



**A&B PROPERTIES, INC.**  
A SUBSIDIARY OF ALEXANDER & BALDWIN, INC.

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RECEIVED  
 2016 JUL -6 PM 4:30  
 OFFICE OF THE  
 COUNTY CLERK

June 29, 2016

RECEIVED  
 2016 JUN -1 PM 2:55  
 OFFICE OF THE  
 COUNTY CLERK

The Honorable Michael White, Chair  
 Members of the Maui County Council  
 200 South High Street  
 Wailuku, HI 96793

**Subject: 2016 Annual Report to the Maui County Council  
 Maui County Ordinance No. 4146  
 Kihei Residential Project-Change in Zoning**

Dear Council Chair White and Councilmembers:

On behalf of Alexander & Baldwin, LLC, A&B Properties, Inc. (hereinafter "A&B" or "Petitioner") hereby submits this 2016 annual report to the Maui County Council (hereinafter "Council") pursuant to Condition No. 3 of Maui County Ordinance No. 4146 (hereinafter "Ordinance").

Since the receipt of zoning approval in August 2014, Petitioner has proceeded with the design, engineering and construction of the Project. Subdivision plans for the initial increments of the Project have been filed and are being processed by the County. Plans for the Project's initial increment include affordable residential units as prescribed by the County's residential workforce housing policy. The overall master plan seeks to provide a range of housing types to meet a range of price points and market segments, all geared toward primary housing for Maui families. Toward that end the plan includes a mix of multi family attached and single family detached units, including stacked flats, townhomes, motor court homes and single family detached homes under condominium ownership. To provide for that mix of housing types within the R-1 zoned area, the Petitioner sought and received a Cluster Housing permit from the County of Maui. This permit allows for a mix of single family detached housing types to meet a wider range of market segments and price points.

Construction of the Project commenced in March 2016, with site grading and infrastructure improvements. Vertical construction is anticipated to commence in September 2016 and the first home deliveries are expected in early 2017. The Project has also been given a new name and is now referred to as "Kamalani".

**GENERAL COMMUNICATION NO. 16-7**

Listed below are each of the conditions imposed by the Council and the status of activities pertaining to each respective condition.

1. That, in order to meet the goals and objectives of the Kihei-Makena Community Plan, Maui Island Plan, and Countywide Policy Plan (“General Plan documents”), Alexander & Baldwin, LLC (“A&B”) shall provide an open space/greenway with pedestrian walkways and bicycle pathways throughout the project area with connectivity to the Waiakoa Gulch and adjoining residential areas within the time frame for completion of backbone infrastructure improvements established by the State Land Use Commission Decision and Order, Condition 22. Plans for the pedestrian walkways and bicycle pathways as they relate to each increment of the project shall be provided to the Department of Planning (“Planning”) for review and evaluation for consistency with the General Plan documents prior to final subdivision approval of each increment.

**Status: Plans for the Project include both active and passive parks at strategic locations throughout the Project, including at areas abutting the Waiakoa Gulch. Pedestrian and bike paths have also been incorporated into the plan.**

2. That consideration shall be given to generating renewable energy consistent with Hawaii Clean Energy Initiative goals.

**Status: Measures to promote energy conservation, such as the use of gas in lieu of electricity for the appropriate appliances and LED lighting, are being implemented to the extent feasible.**

3. That A&B shall provide annual compliance reports to Planning and the Maui County Council. The reports would include the status of the project and A&B’s progress in complying with the conditions of zoning, commencing within one year of the effective date of the ordinance and continuing until such time as the conditions have been fully satisfied, as determined by Planning and the Department of Public Works (“DPW”).

**Status: This annual report is being provided in compliance with this condition.**

4. That A&B shall provide two additional vehicular access points at the mauka end of the project in addition to the primary access at the makai end of the project to Kaiwahine Street. One of the additional access points shall provide a permanent vehicular connection to the previously developed properties to the South, and shall be located at or near the County-owned Hale Piilani Park (TMK: (2) 3-8-004:031). The other access shall be provided as a connection to any future collector road or the future Kihei mauka bypass road as conceptually depicted in the Maui Island Plan, Diagram 6-1.

A&B shall enter into an access phasing agreement with DPW to ensure the additional access points within the project are provided to County standards and at appropriate times in the build-out of the project. The access phasing agreement shall be entered into prior to the occupancy of the 100<sup>th</sup> unit of the project.

**Status: The access phasing agreement with the DPW has been executed. A copy of the agreement is attached (Attachment 1).**

5. That the mitigative transportation improvements at the intersection of Piilani Highway/Kaiwahine Street/Uwapo Road, including the recommended storage lengths for turning lanes, as recommended in the Updated/Revised Traffic Impact Analysis Report (“TIAR”) dated January 22, 2013, and as delineated in the draft Conceptual Layout attached hereto as Exhibit “E-1”, shall be designed and constructed by A&B prior to occupancy of the first dwelling unit, or as may be subsequently determined by the State Department of Transportation (“DOT”), all at no cost to the State of Hawaii or the County of Maui, provided that any such determinations are substantiated by the findings of a new updated/revised traffic impact analysis report that is reviewed and accepted by DOT and DPW.

**Status: In August 2014, an updated traffic analysis was submitted to the State DOT for review. This traffic analysis supplemented the Updated/Revised TIAR dated January 22, 2013, which was accepted by the DOT in May 2013. On May 26, 2015 the DOT accepted the updated traffic analysis including the timing of the improvements at the Piilani Highway/Kaiwahine Street intersection. A copy of that letter was provided with our 2015 annual report.**

6. That any additional land required to accommodate the recommended transportation improvements shall be provided by A&B at no cost to the State of Hawaii or the County of Maui.

**Status: Petitioner acknowledges this condition.**

7. That a separate right-turn-in and right-turn-out additional access to Piilani Highway shall not be permitted, unless approved by DOT and DPW.

**Status: Plans for the Project do not include direct vehicular access onto Piilani Highway.**

8. That A&B shall coordinate design and construction drawings with the DOT Highways Maui District Office for any applicable review by DOT’s Traffic Branch and Design Branch, during the design phase.

**Status: Design and construction plans will be coordinated with the State DOT.**

9. That the subdivision map shall show vehicular access restrictions along the project’s frontage with Piilani Highway. Those access restrictions shall be recorded at the Bureau of Conveyances and described in the deeds to any lots within the project that are adjacent to Piilani Highway.

**Status: The subdivision map for the portion of the Project along Piilani Highway includes vehicular access restrictions.**

10. That all required improvements shall follow American Association of State Highway and Transportation Officials (“AASHTO”) guidelines and State and County requirements and shall be provided at no cost to the State of Hawaii or the County of Maui.

**Status: Petitioner acknowledges this condition and will comply with its requirements.**

11. That A&B shall update the accepted TIAR when the development reaches the threshold of 70 per cent occupancy, or as may be subsequently determined by DOT and DPW, and submitted to DOT and DPW for review and acceptance. If the intersection is not operating as well as projected in the TIAR, the updated TIAR shall recommend additional transportation improvements to mitigate project-generated traffic impacts. These transportation improvements shall be constructed and provided by A&B, at no cost to the State of Hawaii or the County of Maui, prior to occupancy of the remaining 30 per cent of the project, or as may be subsequently determined by DOT and DPW.

**Status: Petitioner acknowledges this condition and will comply with its requirements.**

12. That transient vacation rentals, bed and breakfast homes, and short-term rental homes shall be prohibited.

**Status: Petitioner acknowledges this condition and such restrictions have been incorporated into applicable legal documents.**

13. That A&B shall work with the Department of Housing and Human Concerns to incorporate appropriate sales provisions and processes that promote home sales to owner occupants.

**Status: In compliance with the County’s Residential Workforce Housing Policy, the Petitioner has executed an affordable housing agreement with the County of Maui. A copy of that agreement is attached to this report (Attachment 2). Petitioner is working with the DHHC to implement appropriate provisions and processes to promote sales to owner occupants.**

14. That A&B shall comply with State and County drainage design and construction standards to mitigate on-site flooding impacts and off-site stormwater runoff impacts to downstream properties. Engineering design of the drainage system, including drainage basins designed to adequately detain and filter stormwater, shall be reviewed and approved by DPW.

**Status: Drainage plans for the Project have been prepared in compliance with applicable State and County design standards, including best management practices to mitigate stormwater runoff impacts. These plans are subject to the review and approval by DPW.**

15. That A&B shall provide a long-term drinking water source, storage, and transmission facilities and improvements to accommodate development of the project to the satisfaction of the Department of Water Supply and other applicable State and County agencies.

**Status: Petitioner, in partnership with other parties, including the County DWS, is undertaking the development of new potable groundwater wells to serve the Project.**


16. That A&B shall initiate, within 10 years of the effective date of this ordinance, construction of the proposed backbone infrastructure, which may include any of the following: primary roadways and access points, residential internal roadways, and water supply, sewage and electrical infrastructure.

**Status: As noted previously, construction of the Project commenced in March 2016, with site grading and infrastructure improvements. Vertical construction is anticipated to commence in September 2016 and the first home deliveries are expected in early 2017.**

Please do not hesitate to contact the undersigned should you require any further information regarding this matter.

Sincerely,

A&B PROPERTIES, INC.



Grant Chun  
Vice President, Maui

cc: Maui Planning Department, w/encl.

**Attachment 1**

**THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII**

**BUREAU OF CONVEYANCES**

**DOCUMENT NO.**

**Doc A - 57780824**

**DATE - TIME**

**October 27, 2015 10:45 AM**

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Return by MAIL [ ] or PICKUP [ ] TO:

COUNTY OF MAUI  
Department of Public Works  
200 South High Street  
Wailuku, Hawaii 96793

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TMK: (2) 3-8-004-030

Total No. of Pages: 11

**ACCESS PHASING AGREEMENT**  
**KIHEI RESIDENTIAL PROJECT**

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**ACCESS PHASING AGREEMENT**  
**KIHEI RESIDENTIAL PROJECT**

THIS ACCESS PHASING AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the COUNTY OF MAUI, by and through its Department of Public Works, a political subdivision of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "COUNTY", or "DPW" and Kamalani Ventures LLC, a Hawaii limited liability company, including its successors and permitted assigns, as well as any future owners of the Property referenced herein, whose mailing address is 822 Bishop Street, Honolulu, Hawaii 96813, hereinafter referred to as "DEVELOPER".

**WITNESSETH:**

WHEREAS, DEVELOPER is the owner in fee simple of a certain property situated at Kihei, Maui, Hawaii, and specifically identified as Tax Map Key No.: (2) 3-8-004: 030 and is more particularly described in Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Property abuts the existing Hale Piilani Subdivision and Hale Piilani Park and has access from Kaiwahine Street owned by the COUNTY; and

WHEREAS, DEVELOPER desires to develop a residential subdivision upon the Property, which development is to be known as "Kihei Residential" (the "Project"); and

WHEREAS, DEVELOPER would like to construct the Project in three (3) separate increments, which increments are shown on the attachment hereto identified as Exhibit "B"; and

WHEREAS, the Project shall consist of approximately 600 residential units, including affordable housing and market priced units, a recreation center, and a community park; and

WHEREAS, DEVELOPER plans on constructing the Project's primary access at an intersection with Kaiwahine Street near its intersection with Piilani Highway; and

WHEREAS, Condition 4 in Exhibit E of Maui County Ordinance No. 4146 (Change in Zoning), effective August 1, 2014, reads as follows:

That A&B shall provide two additional vehicular access points at the mauka end of the project in addition to the primary access at the makai end of the project to Kaiwahine Street. One of the additional access points shall provide a permanent vehicular connection to the previously developed properties to the South, and shall be located at or near the County-owned Hale Piilani Park (TMK: (2) 3-8-004:031). The other access shall be provided as a connection to any future collector road or the future Kihei mauka bypass road as conceptually depicted in the Maui Island Plan, Diagram 6-1.

A&B shall enter into an access phasing agreement with DPW to ensure the additional access points within the project are provided to County standards and at appropriate times in the build-out of the project. The access phasing agreement shall be entered into prior to the occupancy of the 100<sup>th</sup> unit of the project.

WHEREAS, this Agreement is made in satisfaction of such Condition 4; and

WHEREAS, the COUNTY requires that DEVELOPER provide two on-site secondary vehicular access points at the mauka end of the Project, in addition to the primary access at the makai end of the Project to Kaiwahine Street, with one of the additional on-site access points connecting at or near the COUNTY owned Hale Piilani Park (TMK: (2) 3-8-004:031), and the other on-site access connecting to a collector road or the future Kihei Bypass Road, as conceptually depicted in the Maui Island Plan, Diagram 6-1, as described in this Agreement; and

WHEREAS, the COUNTY will require that the additional access points consist of on-site roadway and other improvements typical of similar access points, as reasonably determined by the COUNTY, and

WHEREAS, DEVELOPER is willing to make such improvements in accordance with the terms set forth herein;

NOW, THEREFORE, in consideration of the mutual obligations and covenants of the parties hereinafter set forth, the COUNTY and DEVELOPER do hereby agree as follows:

**ON-SITE IMPROVEMENTS**

1. DEVELOPER shall complete the primary Project access point, consisting of a roadway connection to Kaiwahine Street at the makai end of the Project near Piilani Highway, as part of developing Increment 1 of the Project. The connection shall consist of roadway improvements, which improvements shall include intersection improvements on Kaiwahine Street, installation of utilities, drain lines with related



catch basins, roadway and parking paving, curbs and gutters, sidewalks, striping and signage, landscaping, driveway connections, and any other related roadway improvements reasonably required by the COUNTY.

2. DEVELOPER has identified on Exhibit "B" attached hereto two secondary vehicular access points within Increment 3 ("Secondary Access Points"). One Secondary Access Point shall be at or near Hale Piilani Park, and the other Secondary Access Point shall be further east within Increment 3 (such other Secondary Access Point shall be referred to as the "Additional Access"). However, if at the time DEVELOPER submits its subdivision application to the COUNTY, a final subdivision map for the land south of Increment 3 identifies one or more connector roads adjacent to the Project, then DEVELOPER, with the concurrence of the COUNTY, will situate the Additional Access within Increment 3 to connect to such connector road(s).

3. DEVELOPER shall complete the Secondary Access Points as part of developing Increment 3 of the Project. The Secondary Access Points shall consist of on-site roadway and other on-site improvements typical of similar access points, as reasonably approved by the COUNTY ("On-Site Improvements").

4. DEVELOPER does hereby declare that the Property, and all parts thereof, is and shall be held subject to the foregoing covenants, conditions and restrictions and that all such covenants, condition and restrictions shall be effective as to and shall run with the land as to the Property from and after the recording of this instrument with the Bureau of Conveyances or Land Court of the State of Hawaii, as the case may be (the "Recording Office").

5. This Agreement and all of the covenants, conditions and restrictions contained herein shall bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and other persons who obtain any interest in the Property of portions thereof; PROVIDED HOWEVER, that upon completion of the On-Site Improvements, including the Secondary Access Points, this Agreement shall be of no further force and effect, and the COUNTY and DEVELOPER shall execute and record at the Recording Office a good and sufficient instrument evidencing the termination of this Agreement. Failure to execute and record such instrument, however, shall not indicate this Agreement continues in effect.

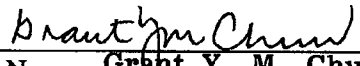
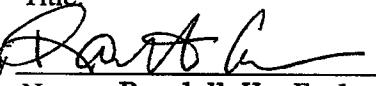
6. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all the parties hereto, notwithstanding all the parties are not signatory to the original or 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 page assembled as one document.

7. Nothing in this agreement shall affect the COUNTY'S right, under Section 16.26B.3600, Maui County Code, to require improvements in conjunction with any future building permits for the Project.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day, month, and year first above written.

"DEVELOPER"


Kamalani Ventures LLC  
By A & B Properties, Inc.,  
Its Manager

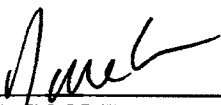
By   
Name: Grant Y. M. Chun  
Title: Vice President  
By   
Name: Randall H. Endo  
Title: Vice President

APPROVED AS TO FORM  
AND LEGALITY:

  
MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui

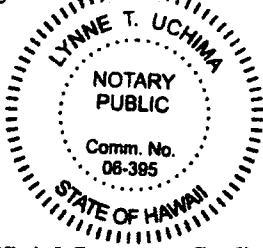
"COUNTY"

By   
ALAN M. ARAKAWA  
Its Mayor

By   
DAVID C. GOODE  
Director of Public Works

STATE OF HAWAII )  
COUNTY OF MAUI ) SS:  
~~CITY AND COUNTY OF HONOLULU )~~

On this 14th day of August, 2015, before me personally appeared Grant Y. M. Chun and Randall H. Endo, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

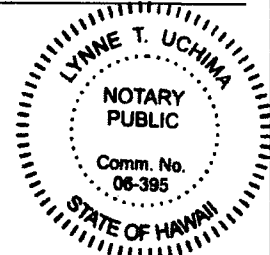


(Official Stamp or Seal)

*Lynne T. Uchima*

Name: Lynne T. Uchima  
Notary Public, State of Hawaii  
My commission expires: 7/2/2018

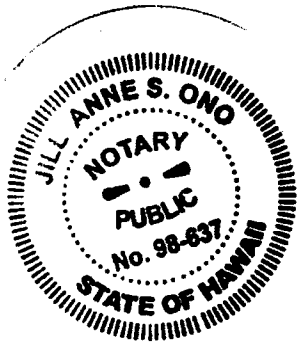
NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>Access Phasing Agreement</u> <u>Kihei Residential Project</u>	
Doc. Date: _____ or <input checked="" type="checkbox"/> Undated at time of notarization.	
No. of Pages: <u>11</u>	Jurisdiction: <u>Second</u> Circuit (in which notarial act is performed)
<u><i>Lynne T. Uchima</i></u> Signature of Notary	<u>8/14/15</u> Date of Notarization and Certification Statement
<u>Lynne T. Uchima</u> Printed Name of Notary	(Official Stamp or Seal)



STATE OF HAWAII        )  
                                      : SS.  
COUNTY OF MAUI        )

On this 5<sup>th</sup> day of October, 2015, before me personally appeared DAVID C. GOODE, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

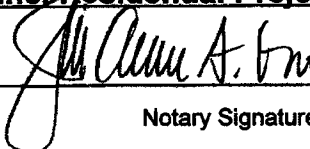
IN WITNESS WHEREOF, I have hereunto set my hand and seal.



A handwritten signature in cursive script, appearing to read "Jill Anne S. Ono".

JILL ANNE S. ONO  
Notary Public, State of Hawaii

My commission expires: 11/30/15

<b>Date: <u>Undated at time of notarization</u> No. of Pages: <u>11</u></b>	
<b>Name: JILL ANNE S. ONO</b>	<b>Second Circuit</b>
<b>Doc. Description: <u>Access Phasing Agreement</u></b>	
<b><u>Kihei Residential Project</u></b>	
	<b>10/5/15</b>
Notary Signature	
<b>NOTARY CERTIFICATION</b>	

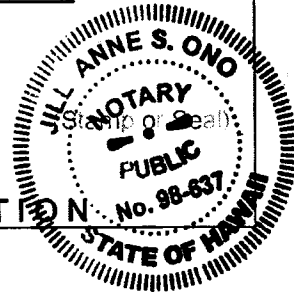


Exhibit A

All of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Number 8140, Land Commission Award Number 5230 to Keaweamahi) situate, lying and being on the easterly side of the Piilani Highway (F.A.P. No. NH-0900(59) at Pulehunui, Kihei, District of Wailuku, Island and County of Maui, State of Hawaii, being LOT 5 of the "PULEHUNUI PLAINS SUBDIVISION", and thus bounded and described:

Beginning at a pipe at the southwesterly corner of this lot, on the northeasterly side of Piilani Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KOHA" being 14,712.86 feet south and 30,237.57 feet west and running by azimuths measured clockwise from true South:

1. 131° 43' 42" 984.17 feet along said easterly side of Piilani Highway to the southwesterly corner of Lot 1 of said Pulehunui Plains Subdivision;

Thence along the southerly boundary of Lot 1 and Lot 2 and Lot 7 of said Pulehunui Plains Subdivision the following 37 courses:

2.	175°	46'	53"	24.39	feet;
3.	218°	31'	53"	30.00	feet;
4.	285°	02'	53"	407.10	feet;
5.	280°	03'	53"	242.00	feet;
6.	269°	27'	53"	151.20	feet;
7.	239°	26'	53"	258.75	feet;
8.	275°	31'	53"	228.00	feet;
9.	303°	26'	53"	185.00	feet;
10.	278°	41'	53"	140.00	feet;
11.	272°	01'	53"	255.50	feet;
12.	262°	41'	53"	275.00	feet;
13.	257°	28'	53"	429.00	feet;
14.	275°	33'	53"	139.00	feet;
15.	261°	01'	53"	153.65	feet;
16.	297°	33'	53"	192.00	feet;
17.	290°	26'	53"	420.00	feet;
18.	264°	16'	53"	269.00	feet;
19.	275°	56'	53"	90.00	feet;
20.	294°	01'	53"	178.80	feet;
21.	317°	01'	53"	222.00	feet;
22.	278°	33'	53"	181.65	feet;
23.	216°	47'	53"	338.00	feet;

24.	263°	06'	53"	335.00	feet;
25.	287°	59'	53"	511.00	feet;
26.	302°	16'	53"	406.00	feet;
27.	306°	31'	53"	153.50	feet;
28.	294°	41'	53"	227.60	feet;
29.	310°	16'	53"	210.80	feet;
30.	354°	59'	53"	48.00	feet;
31.	307°	01'	53"	85.00	feet;
32.	313°	51'	53"	141.00	feet;
33.	323°	46'	53"	100.30	feet;
34.	311°	33'	53"	233.75	feet;
35.	323°	46'	53"	180.00	feet;
36.	306°	01'	53"	131.00	feet;
37.	284°	29'	53"	256.00	feet;
38.	289°	31'	53"	472.25	feet;
39.	92°	58'	53"	1,804.74	feet along Waiakoa to a point;
40.	115°	09'	23"	1,223.54	feet along Lot 134-A (being a portion of Lot 134 of the Hale Piilani Subdivision - Phase II (File Plan 1831)) to a point;
41.	131°	28'	43"	599.16	feet along Lot 134-B (being a portion of Lot 134 of the Hale Piilani Subdivision - Phase II (File Plan 1831)) and Lot 147 of the Hale Piilani Subdivision - Phase 2 (File Plan 1894) to a point;
42.	98°	30'	53"	1,616.00	feet along Lots 147 to 171, inclusive, of the Hale Piilani Subdivision Phase II (File Plan 1894) and Lot 122 of the Hale Piilani Subdivision Phase I (File Plan 1831) to a point;
43.	83°	04'	23"	728.00	feet along Lots 122 to 112, inclusive, of the Hale Piilani Subdivision - Phase I (File Plan 1831) to a point;
44.	78°	00'	53"	161.00	feet along Lot 109 of the Hale Piilani Subdivision - Phase I (File Plan 1831) to a point;
45.	82°	51'	53"	455.57	feet along Lots 108, 101, 100, and 124 (Kaiwahine Street) of the Hale Piilani Subdivision (File Plan 1831) to a point;

Thence along the northeasterly side of Kaiwahine Street on a curve to the left with a radius of 530.00 feet, the chord azimuth and distance being:

46. 94° 24' 56" 212.25 feet;
47. 172° 51' 53" 10.00 feet along the northerly side of Kaiwahine Street;
48. 82° 51' 53" 70.00 feet along same;
- Thence along same on a curve to the left with a radius of 165.00 feet, the chord azimuth and distance being:
49. 72° 30' 16" 59.35 feet to the point of beginning and containing an area of 94.352 acres, more or less.

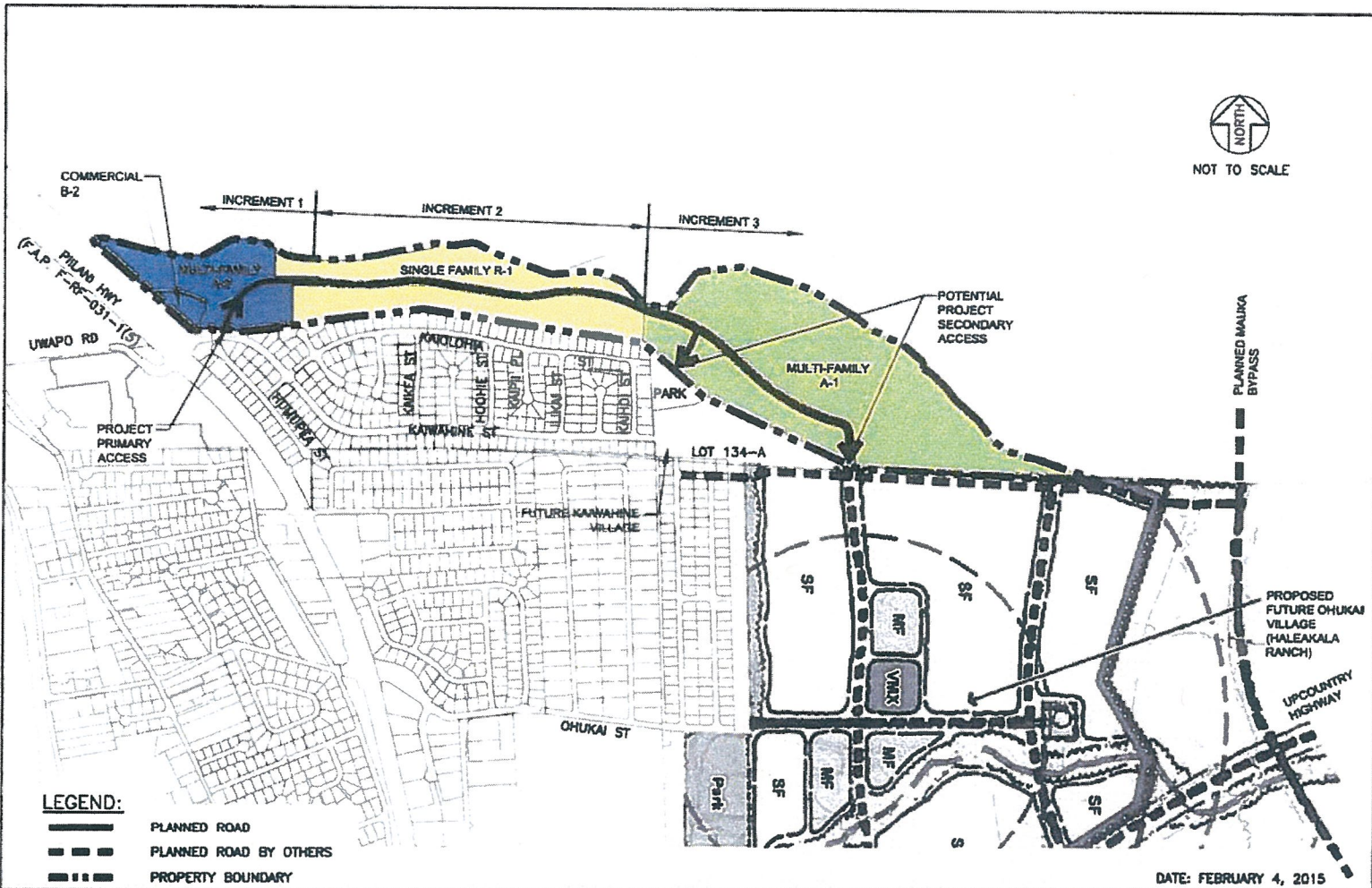
**BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED WITH COVENANTS AND RESERVATIONS**

**GRANTOR:** ALEXANDER & BALDWIN, LLC, a Hawaii limited liability company

**GRANTEE:** KAMALANI VENTURES LLC, a Hawaii limited liability company

**DATED:** April 6, 2015

**RECORDED:** Document No. A-55830770



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**KIHEI RESIDENTIAL PROJECT**

**ATA AUSTIN, TSUTSUMI & ASSOCIATES, INC.**  
 ENGINEERS, SURVEYORS HONOLULU, HAWAII

**ACCESS PLAN**

Exhibit B



Attachment 2

THE ORIGINAL OF THIS DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES

DOCUMENT NO.

Doc A - 56550796

DATE - TIME

June 26, 2015 10:45 AM

Return by Mail  Pickup

To: Department of Housing and Human Concerns  
County of Maui  
2200 Main Street, Suite 546  
Wailuku, Hawaii 96793

TITLE OF DOCUMENT:

RESIDENTIAL WORKFORCE HOUSING AGREEMENT  
FOR  
KAMALANI

PARTIES TO DOCUMENT:

DEVELOPER: KAMALANI VENTURES LLC, a Hawaii limited liability company  
c/o 822 Bishop Street  
Honolulu, Hawaii 96813

COUNTY: COUNTY OF MAUI  
200 S. High Street  
Wailuku, Maui, Hawaii 96793

TAX MAP KEY NO.: (2) 3-8-004-030

(This document consists of 15 pages.)

RESIDENTIAL WORKFORCE HOUSING AGREEMENT  
FOR  
KAMALANI

THIS AGREEMENT (this "Agreement") is made this 23<sup>rd</sup> day of JUNE, 2015, by and between, KAMALANI VENTURES LLC, a Hawaii limited liability company, whose address is c/o 822 Bishop Street, Honolulu, Hawaii 96813 ("Developer"), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 ("County").

WHEREAS, Developer owns that certain parcel of land located at Pulehunui, Kihei, District of Wailuku, Island and County of Maui, being Lot 5 of the "Pulehunui Plans Subdivision," identified by Tax Map Key No. (2) 3-8-004-030 with an area of approximately 94.352 acres as described and depicted in Exhibit A attached hereto and incorporated herein (the "Land");

WHEREAS, by Findings of Fact, Conclusions of Law, and Decision and Order, entered February 20, 2009, in Docket No. A07-772, the Land Use Commission of the State of Hawaii reclassified the Land from State Land Use Agricultural District to the State Land Use Urban District;

WHEREAS, pursuant to such reclassification, Developer's predecessor entered into that certain Declaration of Conditions dated April 3, 2009, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") as Document No. 2009-051059 (the "Declaration");

WHEREAS, the Declaration requires Developer to provide affordable housing opportunities pursuant to the applicable affordable housing requirements of the County under such terms as may be mutually agreeable between Developer and the County;

WHEREAS, pursuant to Ordinance No. 4145 (2014) and Ordinance No. 4146 (2014), the Land was rezoned "from Agricultural District to A-1 Apartment District, A-2 Apartment District, R-1 Residential District, and B-2 Community Business District (Conditional Zoning)," as more particularly described therein, and in that certain Unilateral Agreement and Declaration for Conditional Zoning dated July 8, 2014, recorded in the Bureau as Document No. A-53191023 (the "Unilateral Agreement");

WHEREAS, pursuant to the Unilateral Agreement, Developer is to work with the County's Department of Housing and Human Concerns ("DHHC") to incorporate appropriate sales provisions and processes that promote home sales to owner occupants;

WHEREAS, Developer intends to subdivide the Land and construct residential dwelling units thereon, which development is subject to County's Residential Workforce Housing Policy, Chapter 2.96, Maui County Code ("MCC") and the applicable provisions thereof are attached hereto and incorporated herein as Exhibit B; and

WHEREAS, Section 2.96.040, MCC, requires that prior to final subdivision approval or issuance of a building permit for a development, Developer is required to enter into a residential workforce housing agreement with DHHC;

NOW, THEREFORE, Developer and County hereby agree as follows:

1. Project Description. Kamalani (the "Development") is to be located on the Land and is intended to be developed in increments over time. The Development is envisioned to consist of residential workforce housing units and market dwelling units on the Land. Developer has reserved the right to add and

annex additional land in the vicinity of the Land to the Development, in which case, the Development shall refer to the Land (as described above) and such additional lands that are so annexed.

2. **Definitions:** The following are some of the defined terms used in this Agreement.

(a) **“Above-moderate income”** means those households whose gross annual family income is more than one hundred twenty percent, but not more than one hundred forty percent of the area median income as established by HUD for the island of Maui (excluding Hana), as adjusted for household size.

(b) **“Affordable Rates”** means the pricing rates of the RWH Units for households at or below Above-moderate income, *i.e.*, at or below 140% of area median income as established by HUD for the island of Maui (excluding Hana) adjusted for household size.

(c) **“Annual Report”** means an annual report, which shall confirm, update, or supplement the information in Exhibit C, attached hereto and made a part hereof.

(d) **“Below-moderate income”** means those households whose gross annual family income is more than eighty percent, but not more than one hundred percent of the area median income as established by HUD for the island of Maui (excluding Hana), as adjusted for household size.

(e) **“Developer’s Agent”** means, collectively, Developer’s partners, management company, and real estate broker, as applicable.

(f) **“Director”** means the then director of the DHHC.

(g) **“HUD”** means the United States Department of Housing and Urban Development.

(h) **“Market Units”** means the residential dwelling units and residential lots within the Development that are not residential workforce housing units as defined in Section 2.96.020, MCC.

(i) **“Moderate income”** means those households whose gross annual family income is more than one hundred percent, but not more than one hundred twenty percent of the area median income as established by HUD for the island of Maui (excluding Hana), as adjusted for household size.

(j) **“Non-Resident”** means a person who does not meet the requirements to be a Resident.

(k) **“Resident”** means a person who meets the requirements of a “Resident” as defined in Section 2.96.020, MCC.

(l) **“RWH Credits”** means credits given to Developer for the RWH Units constructed and sold at Affordable Rates in excess of the RWH Units required for the Development, as described below.

(m) **“RWH Units”** means residential work force housing units, as defined in Section 2.96.020, MCC, which are intended to be constructed within the Development.

3. **Residential Workforce Housing Requirement:**

(a) Requirement: 25% of the Market Units (*e.g.*, 25% of the 460 Market Units)<sup>1</sup>.

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<sup>1</sup> As described in this Agreement, amounts and quantities that are assumed or shown in parentheses in this Agreement are examples based on current estimates, and are subject to change, provided all changes shall comply with the MCC requirements and shall be reflected in each Annual Report.

(b) Number of RWH Units required: 25% of the total number of Market Units in the Development (*e.g.*,  $460 \times 25\% = 115 = 115$  RWH Units).

(c) Income Group Distribution (as more particularly described below):

(i) At least 30% of the RWH Units shall be priced for Below-moderate income households (*e.g.*, 35 RWH Units);

(ii) No more than 20% of the RWH Units shall be priced for Above-moderate income households (*e.g.*, 23 RWH Units); and

(iii) The balance of the RWH Units shall be priced for Moderate income households (*e.g.*, 57 RWH Units).

(d) The percent and number of RWH Units priced for Moderate income households may be more or less than 50% of the RWH Units if more than 30% of the RWH Units are price for Below-moderate income households and/or fewer than 20% of the RWH Units are price for Above-moderate income households.

4. **RWH Credits.** For each RWH Unit constructed and sold at Affordable Rates in excess of 25% of the total number of Market Units (*e.g.*,  $170$  RWH Units –  $115$  RWH Units =  $55$  excess RWH Units), Developer shall receive one (1) RWH Credit (*e.g.*,  $55$  RWH Credits), which shall be freely transferable. Developer shall receive  $55$  RWH Credits for excess RWH Units constructed in the Development based on the following assumptions:  $460$  Market Units and  $170$  RWH Units. The RWH Units may be constructed in advance of the Market Units and Developer may construct all or most of the  $170$  RWH Units in an initial increment within the Development. Based on the foregoing assumptions,  $115$  RWH Units will satisfy the requirements for the  $460$  Market Units in the Development and Developer shall have earned  $55$  RWH Credits for the remaining  $55$  RWH Units. The RWH Credits shall be subject to the following:

(a) The RWH Credits may be used in the Development (including additional lands that are annexed) and any community plan area, in accordance with Section 2.96.050(E), MCC.

(b) Each RWH Credit may be used to satisfy the requirement for any type and size of unit or lot that is otherwise required to be a residential workforce housing unit. For example  $25$  RWH Credits may be used to satisfy the requirements of a subdivision with  $100$  market priced lots, in accordance with Section 2.96.050(C), MCC.

(c) The RWH Credits may be applied to satisfy the requirement for any income group. For example, a RWH Credit earned for a RWH Unit priced for an Above-moderate income household may be used to satisfy the requirement for a residential workforce housing unit for a Below-moderate income household.

(d) The number of estimated RWH Credits is set forth in Exhibit C, which shall be updated in each Annual Report.

(e) If Developer constructs and sells RWH Units in excess of the required RWH Units for the Development in an income group (*e.g.*, constructs and sells more than  $35$  RWH Units priced for Below-moderate income households), Developer shall be deemed to have earned RWH Credits for such excess RWH Units, which RWH Credits may be applied immediately to satisfy any residential workforce housing requirements for any community plan area.

5. Deed Restriction Period. Pursuant to Section 2.96.060(B), MCC, the RWH Units priced within each income group shall be subject to the following regulated term (the “**Deed Restricted Period**”) commencing as of the closing date of the initial sale:

- (a) Below-moderate income – 10 years
- (b) Moderate income – 8 years
- (c) Above-moderate income – 5 years

6. Deed Restrictions. For the Deed Restricted Period, the following shall apply:

- (a) The RWH Unit must be owner-occupied.
- (b) The owner must notify DHHC upon a decision to sell.
- (c) Upon the owner’s decision to sell, the County shall have the first option to purchase the RWH Unit from the owner; said option shall be available to the County for a period of one hundred and twenty days from receipt of written notice from the owner and shall not apply to sales by reason of foreclosure.
- (d) Upon sale of the RWH Unit, the deed-restriction shall remain in full force and effect for the remainder of the Deed Restricted Period that commenced at the time of the initial sale.
- (e) Under special circumstances an owner of a RWH Unit may appeal to DHHC for a waiver of the owner-occupancy deed restriction; these circumstances would include, but are not limited to, assignment to active duty military or short-term contracts for off-island employment.

7. Resale. During the applicable Deed Restricted Period, the maximum resale price shall be established by DHHC using the following guidelines:

- (a) An appraisal of the property shall be required before occupancy. The appraisal obtained by or on behalf of the lender or prospective lender for the applicant’s purchase may serve as the appraisal required by this clause (a).
- (b) A second appraisal shall be required upon a decision to sell the RWH Unit.
- (c) Twenty-five percent of the positive difference between the two appraisals plus the amount of a seller’s usual and customary closing costs shall be added to the owner’s purchase price.

8. Designation of Units.

(a) The initial list showing (i) the proposed RWH Units, (ii) the intended income groups for the RWH Units, (iii) the proposed Market Units, and (iv) the estimated RWH Credits, is attached hereto and incorporated herein as Exhibit C. The unit-mix and unit-types may be adjusted from time to time because of (among other reasons) market conditions and development costs, provided, however, the pricing and unit counts (ratio of RWH Units and Market Units) shall comply with the minimum requirements of this Agreement. For example, Developer may increase the number of RWH Units at Affordable Rates and decrease the number of Market Units in the Development thereby increasing the number of RWH Credits; provided, however, the RWH Units required for the Development shall be priced to satisfy the requirements of the income groups.

(b) Developer shall submit to the Director an Annual Report commencing from the calendar year in which Developer first markets the RWH Units and terminating when (i) the last RWH Unit is sold by Developer, and (ii) Developer provides a final report to the Director. The Annual Report for a calendar year shall be submitted by Developer to the Director, by March 31st of the following year. The Annual Reports shall update, confirm, or supplement the information in Exhibit C, provided, however, in addition to the Annual Reports, Developer may, at its election, update, confirm, or supplement such information from time to time and the same shall not be deemed amendments to this Agreement.

(c) The amounts and quantities that are assumed or shown in parentheses in this Agreement are examples based on current estimates, and are subject to change, provided all changes shall comply with the MCC requirements and shall be reflected in each Annual Report and may be included in interim updates, to the extent applicable.

9. Sales Price.

(a) The upper range of the sales prices of the RWH Units shall be set by DHHC in accordance with HUD guidelines prior to Developer's submission of its registration application to the Real Estate Commission of the Department of Commerce and Consumer Affairs of the State of Hawaii ("**Registration Application**") for the RWH Units in the increment or increments that will be offered for sale by Developer. DHHC shall set and provide such upper ranges to Developer within fifteen (15) calendar days of Developer's written request.

(b) The upper ranges shall be based on the assumption of a down payment of five percent (5%) of the purchase price and the prevailing interest rate being the average interest rate then available under any two affordable financing programs of Freddie Mac, Fannie Mae, or the Federal Housing Administration for a 30-year first mortgage loan with no discount points and rounded to the nearest 0.25%.

(c) Developer may elect to decrease the sales prices of the RWH Units so that the originally priced RWH Units may be in a lower income group.

(d) If DHHC does not set or does not provide to Developer the upper range of the sale prices for the applicable RWH Units and income groups within fifteen (15) calendar days of Developer's written request, Developer may submit to DHHC (in writing) its proposed sales prices (or its proposed range of sales prices) for the applicable RWH Units and income groups. If DHHC fails to disapprove in writing the proposed sales prices (or range thereof) and specify its reasons for such disapproval within fifteen (15) calendar days after receipt thereof, the proposed sales prices (or range thereof) shall be deemed approved by DHHC.

10. Marketing.

(a) Developer shall be required to use its reasonable best efforts to effectively market the RWH Units. Developer shall create and submit a marketing plan to DHHC at any time prior to Developer's initial Registration Application. DHHC shall have thirty (30) calendar days from the submission of the marketing plan to approve or request revisions to the plan. If no comments are received from DHHC within such 30-day period, the plan shall be deemed to have been approved by DHHC.

(b) Pursuant to Section 2.96.090, MCC, Developer shall establish and maintain a wait list of all interested applicants for the RWH Units in the Development (the "**Wait List**").

(c) Pursuant to Section 2.96.090, MCC, prior to initiating the Wait List, Developer or Developer's Agent shall publish in at least five (5) issues of a newspaper of general circulation within the

County, a public notice that shall contain all information that is relevant to the establishment of the Wait List. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the Wait List. Developer may do a mass mailing of the application form for the acquisition of the RWH Units (the "**Ownership Application**") to all interested applicants on the Wait List.

11. **Eligibility:** Pursuant to Section 2.96.090(B), MCC, in order to be eligible for a RWH Unit, an applicant must meet each of the following criteria:

(a) Be a citizen of the United States or a permanent resident alien who is a resident of the County of Maui.

(b) Be eighteen (18) years of age or older.

(c) Have a gross annual family income (not to include the income of minors) which does not exceed one hundred forty percent of the area median income as established by HUD for the island of Maui (excluding Hana), as adjusted for household size.

(d) Have assets that do not exceed one hundred forty percent of the area median income as established by HUD for the island of Maui (excluding Hana), as adjusted for household size. Assets shall include all cash, securities, stocks, bonds and real property, but shall exclude amounts in a retirement account, the cash surrender value of any life insurance policies, and the amount to be used for the down payment to acquire the RWH Unit, which excluded down payment amount shall not exceed 10% of the purchase price of the RWH Unit. Real property shall be valued at fair market value less liabilities on such real property.

(e) For a period of three (3) years before the submittal of the Ownership Application, have not had an interest of fifty percent (50%) or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size.

(f) Have pre-qualified for a loan and obtained a pre-qualification letter setting forth the maximum amount of the pre-qualified loan (the "**Pre-Qualification Letter**").

(g) At the election of Developer, have completed Homebuyer Education Classes and received a certification from Hale Mahaolu or another organization acceptable to Developer (the "**Certification**").

12. **Notification of Change:** Pursuant to Section 2.96.090(C), MCC, it shall be the applicant's responsibility to notify Developer or Developer's Agent in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify Developer or Developer's Agent of such changes, and Developer or Developer's Agent is unable to contact the applicant, the applicant's name shall be removed from the Wait List. In addition, the applicant shall be responsible for notifying Developer or Developer's Agent in writing of any changes in his or her status as a Resident or Non-Resident.

13. **Ownership Application:** Developer shall prepare the form of the Ownership Application. All interested applicants shall be required to submit to Developer a completed Ownership Application, the Pre-Qualification Letter, and if required by Developer, the Certification. Pursuant to Section 2.96.090(B), MCC, the Ownership Application will be completed when a specific RWH Unit is being considered.

14. Pre-Selection Verification: Pursuant to Section 2.96.090(B), MCC, the initial determination for compliance with the maximum gross annual family income provision shall be made by Developer or Developer's Agent for the RWH Units on the basis of the information provided on the Ownership Application. Developer may disqualify an applicant who fails to meet any of the criteria in Section 9 on the basis of the information provided in the Ownership Application (and the Pre-Qualification Letter) or who fails to provide the Pre-Qualification Letter, or if required, the Certification. If so disqualified, Developer shall remove the applicant's name from the Wait List.

15. Selection Priority: The selection priority from the Wait List shall be pursuant to Section 2.96.090(D), MCC. Because the RWH Units may be developed in increments, after an offering for an increment, Developer may start a new Wait List for new applicants for the next increment in a manner that is consistent with the provisions of Section 2.96.090(D), MCC. Pursuant to Section 2.96.090(D), MCC, in the event that RWH Units are not sold within the first ninety (90) days after they are offered for sale, and Developer has made a good faith effort, as determined by the Director, to contact and qualify applicants on the Wait List, the sale of remaining units shall be conducted as provided in Section 2.96.090(D), MCC.

16. Post-Selection Verification:

(a) Pursuant to Section 2.96.090(B), MCC, final determination for compliance with the maximum gross annual family income provision shall be made by the prospective lender at the time the applicant's income verification data is received.

(b) To the extent permitted by applicable privacy and other laws and subject to appropriate redactions of social security numbers, birthdates, and other information that is not necessary for verification purposes, Developer shall submit, or shall cause the lender to submit, the following information to DHHC to verify the eligibility of buyers of the RWH Units:

- (i) Applicant's completed Ownership Application;
- (ii) Executed sales contract;
- (iii) Pre-Qualification Letter;
- (iv) All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the lender; and
- (v) Escrow company's settlement statement.

In the alternative, in lieu of redacting the information, Developer or lender shall make the foregoing documents available to DHHC for inspection at a reasonable location during regular business hours.

17. Incentives. The Development is subject to Chapter 2.96, MCC and under the jurisdiction of the Development Services Administration of the County's Department of Public Works and is entitled to expedited review processes under Section 2.96.140, MCC. The reduced fees and reduced park dedication requirement, which are applicable to a residential workforce housing unit under Ordinance 3512 (2007), shall apply to the RWH Units within the Development. Developer shall also be entitled to any other incentives or benefits now or hereafter available for residential workforce housing units or any development with residential workforce housing units.



18. Affordable Housing Agreement. This Agreement does hereby fully satisfy the affordable housing requirements of the Declaration (the Land Use Commission district reclassification) and the Unilateral Agreement (the County's rezoning) and is, and fully satisfies the requirement for, a "residential workforce housing agreement" under Section 2.96.040, MCC, for the Development and fully complies with Chapter 2.96 of the MCC (Residential Workforce Housing Policy). This Section 18 and the RWH Credits provided to Developer (whether or not applied) shall specifically survive the expiration of the term of this Agreement.

19. Indemnification. Developer shall indemnify, defend, and hold harmless County and its officers, employees, and agents from and against any and all claims, including bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from this Agreement.

20. Director Approvals and Actions: Verification of Compliance. The Director shall maintain authority of this Agreement and the authority to implement this Agreement and shall have the authority to make approvals, issue interpretations, waive provisions, execute documents, make and execute further agreements and/or enter into amendments of this Agreement so long as such actions do not materially or substantially change the permitted development and sale of the RWH Units, and such interpretations, waivers and/or amendments may include extensions of time to perform. The County agrees, upon the written request of Developer, to provide such written verification of Developer's compliance with this Agreement as Developer or its prospective or existing lenders or development partners may reasonably request.

21. Amendments: This Agreement, or any provision thereof, may not be modified, altered or changed except by written instrument executed by Developer and the Director, and Developer is fully vested under Chapter 2.96 of the MCC (Residential Workforce Housing Policy) in effect as of the date of this Agreement (a copy of which is attached hereto as Exhibit B).

22. Notices: All notices, demands, requests, consents, approval, or other communications ("notices") required or permitted to be given under this Agreement or which are given with respect to this Agreement shall be in writing and shall be delivered by personal delivery or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the following address, or to such other address as the party to be notified shall have specified most recently by like notice:

If to County, then to:

Mayor  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

cc: Director of the Department of Housing and Human Concerns  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

If to Developer, then to

Kamalani Ventures LLC  
c/o 822 Bishop Street  
Honolulu, Hawaii 96813

cc: Kamalani Ventures LLC  
c/o A & B Properties, Inc.  
11 Puunene Avenue  
Kahului, Hawaii 96732

Notices given as provided in this Section 22 shall be deemed given on delivery or upon receipt if by personal delivery. Any notice may be sent on behalf of either party by such party's counsel.

23. No Partnership or Joint Venture; No Third Party Beneficiary. Nothing contained in this Agreement shall constitute or be construed to constitute or create a partnership, joint venture, or other joint business interest by and between the parties. This Agreement is made exclusively for the benefit of Developer and the County, and no other persons or entities shall acquire any rights, powers, privileges, remedies, or claims thereby.

24. Severability: If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

25. Recordation: As required by Section 2.96.080(B), MCC, this Agreement shall be recorded in the Bureau so that the terms and conditions of this Agreement run with the Land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Land.

26. Effective Date: The effective date of this Agreement shall be the date on which the last party signs this Agreement. This Agreement is made as of the day and year first above written.

27. Governing Law: This Agreement and the rights and obligations of Developer and County shall be interpreted in accordance with the laws of the State of Hawaii and any applicable federal law. Further, the Developer and County agree that all applicable provisions of Section 2.96, MCC shall be adhered to whether or not said provisions have been restated in this Agreement.

28. Term: The term of this Agreement shall expire when the Deed Restricted Period for the last RWH Unit sold by Developer has expired; provided, however, Developer's obligations hereunder shall expire when the last RWH Unit is sold to a homeowner.

[Signatures begin on the next page.]

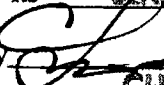
IN WITNESS WHEREOF, Developer and the County have executed this Agreement the day and year first above written.

**KAMALANI VENTURES LLC, a Hawaii limited liability company**

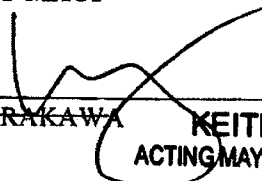
By A & B Properties, Inc.  
Its Manager

By   
ALAN K. ARAKAWA

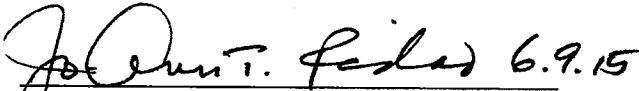
Its SENIOR VICE PRESIDENT

By   
CHARLES W. LOOMIS  
Its ASST SECRETARY


**COUNTY OF MAUI**

By  me/WP  
ALAN M. ARAKAWA KEITH A. REGAN  
Its Mayor ACTING MAYOR, COUNTY OF MAUI

RECOMMENDED APPROVAL:

  
JO-ANN T. RIDAO  
Director Housing and Human Concerns

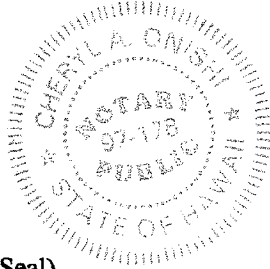
APPROVED AS TO FORM  
AND LEGALITY:

  
JEFFREY UEOKA  
Deputy Corporation Counsel

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this 5<sup>th</sup> day of June 2015, before me appeared ALAN K. ARAKAWA, to me personally known, who, being by me duly sworn, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Cheryl A. Onishi  
CHERYL A. ONISHI

Notary Public, State of Hawaii

My commission expires: APR 17 2017

(Official Stamp or Seal)

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: Residential Workforce Housing Agreement for Kamalani

Doc. Date: Undated at time of notarization

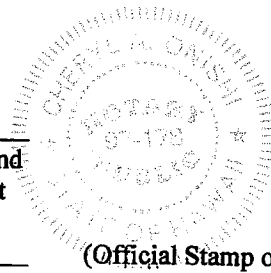
No. of Pages: 45 Jurisdiction: First Circuit  
(in which notarial act is performed)

Cheryl A. Onishi  
Signature of Notary

6/5/15  
Date of Notarization and  
Certification Statement

CHERYL A. ONISHI

Printed Name of Notary



(Official Stamp or Seal)

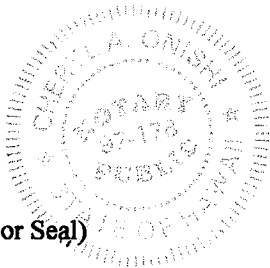
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)  
) SS:  
)

On this 5<sup>th</sup> day of June 2015, before me appeared CHARLES W. LOOMIS, to me personally known, who, being by me duly sworn, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Cheryl A. Onishi

CHERYL A. ONISHI

Notary Public, State of Hawaii

My commission expires: APR 17 2017

(Official Stamp or Seal)

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: Residential Workforce Housing Agreement for Kamalani

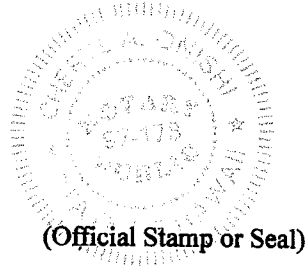
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No. of Pages: 45 Jurisdiction: First Circuit  
(in which notarial act is performed)

Cheryl A. Onishi  
Signature of Notary

6/15/15  
Date of Notarization and Certification Statement

CHERYL A. ONISHI  
Printed Name of Notary

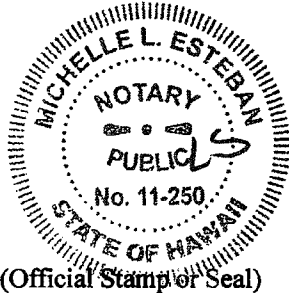


(Official Stamp or Seal)

STATE OF HAWAII )  
 ) SS:  
COUNTY OF MAUI )

On this 20<sup>th</sup> day of June 2015, before me appeared ~~ALAN M. ARAKAWA~~ <sup>KATH A. REGAN me/np</sup> ~~she~~ <sup>he</sup> Acting me/np, to me personally known, who being by me duly sworn did say that she is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-6.2 and Section 9-18.1 of the Charter of the County of Maui; and the said ~~ALAN M. ARAKAWA~~ <sup>KATH A. REGAN me/np</sup> acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Michelle L. Esteban

MICHELLE L. ESTEBAN  
Notary Public, State of Hawaii

My commission expires: 8/14/15

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Residential Workforce  
Housing Agreement for Kamalani

Doc. Date: ~~Undated at time of notarization~~ <sup>me/np</sup> 6/23/2015

No. of Pages: 45 Jurisdiction: Second Circuit  
(in which notarial act is performed)

Michelle L. Esteban  
Signature of Notary

6/23/2015  
Date of Notarization and  
Certification Statement

MICHELLE L. ESTEBAN

Printed Name of Notary

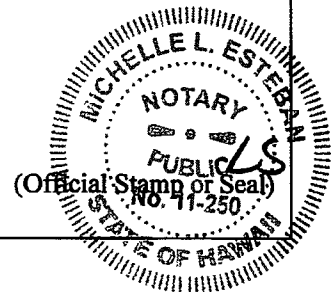
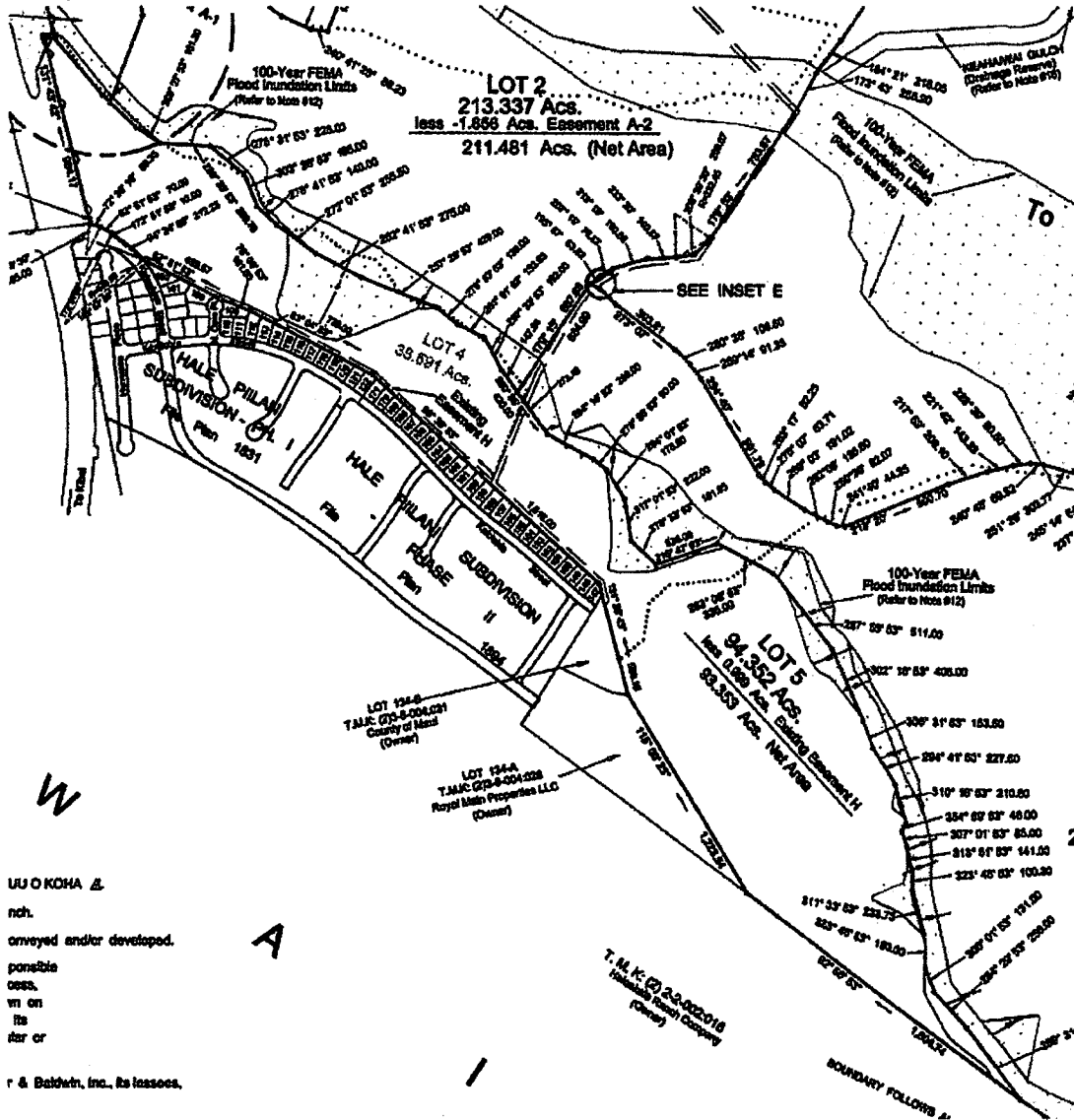


Exhibit A

LAND DESCRIPTION

All of that certain parcel of land (being a portion of Land Patent 8140, Land Commission Award 5230 to Keaweamahi) situate, lying and being situate at Pulehunui, Kihei, Wailuku, Maui, Hawaii, being Lot 5 of the "Pulehunui Plains Subdivision," and thus bounded and described in that certain Affidavit of Justin R. Shaw (Licensed Professional Land Surveyor, Certificate No. LS-15959) dated March 5, 2015, recorded in the Bureau as Document No. A-55460707 and as shown on the Subdivision Map (Pulehunui Plains Subdivision (County of Maui Subdivision File No. 3.2221)) attached to Affidavit of Ken T. Nomura dated July 10, 2012, recorded in the Bureau as Document No. A-45760643) as follows:



## **Exhibit B**

### **Chapter 2.96 - RESIDENTIAL WORKFORCE HOUSING POLICY**

#### **Sections:**

#### **2.96.010 - Purpose.**

The purpose of this chapter is to enhance the public welfare by ensuring that the housing needs of the County are addressed. The council finds that there is a critical shortage of affordable housing, making home acquisition by the majority of County resident workers extremely difficult, and creating a shortage of affordable rental units. The resident workforce is leaving the County in search of affordable housing, and new employees are being deterred by the high cost of living. To maintain a sufficient resident workforce in all fields of employment, and to ensure the public safety and general welfare of the residents of the County, resident workforce housing needs must be addressed. It is the intent of this chapter to encourage the provision and maintenance of residential workforce housing units, for both purchase and rental, to meet the needs of income-qualified households for the workforce, students, and special housing target groups.

(Ord. 3418 § 1 (part), 2006)

#### **2.96.020 - Definitions.**

Whenever used in this chapter, unless a different meaning clearly appears from the context:

"Community land trust" means a nonprofit organization that acquires land that:

1. Is held in perpetuity;
2. Is primarily for conveyance under a long-term ground lease for the creation of dwelling units that shall be sold or rented to applicants within the income-qualified groups established by this chapter; and
3. Retains an option to purchase any dwelling unit at a price determined by formula that is designed to ensure that the dwelling unit remains affordable in perpetuity.

"Council" means the Maui County council.

"Density bonus" means a density increase over the otherwise allowed residential density under the applicable zoning and land use designation, without the need for further council approval, subject to enabling legislation.

"Department" means the department of housing and human concerns.

"Director" means the director of housing and human concerns, County of Maui.

"Disabled" means a person who is determined, by a medical doctor, to have a physical, mental, or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;
2. Substantially impedes his or her ability to live independently; and
3. Is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

"Division" means the housing division of the department of housing and human concerns, County of Maui.

"Elderly" means a person who has attained the age of sixty-two years.

"Employed" means working for compensation in the County for any number of hours.



"Homeless" means:

1. An individual or family who lacks a fixed, regular, and adequate nighttime residence; or
2. An individual or family who has a primary nighttime residence that is:
  - a. A supervised shelter designed to provide temporary living accommodations; or
  - b. A place not designed for or ordinarily used as sleeping accommodations for human beings.

"HUD" means the United States Department of Housing and Urban Development.

"Improved land" means land that has necessary infrastructural improvements to support a public use project or a use density of at least a single-family or a two-family residential building per acre, in conformity with state and County zoning laws and building permit requirements.

"Lot" means any improved or unimproved land that has been subdivided.

"Median family income" means the middle income in a series of incomes ranked from smallest to largest as determined by HUD for the County, or as adjusted by the department, for Hana, Lanai, and Molokai.

"Off-site" means any area outside the boundaries of the development within the community plan area.

"On-site" means the area on, or within the boundaries of, the approved development within the community plan area.

"Prevailing interest rate" means the average interest rate of two mortgage lenders in the County, acceptable to the director, for a thirty year fixed loan with no discount points.

"Qualified housing provider" means a community land trust, nonprofit agency, or other private or public organization, agency, or entity authorized and designated by the department in accordance with section 2.96.150 to own, develop, construct, administer, operate or otherwise provide residential workforce housing required under this chapter.

"Resident" means a person who meets one of the following criteria:

1. Currently employed in the County;
2. Retired from employment in the County, having worked in the County immediately prior to retirement;
3. A full-time student residing in the County;
4. A disabled person residing in the County who was employed in the County prior to becoming disabled;
5. The parent or guardian of a disabled person residing in the County;
6. A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; or
7. In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.

"Residential workforce housing unit" means a unit or lot to be sold or rented to residents within one of the following income groups as established by the department:

1. "Very low income," which are those households whose gross annual family income is fifty percent or less of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai;
2. "Low income," which are those households whose gross annual family income is more than fifty percent, but not more than eighty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai;

3. "Below-moderate income," which are those households whose gross annual family income is more than eighty percent, but not more than one hundred percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai;
4. "Moderate income," which are those households whose gross annual family income is more than one hundred percent, but not more than one hundred twenty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai;
5. "Above-moderate income," which are those households whose gross annual family income is more than one hundred twenty percent, but not more than one hundred forty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai; and
6. "Gap income," which are those households whose gross annual family income is more than one hundred forty percent, but not more than one hundred sixty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

"Special housing target group" means a group of residents that can be demographically defined as having a special or unique housing need, including but not limited to, the elderly, homeless, and disabled.

"Unimproved land" means land not classified as "improved land."

"Wait list area" means Hana, Lanai, Maui (excluding Hana), or Molokai.

(Ord. No. 3719, § 1, 2010; Ord. 3512 § 1, 2007; Ord. 3418 § 1 (part), 2006)

#### 2.96.030 - Applicability.

- A. Any development, including the subdivision of land and/or the construction of single-family dwelling units, two-family dwelling units, multifamily dwelling units, or hotels, as defined in section 19.04.040 of this code, whether constructed at one time or over several years, shall be subject to this chapter upon final subdivision or building permit approval, whichever is applicable and occurs first, if it will result in the creation of the following:
  1. Five or more dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code; provided that, such farm labor dwelling or farm dwelling is in full compliance with chapter 205, Hawaii Revised Statutes, and is not part of a condominium property regime, as set forth in chapter 514A, Hawaii Revised Statutes;
  2. Five or more new lots;
  3. A combination of dwelling units and new lots totaling five or more;
  4. Three or more lodging, dwelling, or time share units in a hotel;
  5. A conversion of one or more hotel units to dwelling units or time share units; or
  6. Any hotel redevelopment or renovation project that increases the number of lodging or dwelling units in a hotel.
- B. Exemptions. This chapter shall not apply to any development that falls into one or more of the following categories:
  1. A development subject to an affordable housing requirement, evidenced by an executed affordable housing agreement with the County, currently in effect and approved prior to the effective date of this chapter;
  2. A development subject to a change in zoning condition that requires affordable or residential workforce housing, unless the condition expressly allows for the application of the affordable housing or residential workforce housing policy set forth herein;
  3. A subdivision granted preliminary subdivision approval prior to the effective date of this chapter;
  4. A building permit application submitted prior to the effective date of this chapter;

5. A family subdivision, for immediate family members, as described in sections 18.20.280.B.1 and B.2 of this code; or
6. A development by a government entity; a project pursuant to section 201H-H, Hawaii Revised Statutes; a community land trust; or an affordable housing project with more than the residential workforce housing units, in-lieu fees, or in-lieu land required by section 2.96.040 of this chapter, as approved by the director.

**C. Adjustment.**

1. A developer of any development subject to this chapter may appeal to the council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and the number of residential workforce housing units or in-lieu fees/land required.
2. Any such appeal shall be made in writing and filed with the County clerk prior to final subdivision approval or issuance of a building permit for the development, whichever is applicable. Any such appeal shall administratively stay the processing of the development's subdivision or building permit, whichever is applicable, until a decision on the appeal is rendered. The appeal shall set forth in detail the factual and legal basis for the claim of reduction, adjustment, or waiver, and the developer shall bear the burden of presenting substantial evidence to support the appeal, including comparable and relevant technical information.
3. The council, or if the appeal is assigned to a council committee, the council committee, shall convene a meeting within forty-five days of the County clerk's receipt of the appeal, to consider the appeal. The council shall approve or disapprove the appeal by resolution within forty-five days from the date the developer has concluded its presentation of evidence supporting the appeal in a council or committee meeting.
4. If the council or a council committee has not convened a meeting within forty-five days of the County clerk's receipt of the appeal, or if the council does not approve or disapprove the appeal by resolution within forty-five days from the date the developer has concluded its presentation of evidence at the council or council committee meeting, the appeal, as submitted by the developer, shall be deemed approved by the council.
5. If a reduction, adjustment, or waiver is granted by the council, any subsequent substantive change or modification in use within the development, as determined by the director, shall invalidate the reduction, adjustment, or waiver previously granted.

(Ord. 3546 § 1, 2008; Ord. 3418 § 1 (part), 2006)

**2.96.040 - Residential workforce housing requirements.**

- A. Prior to final subdivision approval or issuance of a building permit for a development subject to this chapter, the department shall require the developer to enter into a residential workforce housing agreement that requires the following:
  1. Where the residential workforce housing requirement is satisfied exclusively through the provision of on-site units:
    - a. When more than fifty percent of the dwelling units and/or new lots in the development are offered for sale for less than \$600,000, at least twenty-five percent of the total number of units and/or lots shall be sold or rented to residents within the income-qualified groups established by this ordinance; or
    - b. When fifty percent or more of the dwelling units and/or new lots in the development are offered for sale for \$600,000 or more, at least fifty percent of the total number of units and/or lots shall be sold or rented to residents within the income-qualified groups established by this ordinance.

2. Where the residential workforce housing requirement is satisfied through the provision of off-site units:
    - a. When more than fifty percent of the dwelling units and/or new lots in the development are offered for sale for less than \$600,000, then the number of off-site residential workforce housing units due shall be equal to fifty percent of the total number of on-site market rate units; or
    - b. When fifty percent or more of the dwelling units and/or new lots in the development are offered for sale for \$600,000 or more, then the number of off-site residential workforce housing units due shall be equal to fifty percent of the total number of on-site market rate units.
  3. When three or more new lodging, dwelling, or time share units in a hotel are created, or when there is a conversion of one or more hotel units to dwelling units or time share units, or when any hotel redevelopment or renovation project increases the number of lodging or dwelling units in the hotel, or when five or more new dwelling units for rental purposes are created, then forty percent of the total number of new, additional and/or converted units shall be sold or rented to residents within the income-qualified groups established by this ordinance.
- B. The requirement may be satisfied by one or a combination of the following, which shall be determined by the director and stated in the residential workforce housing agreement:
1. Offer for sale, single-family dwelling units, two-family dwelling units, or multi-family dwelling units as residential workforce housing within the community plan area;
  2. Offer for rent, multi-family dwelling units within the community plan area. A developer may partner with a nonprofit organization or community land trust on a specific affordable project to either construct new multi-family dwelling units or renovate existing nonhabitable multi-family dwelling units, paying an amount that represents the difference in unit costs for a family of four at one hundred percent and one hundred forty percent of median income pursuant to HUD affordable sales price guidelines as adjusted by the department by wait list area. The developer's requirement shall be deemed satisfied upon receipt of payment. Moneys shall be deposited into the affordable housing fund;
  3. In lieu of directly selling or renting units pursuant to subsection B.1 or B.2, the developer may convey such units to a qualified housing provider subject to department approval pursuant to section 2.96.150; or
  4. In lieu of providing residential workforce housing units, the residential workforce housing requirement may be satisfied by payment of a fee, by providing improved land, or by providing unimproved land. Any fee must be approved by council resolution. Any donation of land must be approved by the council pursuant to section 3.44.015 of this code.
    - a. The in-lieu fee per unit for sale/ownership units shall be equal to thirty percent of the average projected sales price of the market rate dwelling units and/or new lots in the development. The in-lieu fee per unit for hotel, time share, converted or rental units shall be an amount that represents the difference in unit costs for a family of four at one hundred percent and one hundred sixty percent of median income pursuant to HUD affordable sales price guidelines, or as adjusted by the department, for Hana, Lanai, and Molokai. The in-lieu fee shall be designated in the residential workforce housing agreement, and be secured by a lien on the units if not paid before the units are constructed or converted. The in-lieu fee shall accrue to the affordable housing fund, which shall be established in the County budget for the purpose of enhancing and supporting housing needs and programs of income-qualified households and special housing target groups; and
    - b. The value of the improved land shall not be less than the in-lieu fee that would otherwise have been required under this chapter. The value of the unimproved land shall be at least equal to twice the value of the improved land. The in-lieu land shall be used to address the housing needs of income-qualified households and special housing target groups. Such

land shall have a minimum lot size of six thousand square feet or the minimum lot size allowed by the applicable zoning, whichever is greater. Such land must be acceptable to the department and may be used by the County or others approved by the County to develop residential workforce housing, resource centers for the homeless, day care centers for seniors, or other public use projects that address the housing needs of income-qualified households and special housing target groups.

(Ord. No. 3719, § 2, 2010; Ord. 3438 § 1, 2007; Ord. 3418 § 1 (part), 2006)

**2.96.050 - Residential workforce housing credits.**

- A. Credits may be given under the following circumstances:
1. One residential workforce housing credit shall be given for every single-family dwelling unit, two-family dwelling unit, or multifamily dwelling unit constructed in excess of the residential workforce housing required by section 2.96.040 of this chapter; and
  2. One residential workforce housing credit shall be given for every ten market rate units that contain a deed restriction requiring an owner to occupy the unit for a minimum of three years, and share with the County fifty percent of any profits realized from a sale of that unit within the three-year owner-occupancy period.
- B. The credit must be used in the same community plan area in which the unit was constructed.
- C. The credit must be applied toward the same type of unit constructed.
- D. The credit must be used for the same income group in which the credit was earned, when the credit is earned by constructing more residential workforce housing units than required.
- E. The credit must be used for the "gap income" group when the credit is earned by creating a deed restriction.
- F. The credit may be used for a future development, but may not be used for an affordable housing or residential workforce housing unit owed at the time the credit is given.

(Ord. 3418 § 1 (part), 2006)

**2.96.060 - Residential workforce housing restrictions—Ownership units.**

- A. Ownership units shall be subject to this chapter for twenty-five years from the initial sale of the unit.
- B. Unless an exemption is granted by the director, the percentage of ownership units within each income group shall be as follows:
1. Thirty percent of the ownership units shall be for "below-moderate income" residents;
  2. Thirty percent of the ownership units shall be for "moderate income" residents;
  3. Twenty percent of the ownership units shall be for "above-moderate income" residents; and
  4. Twenty percent of the ownership units shall be for "gap income" residents.
- C. Timing of Completion.
1. Residential workforce housing units shall be made, available for occupancy either before or concurrently with market rate units at the same ratio required of the development; and
  2. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner.
- D. Deed Restrictions.
1. The unit must be owner-occupied;

2. The unit must remain affordable for twenty-five years from the initial sale, with the owner notifying the department upon a decision to sell; and
  3. Under special circumstances an owner of a residential workforce housing unit may appeal to the department for a waiver of the owner-occupancy deed restriction; these circumstances would include, but are not limited to, assignment to active duty military or short-term contracts for off-island employment.
- E. **Sales Price—Single-Family Dwelling Units.** The sales price of a new single-family dwelling unit shall be set by the department, at the time the developer is ready to market the unit, using the following guidelines:
1. A down payment of five percent shall be assumed;
  2. The prevailing interest rate shall be used;
  3. The price of a one-bedroom unit shall be based upon seventy percent of the median income of the wait list area, adjusted to the respective target income group;
  4. The price of a two-bedroom unit shall be based upon eighty-five percent of the median income of the wait list area, adjusted to the respective target income group;
  5. The price of a three-bedroom unit shall be based upon one hundred percent of the median income of the wait list area, adjusted to the respective target income group;
  6. The price of a four-bedroom unit shall be based upon one hundred fifteen percent of the median income of the wait list area, adjusted to the respective target income group; and
  7. Applicants in each income group shall be assumed to pay no more than thirty percent of the gross annual income of the highest percentage in the applicant's group.
- F. **Sales Price—Two-Family or Multifamily Dwelling Units.** The sales price of a new two-family or multifamily dwelling unit shall be ninety percent of the price of a single-family dwelling unit, as established in subsection E of this section.
- G. **Resale Price.** The maximum resale price shall be established by the department using the following guidelines:
1. An appraisal of the property shall be required before occupancy;
  2. A second appraisal shall be required upon a decision to sell the unit; and
  3. Twenty-five percent of the difference between the two appraisals shall be added to the owner's purchase price.
- H. **Foreclosures.**
1. The County shall have the first option to purchase the unit; and
  2. If the County does not exercise its right to purchase, the units may be offered at an affordable price, set by the director, with the same deed restrictions.

(Ord. 3418 § 1 (part), 2006)

**2.96.070 - Residential workforce housing restrictions—Rental units.**

- A. Rental units shall be subject to this chapter for the life of the unit, as determined by a building inspector with the development services administration of the department of public works and environmental management.
- B. Unless an exemption is granted by the director, the percentage of rental units within each income group shall be as follows:
  1. One-third of the rental units shall be for "very low income" and "low income" residents;
  2. One-third of the rental units shall be for "below-moderate income" residents; and

3. One-third of the rental units shall be for "moderate income" residents.

C. Timing of Completion.

1. Except when the developer is partnering with a nonprofit organization or community land trust as allowed in section 2.96.040.B.2 of this chapter, residential workforce housing units shall be made available for occupancy either prior to or concurrently with market rate units at the same ratio required of the development. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner; and

2. When the developer is partnering with a nonprofit organization or community land trust, the payment to the nonprofit organization or community land trust must be made prior to final subdivision approval or issuance of a building permit for the market rate units. The residential workforce housing units must be constructed within three years of the date the certificates of occupancy are issued and/or the final inspections are passed for the market rate units.

D. Vacancies. Any rental unit vacancy must be filled by an applicant in the appropriate income group to better maintain an equal distribution of rentals across the "very low income" and "low income," "below-moderate income," and "moderate income" groups.

E. Deed Restrictions.

1. The rental unit must remain affordable for the life of the unit;
2. The owner must notify the department upon a decision to sell the rental development; and
3. Any new owner must comply with the deed restrictions.

F. Rental Rates. The monthly rental rates shall be set by the department based on HUD income limits.

G. Foreclosures.

1. The County will have the first option to purchase the rental development; and
2. If the County does not exercise its right to purchase, the rental development may be sold with the same deed restrictions.

(Ord. 3418 § 1 (part), 2006)

2.96.080 - Residential workforce housing agreement.

A. Before final subdivision approval or issuance of a building permit, the developer shall enter into a residential workforce housing agreement that sets forth the detailed terms and conditions of compliance with the residential workforce housing policy, including but not limited to:

1. Sales or rental periods for the residential workforce housing units, which specify procedures for the release of units from the residential workforce housing requirements should units not be sold or rented following the expiration of the sales or rental periods;
2. Identification of the number, type, and location of units;
3. Designation of units for specific income and/or special housing target groups;
4. Marketing process for the residential workforce housing units;
5. Eligibility of income-qualified households;
6. Provision for residential workforce housing credits, as applicable;
7. Payment of in-lieu fees or provision of in-lieu land; and
8. Resale restrictions, which may include buy-back provisions, shared equity, and encumbrances.

- B. The residential workforce housing agreement shall be recorded with the bureau of conveyances of the State of Hawaii or the land court of the State as the case may be, so that the terms and conditions of the agreement run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in such property. The agreement shall be enforceable by the County by appropriate action at law or suit in equity, against the developer, its successors, and assignees.

(Ord. 3418 § 1 (part), 2006)

2.96.090 - Applicant selection process—ownership units.

A. Wait List Procedure.

1. The developer, its partner, or its management company shall establish wait lists of interested applicants by development;
2. Prior to initiating the wait list, the developer, its partner, or its management company shall publish in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list; and
3. Selection for purchase shall be made by a lottery administered by the developer, its partner, or its management company and overseen by the department, subject to the applicant meeting the eligibility criteria established in subsection B of this section.

B. Eligibility Criteria. In order to be eligible for a residential workforce housing unit, an applicant must meet the following criteria:

1. Be a citizen of the United States or a permanent resident alien who is a resident of the County;
2. Be eighteen years of age or older;
3. Have a gross annual family income (not to include the income of minors) which does not exceed one hundred sixty percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Initial determination for compliance with the maximum gross annual family income provision shall be made by the developer, its partner, or its management company for the initial sale of residential workforce housing units, on the basis of the information provided on the ownership application. The ownership application will be completed when a specific unit is being considered. Final determination for compliance with the maximum gross annual family income provision shall be made by the prospective lender at the time the applicant's income verification data is received;
4. Have assets that do not exceed one hundred sixty percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property;
5. For a period of three years before the submittal of the ownership application, have not had an interest of fifty percent or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size; and
6. Pre-qualify for a loan with the applicant's choice of lender.

- C. Notification of Change. Each applicant shall be responsible for notifying the developer, its partner, or its management company in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify the developer, its partner, or its management company of such changes and the developer, its partner, or its management company



is unable to contact the applicant, the developer, its partner, or its management company shall remove the applicant's name from the wait list.

**D. Selection Priority.**

1. Residents on the wait list shall receive first priority for the available units. Nonresidents on the wait list may purchase a residential workforce housing unit once the wait list has been exhausted of all residents;
2. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the wait list;
3. The residential workforce housing units must be offered to residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify. Nonresidents will be offered residential workforce housing units in the order in which their names were drawn in the lottery; and
4. In the event that units are not sold within the first ninety days after they are offered for sale, and the developer has made a good faith effort, as determined by the director, to contact and qualify applicants on the wait list, the sale of remaining units shall be conducted as follows:
  - a. For the next ninety-day period, units shall be offered for sale to the next-higher income preference group, at the original sales price. For example, units targeted for families earning up to one hundred twenty percent of the median income may be sold to families earning up to one hundred forty percent of the median income. All other eligibility criteria shall apply;
  - b. Units shall be offered to the next higher income group every ninety days until the units are sold or there are no more income groups available;
  - c. Units shall then be offered to nonresidents on the wait list in the order in which their names were drawn in the lottery, for the next ninety-day period, provided that the applicant's income is within the residential workforce housing income groups; and
  - d. Any units that remain unsold may be offered at market rate without deed restrictions. Upon the sale of the unit, the County shall receive fifty percent of the difference between the original sales price of the unit and the actual market rate sales price, for deposit into the affordable housing fund. In this event, the developer shall still be deemed to have satisfied the requirement for producing a residential workforce housing unit.
5. The developer shall submit copies of the following information to the department to verify the sale of residential workforce housing units to eligible buyers:
  - a. Applicant's completed ownership application;
  - b. Executed sales contract;
  - c. Pre-qualification notice from lender;
  - d. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the lender; and
  - e. Escrow company's settlement statement.
6. An owner of a residential workforce housing unit that is being resold must sell the unit to an income-qualified household and notify the department of the sale. The department shall verify the sales price.

(Ord. 3418 § 1 (part), 2006)

**2.96.100 - Applicant selection process—rental units.**

**A. Wait List Procedure.**

1. The developer, its partner, or its management company shall establish wait lists of interested applicants by rental development;
  2. Prior to initiating the wait list, the developer, its partner, or its management company shall initiate the wait list process by publishing in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list; and
  3. Selection for rental units shall be made by a lottery administered by the developer, its partner, or its management company and overseen by the department, subject to the applicant meeting the eligibility criteria established in subsection B of this section.
- B. Eligibility Criteria. The eligibility criteria for rentals shall be established on a project-by-project basis by the director in the following manner:
1. If the project is receiving federal and/or state assistance, the applicable federal and/or state eligibility criteria shall apply; and
  2. If the project is not receiving federal and/or state assistance, all eligibility criteria in section 2.96.090.B of this chapter shall apply, except for section 2.96.090.B.6 of this chapter.
- C. Notification of Change. Each applicant shall be responsible for notifying the developer, its partner, or its management company in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify the developer, its partner, or its management company of such changes and the developer, its partner, or its management company is unable to contact the applicant, the applicant's name shall be removed from the applicable wait list.
- D. Selection Priority.
1. Residents on the wait list shall receive first priority for the available units. Nonresidents on the wait list may rent a residential workforce housing unit once the wait list has been exhausted of all residents.
  2. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the wait list.
  3. The residential workforce housing units shall be offered to residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify. Nonresidents will then be offered residential workforce housing units in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify.
  4. The developer, its partner, or its management company shall submit copies of the following information to the department to verify the rental of residential workforce housing units to eligible renters:
    - a. Applicant's completed final rental application;
    - b. Executed rental lease; and
    - c. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the developer, its partner, or its management company.
  5. The developer, its partner, or its management company shall maintain a wait list for the development after all of the units are rented, which shall be used to fill any vacancy.
  6. Any rental unit vacancy shall be filled by an applicant in the same income group as the original tenant to maintain an equal distribution of rentals across the "very low income" and "low income," "below-moderate income," and "moderate income" groups.

7. An owner of a residential workforce housing rental development intending to sell the development shall notify the department in writing prior to the closing of the sale, and shall provide documentation to the department that the prospective new owner acknowledges and is aware of the terms, conditions, and restrictions encumbering the development as set forth in section 2.96.070

(Ord. 3546 § 2, 2008; Ord. 3418 § 1 (part), 2006)

**2.96.110 - Review requirements.**

- A. The council shall review this chapter every two years.
- B. The director shall provide an annual report to the council on the status of the housing policy that shall include the following:
  1. The number of units built for sale and rent, categorized by number of bedrooms, income group, and sales price if for sale;
  2. The number of purchasers who resold units, categorized by number of bedrooms, income group, and sales price; and
  3. The number of developers, their partner(s), or their management companies maintaining a wait list, and the number of applicants on each wait list.
- C. For rental developments, the developer, its partner, or its management company shall submit an annual report of rental units to the department that includes the following:
  1. The tenant's move-in date; and
  2. The income group of the tenant or family.

(Ord. 3418 § 1 (part), 2006)

**2.96.120 - Rules.**

The director shall adopt administrative rules to implement this chapter, pursuant to chapter 91, Hawaii Revised Statutes, within one hundred eighty days after the effective date of the ordinance codified in this chapter.

(Ord. 3418 § 1 (part), 2006)

**2.96.130 - Property assessment value.**

The annual tax assessed value, as determined by the County, will take into account the limited resale value of the residential workforce housing property.

(Ord. 3418 § 1 (part), 2006)

**2.96.140 - Incentives.**

- A. For developments subject to this chapter, and under the jurisdiction of the development services administration of the department of public works and environmental management, decisions on permits will be made by all departments within sixty days of the date the permit application is deemed complete by the development services administration. Decisions on permits that require review by any outside agency will be made within thirty days of receipt by the development services administration of the last approval from an outside agency; provided, that decisions on applications that require special management area permit review, or environmental review pursuant to chapter 343, Hawaii Revised Statutes, shall be issued within ninety days of completion of the applicable review.

- B. For developments subject to this chapter, and if applicable, the council will schedule the initial meeting for such application within six months of the referral to the appropriate committee. The council will vote to approve or deny the application within one year of the referral to committee.
- C. Developments that include on-site residential workforce housing units may be entitled to a density bonus, subject to enactment of enabling legislation.

(Ord. 3418 § 1 (part), 2006)

#### 2.96.150 - Qualified housing providers.

Where the department determines that such an agreement will further the purposes of this chapter, the department shall enter into an agreement, on a project-by-project basis, with a qualified housing provider. Such an agreement may provide, without limitation, that the qualified housing provider shall:

- A. Receive, own, manage, rent, operate and sell residential workforce housing units provided by developers pursuant to section 2.96.040 of this chapter;
- B. Enter into agreements with developers pursuant to section 2.96.040.B.2 of this chapter, subject to the department's approval, pursuant to which residential workforce housing units are developed, constructed, renovated, or otherwise made available to satisfy the purposes of this chapter;
- C. Receive land and in-lieu fees provided by developers pursuant to section 2.96.040.B.4 of this chapter;
- D. Receive disbursements from the affordable housing fund and other funds provided for the purposes of this chapter; and/or
- E. Administer the selection processes under sections 2.96.090 and 2.96.100 of this chapter, subject to the department's oversight.
  - 1. Where a qualified housing provider receives, owns, develops, rents, operates or sells residential workforce housing units, such units shall be rented or sold to applicants qualified under this chapter, as set forth in the qualified housing provider's agreement with the department;
  - 2. Selection of purchasers or renters for a qualified housing provider's units shall be made in accordance with sections 2.96.090 and 2.96.100 of this chapter or with other selection processes permitted under the qualified housing provider's agreement with the department;
  - 3. All qualified housing provider rentals or sales shall be on terms, conditions and restrictions set forth in the agreement, which shall be at least as restrictive as the terms, conditions and restrictions applicable to developer rentals or sales under this chapter, and may be more restrictive; and
  - 4. All qualified housing provider agreements shall require detailed reports to the department, on no less than an annual basis, of the qualified housing provider's implementation of, and compliance with, the agreement. This report shall include an annual financial audit.

(Ord. 3418 § 1 (part), 2006)

ORDINANCE NO. 4177

BILL NO. 86 (2014)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO THE RESIDENTIAL WORKFORCE HOUSING POLICY, AND AMENDING CHAPTER 3.35, MAUI COUNTY CODE, RELATING TO THE AFFORDABLE HOUSING FUND

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 2.96.020, Maui County Code, is amended by repealing the definition "density bonus".

[""Density bonus" means a density increase over the otherwise allowed residential density under the applicable zoning and land use designation, without the need for further council approval, subject to enabling legislation."]

SECTION 2. Section 2.96.020, Maui County Code, is amended by repealing the definition "off-site".

[""Off-site" means any area outside the boundaries of the development within the community plan area."]

SECTION 3. Section 2.96.020, Maui County Code, is amended by repealing the definition "on-site".

[""On-site" means the area on, or within the boundaries of, the approved development within the community plan area."]

SECTION 4. Section 2.96.020, Maui County Code, is amended by amending the definition of "Residential workforce housing units" by deleting the definition of "Gap income".

"Residential workforce housing unit" means a unit or lot to be sold or rented to residents within one of the following income groups as established by the department:

1. "Very low income," which are those households whose gross annual family income is fifty percent or less of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai[;].

2. "Low income," which are those households whose gross annual family income is more than fifty percent, but not more than eighty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai[;].

3. "Below-moderate income," which are those households whose gross annual family income is more than eighty percent, but not more than one hundred percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai[;].

4. "Moderate income," which are those households whose gross annual family income is more than one hundred percent, but not more than one hundred twenty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai[;].

5. "Above-moderate income," which are those households whose gross annual family income is more than one hundred twenty percent, but not more than one hundred forty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai; and

6. "Gap income," which are those households whose gross annual family income is more than one hundred forty percent, but not more than one hundred sixty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.]

SECTION 5. Section 2.96.030, Maui County Code, is amended to read as follows:

**"2.96.030 Applicability.** A. Any development, including the subdivision of land and/or the construction of single-family dwelling units, two-family dwelling units, [multifamily] multi-family dwelling units, or hotels, as defined in section 19.04.040 of this code, whether constructed at one time or over several years, shall be subject to this chapter upon final subdivision or building permit approval, whichever is applicable and occurs first, if it will result in the creation of the following:

1. [Five or more dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code; provided that, such farm labor dwelling or farm dwelling is in full compliance with chapter 205, Hawaii Revised Statutes, and is not part of a condominium property regime, as set forth in chapter 514A, Hawaii Revised Statutes;

2. Five or more new lots;

3. A combination of dwelling units and new lots totaling five or more;

4. Three or more lodging, dwelling, or time share units in a hotel;] Ten or more lots, lodging units, time share units, or dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code; provided that, such farm labor dwelling or

farm dwelling is in full compliance with chapter 205, Hawaii Revised Statutes, and is not part of a condominium property regime, as set forth in chapter 514A, Hawaii Revised Statutes;

[5.]2. A conversion of [one] ten or more hotel units to dwelling units or time share units; or

[6.]3. Any hotel redevelopment or renovation project that increases the number of lodging or dwelling units in a hotel by ten or more.

B. Exemptions. This chapter shall not apply to any development that falls into one or more of the following categories:

1. A development subject to an affordable housing requirement, evidenced by an executed affordable housing agreement with the County, currently in effect and approved prior to the effective date of this chapter;

2. A development subject to a change in zoning condition that requires affordable or residential workforce housing, unless the condition expressly allows for the application of the affordable housing or residential workforce housing policy set forth herein;

3. A subdivision granted preliminary subdivision approval prior to the effective date of this chapter;

4. A building permit application submitted prior to the effective date of this chapter;

5. A family subdivision, for immediate family members, as described in [sections] subsections 18.20.280.B.1 and B.2 of this code; [or]

6. A development by a government entity[; a project pursuant to section 201H-H, Hawaii Revised Statutes;] or a community land trust[; or an affordable housing project with more than the residential workforce housing units, in-lieu fees, or in-lieu land required by section 2.96.040 of this chapter], as approved by the director[.]; or

7. A development within the boundaries of the Wailuku redevelopment area as defined by the Maui redevelopment agency pursuant to chapter 53, Hawaii Revised Statutes.

C. Adjustment[.] by developer.

1. A developer of any development subject to this chapter may appeal to the council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and the number of residential workforce housing units or in-lieu fees/land required.

2. Any such appeal shall be made in writing and filed with the [County] county clerk prior to final subdivision approval or issuance of a building permit for the development, whichever is applicable. Any such appeal shall administratively stay the processing of the development's subdivision or building permit, whichever is applicable, until a decision on the appeal is rendered. The appeal shall set forth in detail the factual and legal basis for the claim of reduction, adjustment, or waiver, and the developer shall bear the burden of presenting substantial evidence to support the appeal, including comparable and relevant technical information.

3. The council, or if the appeal is assigned to a council committee, the council committee[,] shall convene a meeting within forty-five days of the [County] county clerk's receipt of the appeal, to consider the appeal. The council shall approve or disapprove the appeal by resolution within forty-five days from the date the developer has concluded its presentation of evidence supporting the appeal in a council or committee meeting.

4. If the council or a council committee has not convened a meeting within forty-five days of the [County] county clerk's receipt of the appeal, or if the council does not approve or disapprove the appeal by resolution within forty-five days from the date the developer has concluded its presentation of evidence at the council or council committee meeting, the appeal, as submitted by the developer, shall be deemed approved by the council.

5. If a reduction, adjustment, or waiver is granted by the council, any subsequent substantive change or modification in use within the development, as determined by the director, shall invalidate the reduction, adjustment, or waiver previously granted.

D. Adjustment by director. The director may, subject to council approval by resolution, authorize a reduction, adjustment, or waiver of any provision of this chapter."

SECTION 6. Section 2.96.040, Maui County Code, is amended to read as follows:

**"2.96.040 Residential workforce housing requirements.** A. [Prior to final subdivision approval or issuance of a building permit for a development subject to this chapter, the department shall require the developer to enter into a residential workforce housing agreement that requires the following:] Developers shall be required to provide a number of residential workforce housing units equivalent to at least twenty-five percent, rounding up to the nearest whole number, of the total number of market rate lots, lodging units, time share units, or dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code, created. If a developer satisfies the requirements of this chapter through subsection (B)(3) and the units shall remain available only to income-qualified groups in perpetuity, the developer shall provide at least twenty percent, rounding up to the nearest whole number, of the total number of market rate lots, lodging units, time share units, or dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code, created.

[1. Where the residential workforce housing requirement is satisfied exclusively through the provision of on-site units:

a. When more than fifty percent of the dwelling units and/or new lots in the development are offered for sale for less than \$600,000, at least twenty-five percent of the total number of units and/or lots shall be sold or rented to residents within the income-qualified groups established by this ordinance; or



b. When fifty percent or more of the dwelling units and/or new lots in the development are offered for sale for \$600,000 or more, at least fifty percent of the total number of units and/or lots shall be sold or rented to residents within the income-qualified groups established by this ordinance.

2. Where the residential workforce housing requirement is satisfied through the provision of off-site units:

a. When more than fifty percent of the dwelling units and/or new lots in the development are offered for sale for less than \$600,000, then the number of off-site residential workforce housing units due shall be equal to fifty percent of the total number of on-site market rate units; or

b. When fifty percent or more of the dwelling units and/or new lots in the development are offered for sale for \$600,000 or more, then the number of off-site residential workforce housing units due shall be equal to fifty percent of the total number of on-site market rate units.

3. When three or more new lodging, dwelling, or time share units in a hotel are created, or when there is a conversion of one or more hotel units to dwelling units or time share units, or when any hotel redevelopment or renovation project increases the number of lodging or dwelling units in the hotel, or when five or more new dwelling units for rental purposes are created, then forty percent of the total number of new, additional and/or converted units shall be sold or rented to residents within the income-qualified groups established by this ordinance.]

B. Prior to final subdivision approval or issuance of a building permit for a development subject to this chapter, the department shall require the developer to enter into a residential workforce housing agreement. The [requirement] agreement shall set forth the method by which the developer satisfies the requirements of this chapter. The requirements may be satisfied by one or a combination of the following, which shall be determined by the director and stated in the [residential workforce housing] agreement:

1. Offer for sale, single-family dwelling units, two-family dwelling units, or multi-family dwelling units as residential workforce housing within the community plan area;

2. Offer for rent, multi-family dwelling units as residential workforce housing units within the community plan area]. A developer may partner with a nonprofit organization or community land trust on a specific affordable project to either construct new multi-family dwelling units or renovate existing nonhabitable multi-family dwelling units, paying an amount that represents the difference in unit costs for a family of four at one hundred percent and one hundred forty percent of median income pursuant to HUD affordable sales price guidelines as adjusted by the department by wait list area. The developer's requirement shall be deemed satisfied upon receipt of payment. Moneys shall be deposited into the affordable housing fund];

3. In lieu of directly selling or renting units pursuant to [subsection B.1 or B.2,] subsections (B)(1) or (B)(2) the developer may convey such units to a qualified housing provider subject to department approval pursuant to section 2.96.150; or

4. In lieu of providing residential workforce housing units, the residential workforce housing requirement may be satisfied by payment of a fee, by providing improved land, or by providing unimproved land[. Any fee must be approved by council resolution. Any donation of land must be approved by the council pursuant to section 3.44.015 of this code.] in accordance with the following:

a. The in-lieu fee per residential workforce housing unit required by this chapter [for sale/ownership units shall be equal to thirty percent of the average projected sales price of the market rate dwelling units and/or new lots in the development. The in-lieu fee per unit for hotel, time share, converted or rental units shall be an amount that represents the difference in unit costs for a family of four at one hundred percent and one hundred sixty percent of median income pursuant to HUD affordable sales price guidelines, or as adjusted by the department, for Hana, Lanai, and Molokai. The in-lieu fee shall be designated in the residential workforce housing agreement, and be secured by a lien on the units if not paid before the units are constructed or converted. The in-lieu fee shall accrue to the affordable housing fund, which shall be established in the County budget for the purpose of enhancing and supporting housing needs and programs of income-qualified households and special housing target groups; and] shall be equal to the difference in unit costs for a three bedroom, single-family, dwelling unit, at one hundred percent and a three bedroom, single-family, dwelling unit at one hundred sixty percent of median income, for a family of four, pursuant to HUD affordable sales price guidelines, or as adjusted by the department for Hana, Lanai, and Molokai.

b. [The value of the improved land shall not be less than the in-lieu fee that would otherwise have been required under this chapter. The value of the unimproved land shall be at least equal to twice the value of the improved land. The in-lieu land shall be used to address the housing needs of income-qualified households and special housing target groups. Such land shall have a minimum lot size of six thousand square feet or the minimum lot size allowed by the applicable zoning, whichever is greater. Such land must be acceptable to the department and may be used by the County or others approved by the County to develop residential workforce housing, resource centers for the homeless, day care centers for seniors, or other public use projects that address the housing needs of income-qualified households and special housing target groups.] Any dedication of improved or unimproved land in-lieu of residential workforce housing units shall be subject to the approval of the director and the council by resolution.

C. Income group distribution.

1. Unless an exemption is granted by the director, the percentage of ownership units within each income group shall be as follows:

a. Thirty percent of the ownership units shall be for "below-moderate income" residents.

b. Fifty percent of the ownership units shall be for "moderate income" residents.

c. Twenty percent of the ownership units shall be for "above-moderate income" residents.

2. Unless an exemption is granted by the director, the percentage of rental units within each income group shall be as follows:

a. One-third of the rental units shall be for "very low income" and "low income" residents.

b. One-third of the rental units shall be for "below-moderate income" residents.

c. One-third of the rental units shall be for "moderate income" residents."

SECTION 7. Section 2.96.050, Maui County Code, is amended to read as follows:

**"2.96.050 Residential workforce housing credits.** A. Credits may be given under the following circumstances:

1. One residential workforce housing credit shall be given for every single-family dwelling unit, two-family dwelling unit, or [multifamily] multi-family dwelling unit constructed and sold at affordable rates, in excess of the residential workforce housing required by section 2.96.040 [of this chapter]; and

2. [One residential workforce housing credit shall be given for every ten market rate units that contain a deed restriction requiring an owner to occupy the unit for a minimum of three years, and share with the County fifty percent of any profits realized from a sale of that unit within the three-year owner-occupancy period.] Credits may be issued for a one hundred percent affordable project developed pursuant to section 201H-38, Hawaii Revised Statutes, provided that one residential workforce housing credit shall be given, upon request by the developer, for every single-family dwelling unit, two-family dwelling unit, or multi-family dwelling unit constructed and sold at affordable rates, in excess of fifty percent of the total number of units constructed and sold at affordable rates in the project. Credits shall not be issued for projects developed pursuant to section 201H-38, Hawaii Revised Statutes, that are not one hundred percent affordable.

B. The credit [must] may be used in [the same] any community plan area [in which the unit was constructed].

C. The credit [must be applied toward the same] may satisfy the requirement for any type of unit constructed.

D. The credit [must be used for the same] may satisfy the requirement for a unit in any income group [in which the credit was earned, when the credit is earned by constructing more residential workforce housing units than required].

E. [The credit must be used for the "gap income" group when the credit is earned by creating a deed restriction.

F.] The credit may be used for a future development, but may not be used for an affordable housing or residential workforce housing unit owed at the time the credit is given.

[G.]F. The number of credits issued shall be set forth in the residential workforce housing agreement."

SECTION 8. Section 2.96.060, Maui County Code, is amended to read as follows:

**"2.96.060 Residential workforce housing [restrictions-Ownership units.] restrictions-ownership units.** A. [Ownership units shall be subject to this chapter for twenty-five years from the initial sale of the unit.

B. Unless an exemption is granted by the director, the percentage of ownership units within each income group shall be as follows:

1. Thirty percent of the ownership units shall be for "below-moderate income" residents;
2. Thirty percent of the ownership units shall be for "moderate income" residents;
3. Twenty percent of the ownership units shall be for "above-moderate income" residents; and
4. Twenty percent of the ownership units shall be for "gap income" residents.

C.] Timing of [Completion.] completion.

1. Residential workforce housing units shall be made[,] available for occupancy either before or concurrently with market rate units at the same ratio required of the development[; and].

2. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner.

[D]B. Deed [Restrictions.] restrictions.

1. The ownership units within each income group shall be subject to the deed restrictions contained in this section for the following periods:

a. "Below-moderate income," ten years.

b. "Moderate income," eight years.

c. "Above-moderate income," five years.

2. For the deed-restricted period, the following shall apply:

[1.]a. The unit must be owner-occupied[;].

[2.]b. The [unit must remain affordable for twenty-five years from the initial sale, with the] owner [notifying] must notify the department upon a decision to sell[; and].

c. Upon the owner's decision to sell, the County shall have the first option to purchase the unit from the owner; said option shall be available to the County for a period of one hundred and twenty days from receipt of written notice from the owner and shall not apply to sales by reason of foreclosure.

d. Upon sale of the unit, the deed-restricted shall remain in full force and effect for the remainder of the deed restriction period that commenced at the time of the initial sale.

[3.]e. Under special circumstances an owner of a residential workforce housing unit may appeal to the department for a waiver of the owner-occupancy deed restriction; these circumstances would include, but are not limited to, assignment to active duty military or short-term contracts for off-island employment.

f. Resale. The maximum resale price shall be established by the department using the following guidelines:

1. An appraisal of the property shall be required before occupancy.

2. A second appraisal shall be required upon a decision to sell the unit.

3. Twenty-five percent of the difference between the two appraisals shall be added to the owner's purchase price.

[E]C. Sales [Price - Single-Family Dwelling Units.] price - dwelling units.  
The sales price of a new [single-family] dwelling unit shall be [set by the department, at the time the developer is ready to market the unit, using the following guidelines:

1. A down payment of five percent shall be assumed;
2. The prevailing interest rate shall be used;
3. The price of a one-bedroom unit shall be based upon seventy percent of the median income of the wait list area, adjusted to the respective target income group;
4. The price of a two-bedroom unit shall be based upon eighty-five percent of the median income of the wait list area, adjusted to the respective target income group;
5. The price of a three-bedroom unit shall be based upon one hundred percent of the median income of the wait list area, adjusted to the respective target income group;
6. The price of a four-bedroom unit shall be based upon one hundred fifteen percent of the median income of the wait list area, adjusted to the respective target income group; and
7. Applicants in each income group shall be assumed to pay no more than thirty percent of the gross annual income of the highest percentage in the applicant's group.] established by the department based on current HUD price guidelines.

[F. Sales price - Two-Family or Multifamily Multi-family Dwelling Units. The sales price of a new two-family or multifamily dwelling unit shall be

ninety percent of the price of a single-family dwelling unit, as established in subsection E of this section.

G. **Resale Price.** The maximum resale price shall be established by the department using the following guidelines:

1. An appraisal of the property shall be required before occupancy;
2. A second appraisal shall be required upon a decision to sell the unit; and
3. Twenty-five percent of the difference between the two appraisals shall be added to the owner's purchase price.

H. **Foreclosures.**

1. The County shall have the first option to purchase the unit; and
2. If the County does not exercise its right to purchase, the units may be offered at an affordable price, set by the director, with the same deed restrictions.]"

SECTION 9. Section 2.96.070, Maui County Code, is amended to read as follows:

**"2.96.070 Residential workforce housing [restrictions - Rental units.] restrictions-rental units.** A. [Rental units shall be subject to this chapter for the life of the unit, as determined by a building inspector with the development services administration of the department of public works and environmental management.

B. Unless an exemption is granted by the director, the percentage of rental units within each income group shall be as follows:

1. One-third of the rental units shall be for "very low income" and "low income" residents;
2. One-third of the rental units shall be for "below-moderate income" residents; and
3. One-third of the rental units shall be for "moderate income" residents.

C.] **Timing of [Completion.] completion.**

[1. Except when the developer is partnering with a nonprofit organization or community land trust as allowed in section 2.96.040.B.2 of this chapter, residential] **Residential** workforce housing units shall be made available for occupancy either prior to or concurrently with market rate units at the same ratio required of the development. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner[; and

2. When the developer is partnering with a nonprofit organization or community land trust, the payment to the nonprofit organization or community land trust must be made prior to final subdivision approval or issuance of a building permit for the market rate units. The residential workforce housing units must be constructed within

three years of the date the certificates of occupancy are issued and/or the final inspections are passed for the market rate units].

[D.]B. Vacancies. Any rental unit vacancy must be filled by an applicant in the appropriate income group to better maintain an equal distribution of rentals across the "very low income" and "low income," "below-moderate income," and "moderate income" groups.

[E.]C. Deed [Restrictions.] restrictions.

1. The rental unit must remain affordable for [the life of the unit;] thirty years from the initial occupancy.

2. For the thirty-year affordability period, the following shall apply:

a. The owner must notify the department upon a decision to sell the rental development[;] and the County shall have the first option to purchase the rental development from the owner; said option shall be available to the County for a period of one hundred and twenty days from receipt of written notice from the owner and shall not apply to sales by reason of foreclosure.

[3.] b. Any new owner must comply with the deed restrictions.

3. Within 90 days of the expiration of the thirty-year affordability period, the owner shall offer the County the right to purchase the property at market value as determined by the owner.

[F.]D. Rental [Rates.] rates. The monthly rental rates shall be set by the department based on HUD income limits.

[G. Foreclosures.

1. The County will have the first option to purchase the rental development; and

2. If the County does not exercise its right to purchase, the rental development may be sold with the same deed restrictions.]"

SECTION 10. Section 2.96.090, Maui County Code, is amended to read as follows:

**"2.96.090 Applicant selection process – ownership units. A. Wait List Procedure.**

1. The developer, its partner, or its management company shall establish wait lists of interested applicants by development[;].

2. Prior to initiating the wait list, the developer, its partner, or its management company shall publish in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list[; and].

3. Selection for purchase shall be made by a lottery administered by the developer, its partner, or its management company and overseen by the

department, subject to the applicant meeting the eligibility criteria established in subsection [B of this section.] **(B).**

**B. Eligibility [Criteria.] criteria.** In order to be eligible for a residential workforce housing unit, an applicant must meet the following criteria:

1. Be a citizen of the United States or a permanent resident alien who is a resident of the County[;].

2. Be eighteen years of age or older[;].

3. Have a gross annual family income (not to include the income of minors) which does not exceed one hundred [sixty] forty [per cent] percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Initial determination for compliance with the maximum gross annual family income provision shall be made by the developer, its partner, or its management company for the initial sale of residential workforce housing units, on the basis of the information provided on the ownership application. The ownership application will be completed when a specific unit is being considered. Final determination for compliance with the maximum gross annual family income provision shall be made by the prospective lender at the time the applicant's income verification data is received[;].

4. Have assets that do not exceed one hundred [sixty] forty [per cent] percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property[;].

5. For a period of three years before the submittal of the ownership application, have not had an interest of fifty [per cent] percent or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size[; and].

6. Pre-qualify for a loan with the applicant's choice of lender.

**C. Notification of Change.** Each applicant shall be responsible for notifying the developer, its partner, or its management company in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify the developer, its partner, or its management company of such changes and the developer, its partner, or its management company is unable to contact the applicant, the developer, its partner, or its management company shall remove the applicant's name from the wait list.

**D. Selection [Priority.] priority.**

1. Residents on the wait list shall receive first priority for the available units. Nonresidents on the wait list may purchase a residential workforce housing unit once the wait list has been exhausted of all residents[;].

2. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the wait list[;].



3. The residential workforce housing units must be offered to residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify. Nonresidents will be offered residential workforce housing units in the order in which their names were drawn in the lottery[; and].

4. In the event that units are not sold within the first ninety days after they are offered for sale, and the developer has made a good faith effort, as determined by the director, to contact and qualify applicants on the wait list, the sale of remaining units shall be conducted as follows:

a. For the next ninety-day period, units shall be offered for sale to the next-higher income preference group, at the original sales price. For example, units targeted for families earning up to one hundred twenty [per cent] percent of the median income may be sold to families earning up to one hundred forty [per cent] percent of the median income. All other eligibility criteria shall apply[;].

b. Units shall be offered to the next higher income group every ninety days until the units are sold or there are no more income groups available[;].

c. Units shall then be offered to nonresidents on the wait list in the order in which their names were drawn in the lottery, for the next ninety-day period, provided that the applicant's income is within the residential workforce housing income groups[; and].

d. Any units that remain unsold may be offered at market rate without deed restrictions. Upon the sale of the unit, the County shall receive fifty [per cent] percent of the difference between the original sales price of the unit and the actual market rate sales price, for deposit into the affordable housing fund. In this event, the developer shall still be deemed to have satisfied the requirement for producing a residential workforce housing unit.

5. The developer shall submit copies of the following information to the department to verify the sale of residential workforce housing units to eligible buyers:

- a. Applicant's completed ownership application[;].
- b. Executed sales contract[;].
- c. Pre-qualification notice from lender[;].
- d. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the lender[; and].
- e. Escrow company's settlement statement.

6. An owner of a residential workforce housing unit that is being resold must sell the unit to an income-qualified household and notify the department of the sale. The department shall verify the sales price.

SECTION 11. Section 2.96.140, Maui County Code, is amended to read as follows:

**"2.96.140 Incentives.** A. For developments subject to this chapter, and under the jurisdiction of the development services administration of the department of public works [and environmental management], decisions on permits will be made by all departments within sixty days of the date the permit application is deemed complete by the development services administration. Decisions on permits that require review by any outside agency will be made within thirty days of receipt by the development services administration of the last approval from an outside agency; provided[,], that decisions on applications that require special management area permit review, or environmental review pursuant to chapter 343, Hawaii Revised Statutes, shall be issued within ninety days of completion of the applicable review.

B. For developments subject to this chapter, and if applicable, the council will schedule the initial meeting for such application within six months of the referral to the appropriate committee. The council will vote to approve or deny the application within one year of the referral to committee.

[C. Developments that include on-site residential workforce housing units may be entitled to a density bonus, subject to enactment of enabling legislation.]"

SECTION 10. Section 2.96.150, Maui County Code, is amended to read as follows:

**"2.96.150 Qualified housing providers.** Where the department determines that such an agreement will further the purposes of this chapter, the department shall enter into an agreement, on a project-by-project basis, with a qualified housing provider. Such an agreement may provide, without limitation, that the qualified housing provider shall:

A. Receive, own, manage, rent, operate and sell residential workforce housing units provided by developers pursuant to section 2.96.040 [of this chapter];

B. [Enter into agreements with developers pursuant to section 2.96.040.B.2 of this chapter, subject to the department's approval, pursuant to which residential workforce housing units are developed, constructed, renovated, or otherwise made available to satisfy the purposes of this chapter[;].

C.] Receive land and in-lieu fees provided by developers pursuant to [section 2.96.040.B.4 of this chapter;] subsection 2.96.040(B)(4).

[D.]C. Receive disbursements from the affordable housing fund and other funds provided for the purposes of this chapter[; and/or].

[E.]D. Administer the selection processes under sections 2.96.090 and 2.96.100 [of this chapter,] subject to the department's oversight.

1. Where a qualified housing provider receives, owns, develops, rents, operates or sells residential workforce housing units, such units shall be rented or sold to applicants qualified under this chapter, as set forth in the qualified housing provider's agreement with the department[;].

2. Selection of purchasers or renters for a qualified housing provider's units shall be made in accordance with sections 2.96.090 and 2.96.100 of this chapter or with other selection processes permitted under the qualified housing provider's agreement with the department[;].

3. All qualified housing provider rentals or sales shall be on terms, conditions, and restrictions set forth in the agreement, which shall be at least as restrictive as the terms, conditions and restrictions applicable to developer rentals or sales under this chapter, and may be more restrictive[; and].

4. All qualified housing provider agreements shall require detailed reports to the department, on no less than an annual basis, of the qualified housing provider's implementation of, and compliance with, the agreement. This report shall include an annual financial audit."

SECTION 12. Section 3.35.050, Maui County Code, is amended to read as follows:


**"3.35.050 Term of affordability.** A. Ownership housing units financed by the affordable housing fund shall be subject to the restrictions of [sections 2.96.060(D) through (H)] subsections 2.96.060(B) and (C) of this code. Rental housing units financed by the affordable housing fund shall be subject to the restrictions of [sections 2.96.070(E) through (G)] subsections 2.96.070(C) through (D) of this code.

B. The restrictions imposed by this section shall run with and bind the housing units, and the department shall record such restrictions with the bureau of conveyances or the land court of the [state.] State."

SECTION 13. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 14. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

  
JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

hht:misc:011abill02

S:\ALL\JTU\ORDS\2.96 residential workforce housing policy (11.25.14).docx

WE HEREBY CERTIFY that the foregoing BILL NO. 86 (2014)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 19th day of December, 2014, by the following vote:

Gladys C. BAISA Chair	Robert CARROLL Vice-Chair	Eleanora COCHRAN	Donald G. COUCH. JR.	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
Excused	Aye	No	Aye	Aye	Aye	Aye	Excused	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 19th day of December, 2014.

DATED AT WAILUKU, MAUI, HAWAII, this 19th day of December, 2014.



ROBERT CARROLL, VICE-CHAIR  
Council of the County of Maui




JOSIAH K. NISHITA, DEPUTY COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 22 DAY OF December, 2014.



ALAN M. ARAKAWA, MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4177 of the County of Maui, State of Hawaii.



DENNIS A. MATEO, COUNTY CLERK  
County of Maui

Passed First Reading on December 5, 2014.  
Effective date of Ordinance December 22, 2014

RECEIVED

2014 DEC 22 PM 2:44

OFFICE OF THE  
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4177 the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui

