K. KAWAKAMI
Its: Mayor

APPROVED AS TO FORM:

By: _____

Its:

By: _____
JADE K. FOUNTAIN-TANIGAWA
Its: County Clerk

Exhibit “D”
PERMITTED MORTGAGES

The rights and provisions set forth in this Exhibit shall be understood to be provisions of the Lease and read specifically in conjunction with Article 8 of the Lease. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

A. OBLIGATIONS OF PERMITTED MORTGAGEE. Any Permitted Mortgagee shall be bound by each of the following requirements unless the particular requirement is removed, contradicted or modified by a rider to this Lease signed by the Homeowner and the COUNTY to modify the terms of the Lease during the term of the Permitted Mortgage.

1. If Permitted Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Permitted Mortgage, the Permitted Mortgagee shall, at the same time, send a copy of that notice to the COUNTY. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the “cure period”), the COUNTY shall have the right to cure the default on the Homeowner’s behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Permitted Mortgagee.

2. If, after the cure period has expired, the Permitted Mortgagee intends to accelerate the note secured by the Permitted Mortgage or begin foreclosure proceedings under the Permitted Mortgage, the Permitted Mortgagee shall first notify COUNTY of its intention to do so, and COUNTY shall then have the right, upon notifying the Permitted Mortgagee within thirty (30) days of receipt of such notice, to acquire the Permitted Mortgage by paying off the debt secured by the Permitted Mortgage.

3. If the Permitted Mortgagee acquires title to the Home through foreclosure or acceptance of a deed in lieu of foreclosure, the Permitted Mortgagee shall give COUNTY written notice of such acquisition and COUNTY shall then have an option to purchase the Home from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage. To exercise this option to purchase, COUNTY must give written notice to the Permitted Mortgagee of COUNTY’s intent to purchase the Home within thirty (30) days following COUNTY’s receipt of the Permitted Mortgagee’s notice. COUNTY must then complete the purchase of the Home within sixty (60) days of having given written notice of its intent to purchase. If COUNTY does not complete the purchase within this 60-day period, the Permitted Mortgagee shall be free to sell the Home to another person.

4. Nothing in the Permitted Mortgage or related documents shall be construed as giving Permitted Mortgagee a claim on COUNTY’s interest in the Leased Land, or as assigning any form of liability to the COUNTY with regard to the Leased Land, the Home, or the Permitted Mortgage.

5. Nothing in the Permitted Mortgage or related documents shall be construed as rendering COUNTY or any subsequent Mortgagee of COUNTY’s interest in this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt secured by the Permitted Mortgage or any part thereof.

6. The Permitted Mortgagee shall not look to COUNTY or COUNTY’s interest in the Leased Land, but will look solely to Homeowner, Homeowner’s interest in the Leased Land, and the Home for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties hereto that COUNTY’s consent to such the Permitted Mortgage shall be without any liability on the part of COUNTY for any deficiency judgment.)

7. In the event any part of the Security is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Permitted Mortgagee in accordance with the provisions of ARTICLE 9 hereof.

8. COUNTY shall not be obligated to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

B. RIGHTS OF PERMITTED MORTGAGEE. The rights of a Permitted Mortgagee as referenced under Section 8.5 of the Lease to which this Exhibit is attached shall be as set forth below.

1. Any Permitted Mortgagee shall, without further consent by COUNTY, have the right to (a) cure any default under this Lease, and perform any obligation required under this Lease, such cure or performance being effective as if it had been performed by Homeowner; (b) acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Homeowner by this Lease or otherwise by law, subject to the provisions, if any, in the Permitted Mortgage, which may limit any exercise of any such right, remedy or privilege; and (c) rely upon and enforce any provisions of the Lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

2. A Permitted Mortgagee shall not be required, as a condition to the exercise of its rights under the Lease, to assume personal liability for the payment and performance of the obligations of the Homeowner under the Lease. Any such payment or performance or other act by Permitted Mortgagee under the Lease shall not be construed as an agreement by Permitted Mortgagee to assume such personal liability except to the extent Permitted Mortgagee actually takes possession of the Home and Leased Land. In the event Permitted Mortgagee does take possession of the Home and Leased Land and thereupon transfers such property, any such transferee shall be required to enter into a written agreement assuming such personal liability and upon any such assumption the Permitted Mortgagee shall automatically be released from personal liability under the Lease.

3. In the event that title to the estates of both COUNTY and Homeowner are acquired at any time by the same person or persons, no merger of these estates shall occur without the prior written declaration of merger by Permitted Mortgagee, so long as Permitted Mortgagee owns any interest in the Security or in a Permitted Mortgage.

4. If the Lease is terminated for any reason, or in the event of the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, COUNTY shall enter into a new lease for the Leased Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to COUNTY's approval, which approval shall not be unreasonably withheld), not more than thirty (30) days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the term of the Lease, effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. However, the Permitted Mortgagee shall make a written request to COUNTY for such new lease within sixty (60) days after the effective date of such termination, rejection or disaffirmance, as the case may be. Such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Homeowner thereunder. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Land as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full effect thereafter to the same extent as if this Section were

Exhibit "E"
FIRST REFUSAL

Whenever any party under the Lease shall have a right of first refusal as to certain property, the following procedures shall apply. If the owner of the property offering it for sale ("Offering Party") shall within the term of the Lease receive a bona fide third party offer to purchase the property which such Offering Party is willing to accept, the holder of the right of first refusal (the "Holder") shall have the following rights:

a) Offering Party shall give written notice of such offer ("the Notice of Offer") to Holder setting forth (a) the name and address of the prospective purchaser of the property, (b) the purchase price offered by the prospective purchaser and (c) all other terms and conditions of the sale. Holder shall have a period of forty-five (45) days after the receipt of the Notice of Offer ("the Election Period") within which to exercise the right of first refusal by giving notice of intent to purchase the property ("the Notice of Intent to Purchase") for the same price and on the same terms and conditions set forth in the Notice of Offer. Such Notice of Intent to Purchase shall be given in writing to the Offering Party within the Election Period.

b) If Holder exercises the right to purchase the property, such purchase shall be completed within sixty (60) days after the Notice of Intent to Purchase is given by Holder (or if the Notice of Offer shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice of Offer, including payment of the purchase price provided therein.

c) Should Holder fail to exercise the right of first refusal within the Election Period, then the Offering Party shall have the right (subject to any other applicable restrictions in the Lease) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within such one-year period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this section shall be applied again to any future offer, all as aforesaid. If a sale is consummated within such one-year period, the purchaser shall purchase subject to the Holder having a renewed right of first refusal in said property.

Exhibit "F"
INITIAL APPRAISAL

Exhibit "G"
Memorandum of Lease

