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Douglas Spencer
JES LLC dba Spencer Development
67 E. Waiko Road
Wailuku, Hawaii 96793

TITLE OF DOCUMENT:

WAIKAPU GARDENS PHASE II
FIRST AMENDED AFFORDABLE HOUSING AGREEMENT

PARTIES TO DOCUMENT:

DEVELOPER: JES LLC dba Spencer Development
67 E. Waiko Road
Wailuku, Hawaii 96793

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

TAX MAP KEY(S): (2) 3-5-002-016

(This document consists of 16 pages.)

RECEIVED AT HHT MEETING ON 5/31/18
Buddy Almeida,
Housing Administrator

**WAIKAPU GARDENS PHASE II
FIRST AMENDED AFFORDABLE HOUSING AGREEMENT**

This Agreement is made this 29th day of May, 2015, by and between JES LLC, a Hawaii Limited Liability Company dba Spencer Development, whose mailing address is 67 E. Waiko Road, Wailuku, Hawaii 96793, hereinafter called "Developer", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "County".

Background

1. On October 7, 2013, the Council of the County of Maui ("Council") approved Developer's application for the development of the Waikapu Gardens Phase II Subdivision ("Project") pursuant to Section 201H-38, Haw. Rev. Stat., which will be developed on a parcel of land owned by Developer and identified by TMK (2) 3-5-002:016 in Waikapu, Maui, Hawaii (the "Property").

2. In accordance with the Council's approval of the Project, Developer is required to develop the Property and the Project in accordance with the following standards:

a. Pursuant to the Project's preliminary plans and specifications, Developer shall construct and sell all 56 homes as affordable house and lot units to families earning between eighty (80) and one hundred forty (140) percent of Maui County's median family income. Fourteen (14) house and lot units will be priced for families in the 81-100% of Maui County's median family income with house and lot prices not to exceed \$350,000. Fourteen (14) house and lot units will be priced for families in the 101-120% of Maui County's median family income with house and lot prices not to exceed \$425,000. Twenty (20) house and lot units will be priced for families in the 121-140% of Maui County's median family income with house and lot prices not to exceed \$500,000. Eight (8) house and lot units will be priced for families in the 121-140% of Maui County's median family income with house and lot prices not to exceed \$575,000.

b. Developer shall submit annual reports to the Director of DHHC, which shall include the number of units that have been constructed and sold, including sales prices of said units. Submittal of the annual reports shall be on the anniversary of the date of the County Council's approval of the Project.

3. That the Developer and the County of Maui previously entered into an Affordable Housing Agreement dated August 27, 2014, which said Agreement was recorded in the Bureau of Conveyances, State of Hawaii on September 9, 2014 as

Document No. A-53650205. In order to comply with the Federal National Mortgage Association ("Fannie Mae") underwriting requirements, certain amendments to the original Affordable Housing Agreement are required. To the extent that there is any conflict between the original Affordable Housing Agreement and the First Amended Affordable Housing Agreement, the terms of the First Amended Affordable Housing Agreement shall be controlling.

NOW, THEREFORE, Developer and County, in consideration of the terms, covenants and conditions set forth in this First Amended Affordable Housing Agreement (the "Agreement"), agree as follows:

ARTICLE I - DEFINITIONS

In addition to those capitalized terms defined elsewhere in this Agreement, the following capitalized terms shall have the following indicated meanings in this Agreement:

- A. "Affordable Buyer" means a person or family who, individually or collectively, as the case may be:
1. Is a citizen of the United States or a permanent resident alien;
 2. Currently resides or is employed within the County of Maui prior to the filing of an Application for an Affordable Housing Unit, with documentation, including but not limited to, filed tax returns and paystubs, confirming residency or employment within the County of Maui being the primary employment and source of income;
 3. Does not hold, and has not held title, within three (3) years prior to the filing of an Application for an Affordable Housing Unit, individually or jointly with a spouse or any other person, to any fee simple or leasehold 50% or more interest in a single-family dwelling unit (excluding apartments, townhomes, or condominiums) anywhere in the United States (with exceptions for displaced homemakers and recently divorced individuals);
 4. Is at least eighteen (18) years of age;
 5. Has the financial ability to purchase an affordable housing unit, including being able to qualify for a residential mortgage in a timely manner; and
 6. Meets all applicable affordable housing requirements, including verification of earnings in the income category for which they qualify and meeting the specific eligibility criteria which may be established by the County and/or Developer.

Developer shall be responsible for requesting appropriate documentation and for verifying all of the foregoing requirements.

- B. "Affordable Housing Unit" means any of the fifty-six (56) residential homes in the Project.
- C. "Affordable Sales Period" means the ninety (90) consecutive calendar day period commencing on the date of the start of the construction of infrastructure for the Project after receipt of final subdivision approval when the Developer is able to enter into binding sales contracts to sell the Affordable Housing Units to Affordable Buyers. Notwithstanding this definition, Developer shall comply with the sales procedures set forth in Section II (C) below.
- D. "Application for an Affordable Housing Unit" means the application form prepared by Developer and duly completed and signed by an applicant to determine the applicant's eligibility to be an Affordable Buyer to purchase an Affordable Housing Unit in the Project.
- E. "Cash Equity" means the actual amount of payments of principal which the Affordable Buyer has made for the purpose of purchasing or improving an Affordable Housing Unit, including the cash down payment made, payments of principal on mortgage loans secured to purchase the Affordable Housing Unit, and payments of principal for improvements which add value to the Affordable Housing Unit. The term "Cash Equity" shall not include interest or the appreciated value of the Affordable Housing Unit caused by market fluctuation.
- F. "DHHC" shall refer to Department of Housing and Human Concerns of the County of Maui.
- G. "Family" means two (2) or more persons related by blood, marriage or operation of law.
- H. "Gross Annual Income" means the aggregate gross income received within a calendar year from all sources for all adult household members.
- I. "Improvements" means substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the premises or substantial or total loss of value of said improvements and as may be further defined by Developer in its sales documents.
- J. "Median Annual Income" means the median annual family income for the year in which the Affordable Buyer contracts to purchase the Housing Unit for the County of Maui as established by the U. S. Department of Housing and Urban Development.

ARTICLE II - AFFORDABLE HOUSING PROGRAM

A. Housing Distribution and Sales Prices

Developer shall construct fifty-six (56) Affordable Housing Units in the Project and shall offer to sell said units during the Affordable Sales Period in accordance with the terms, covenants and conditions of this Agreement:

1. Fourteen of the homes will be priced to be affordable to families earning 80% to 100% of Median Annual income.
2. Fourteen of the homes will be priced to be affordable to families earning 101% to 120% of Median Annual Income.
3. Twenty-eight of the homes will be priced to be affordable to families earning 121% to 140% of Median Annual Income.

The foregoing sales prices of the Affordable Housing Units to be offered for sale to Affordable Buyers may be lowered, if necessary, based on the prevailing interest rate at the time of sale not to exceed the 140% of County Median Annual Income requirement and shall be in accordance with the standards of the Council's approval of the Project .

The sales prices of the Affordable Housing Units to be offered for sale to Affordable Buyers shall be approved by the DHHC. Not less than fifteen (15) consecutive calendar days prior to the commencement of the Affordable Sale Period, Developer shall submit to the DHHC for its approval the sale prices proposed by the Developer for the Affordable Housing Units (the "Proposed Sales Prices"). If the DHHC fails to disapprove in writing the Proposed Sales Prices and specify its reasons for such disapproval within fifteen (15) consecutive calendar days after receipt thereof, the Proposed Sales Prices shall be deemed approved by DHHC.

B. Marketing of Affordable Housing Units.

DHHC acknowledges that Developer has previously announced and promoted to the general public the sale of the Affordable Housing Units to Affordable Buyers, and that the selection of the Affordable Buyers for the Affordable Housing Units shall be made from the waiting list that has been established by the Developer.

C. Sales of Affordable Housing Units.

Developer shall deliver to the DHHC not less than fifteen (15) consecutive calendar days prior to the commencement of the Affordable Sales Period, written notice of the commencement date of the Affordable Sales Period.

In the event that any Affordable Housing Unit is not sold during the Affordable Sales Period, then 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. Thereafter 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.

Provided Developer has made a reasonable effort to advertise and publicize on Maui the availability of the Affordable Housing Units, Developer shall then have the option of renting said unit to an Affordable Renter or Developer may request and, after securing written approval from the DHHC, sell the remaining affordable housing units without any restrictions. If within fifteen (15) consecutive calendar days after receipt of the request to sell the unsold Affordable Housing Units without restrictions, the DHHC does not disapprove the request in writing and specifying the reasons for the disapproval, such request shall be deemed approved.

D. Owner Occupancy

Each deed for an Affordable Housing Unit shall specifically prohibit the construction of any ohana units either detached or as part of the Affordable Housing Unit, and shall require that for a period of ten (10) years after the purchase of an Affordable Housing Unit by an Affordable Buyer, the Affordable Housing Unit shall at all times be owned and occupied by an Affordable Buyer, except as set forth in section E below. Developer shall make a good faith effort to ensure that all Affordable Buyers comply with this provision by requiring the Affordable Buyer to cooperate fully with Developer to provide Developer each year during this 10-year owner-occupancy requirement such information that will indicate the Affordable Buyer's occupancy of the Affordable Housing Unit as said Affordable Buyer's primary residence.

If the Affordable Buyer does not comply with the owner occupancy requirement, or fails to cooperate fully with Developer to provide Developer each year during this 10-year owner-occupancy requirement such information that will indicate the Affordable Buyer's occupancy of the Affordable Housing Unit as said Affordable Buyer's primary residence, the County of Maui shall have the right to purchase the Affordable Housing Unit in accordance with the purchase and resale provisions set forth in Paragraph E of this Agreement.

E. Option to Purchase.

When an Affordable Buyer or any successor in title to the Affordable Buyer shall desire to sell, dispose of, or otherwise convey the Affordable Housing Unit, or any portion thereof, during the owner occupancy period set forth in Paragraph D, the Affordable Buyer shall notify the County of Maui in writing of the Affordable Buyer's intention to so sell, dispose of, or otherwise convey the Affordable Housing Unit (the "Conveyance Notice"); provided, however, this Paragraph E shall not apply to a successor in title to the Affordable Buyer that is the Mortgagee (as defined in Paragraph F below) . Upon receipt of the

Conveyance Notice, the County of Maui shall be entitled to purchase the Affordable Housing Unit from the Affordable Buyer at a price which shall not exceed the sum of:

1. The Affordable Buyer's actual cost to purchase the Affordable Housing Unit; plus
2. The cost of any improvements made to the Affordable Housing Unit, other than repairs to and maintenance of the Affordable Housing Unit, such as painting, re-roofing and the like, and provided that the Affordable Buyer had obtained approval from the County of Maui prior to commencing construction of said improvements; plus
3. Simple interest on the Affordable Buyer's cash equity in the Affordable Housing Unit at the rate of four percent (4%) per year.

The County of Maui shall complete its purchase of the Affordable Housing Unit within ninety (90) calendar days after receiving notice of the Affordable Buyer's (a) intent to sell the Affordable Housing Unit, or (b) failure to occupy the Affordable Housing Unit as required herein, or (c) failure to fully cooperate with Developer by providing to Developer each year during this 10-year owner-occupancy requirement such information that will indicate the Affordable Buyer's occupancy of the Affordable Housing Unit as said Affordable Buyer's primary residence, by sending the Affordable Buyer a written notice of its decision to purchase the Affordable Housing Unit, and shall purchase said unit within the 90 day period referenced above .

The County of Maui, in its sole discretion, may assign to the Developer, or such other entity that the County designates in its sole discretion, the right to purchase the Affordable Housing Unit at such price referred to in this Paragraph E. The Developer, or such other designee, shall complete the purchase of the Affordable Housing Unit within the same 90day period referred to in this Paragraph E. If the Developer, or other designee, exercises its option to purchase the Affordable Housing Unit, Developer , or other designee, shall have the option of either renting the Affordable Housing Unit to an Affordable Renter or to sell the Affordable Housing Unit to an Affordable Buyer pursuant to the Maui County Affordable Housing Guidelines in effect at the time of such sale. If the Developer, or other designee, exercises its option to sell the Affordable Housing Unit, the Developer, or other designee, agrees that the price will not exceed the maximum price for homes in the 140% median family income category pursuant to the Maui County Affordable Housing Guidelines in effect at the time of the sale.

Any lack of cooperation by the Affordable Housing Buyer (for example, the Affordable Buyer's failure to provide the County of Maui a current mailing address or disagreement with the purchase price of the Affordable Housing Unit as determined by the County of Maui) or due to any other reason not within the County of Maui's exclusive control, which has the effect of delaying the ability of the County of Maui, or its designee, to complete the purchase of the Affordable Housing Unit within the 90 day period referred

to above, shall extend the 90 day period by the length of delay caused by such lack of cooperation or other such delay.

If the County of Maui, the Developer, or the County of Maui's other designee, fails to purchase the Affordable Housing Unit with the 90 day period referred to above (or such further time determined as provided herein), then the Affordable Housing Buyer may sell the Affordable Housing Unit to an Affordable Buyer pursuant to the Maui County Affordable Housing Guidelines in effect at the time of such sale. In the event of such a sale by the Affordable Housing Buyer, the price will not exceed the maximum price for homes in the 140% median family income category pursuant to the Maui County Affordable Housing Guidelines in effect at the time of the sale.

The priority for exercising the option to purchase contained in this Paragraph E shall be as follows: (i) the County of Maui, (ii) the Developer, and (iii) the County of Maui's designee.

The holder of any mortgage on the Affordable Housing Unit is not obligated to forbear from exercising the rights and remedies under its mortgage, at law or in equity, after delivery of the Conveyance Notice.

The County of Maui shall provide written notice to the holder of any mortgage on an Affordable Housing Unit of its intention to purchase the Affordable Housing Unit from the Affordable Housing Buyer. Said notice to the Mortgagee(s) shall be made no later than 60 days prior to the completion of the County of Maui's purchase of said Affordable Housing Unit pursuant to this Paragraph E.

Notwithstanding any language in this Affordable Housing Agreement to the contrary, the restrictions contained in this section shall apply to all Affordable Housing Units during the time period in which the owner occupancy and other requirements of Paragraph D are in effect.

F. Procedures Upon Foreclosure

The holder of record of any mortgage on the Affordable Housing Unit, or its successor or assign ("Mortgagee") shall notify the County of Maui, and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which said notice shall be sent to the County of Maui to the attention of the Director of Housing and Human Concerns, not less than 90 days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Affordable Housing Buyer expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to the Mortgagee's intent to foreclose or such other remedial action pursuant to its mortgage.

The County of Maui, or its designee, shall have the right and option to purchase the Affordable Housing Unit provided that the County of Maui, or its designee, completes said purchase within 90 days from the date it receives the Foreclosure Notice. In the event that the County of Maui, or its designee, shall purchase the Affordable Housing Unit pursuant to this Paragraph F, the price to be paid by the County of Maui, or its designee, shall be the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior in priority to such mortgage, plus all future advances, accrued interest, and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of said mortgage(s).

In the event that the County of Maui, or its designee, shall fail to exercise its option to purchase the Affordable Housing Unit pursuant to this Paragraph F, the foreclosing Mortgagee shall have the right to conduct a foreclosure sale, or other such proceeding to enforce its rights under its mortgage. If the Affordable Housing Unit is sold for a price in excess of the purchase price set forth in this Paragraph F, such excess amount shall be paid to the County of Maui Affordable Housing fund after (i) a final judicial determination, or (ii) written agreement of all the parties who, as of such hold (or have been authorized to act for other parties who hold) a recorded interest in the Affordable Housing Unit, that the County of Maui is entitled to such excess amount. The legal costs and expenses incurred by the Mortgagee in obtaining such judicial determination or other agreement shall be deducted from the excess prior to payment to the County of Maui.

To the extent that the Affordable Housing Buyer possesses any interest in any amount which would otherwise be payable to the County of Maui under this paragraph, to the fullest extent permissible by law, the Affordable Housing Buyer hereby assigns its interest in such amount to the Mortgagee for payment to the County of Maui.

Notwithstanding any other provision hereof, the provisions of this Agreement shall be subordinate to the lien of the Lender holding a first mortgage, or such lender's assignee or successor in interest, and shall not impair the rights of the Lender, or such lender's assignee or successor in interest, to exercise its remedies by the Lender pursuant to its first mortgage in the event of default by the Affordable Buyer. Such remedies include the right of foreclosure (judicial or non-judicial), or such other remedies provided for in the first mortgage.

After such foreclosure or other remedies provided for in the first mortgage, this Agreement shall be forever terminated with respect to the subject property and shall have no further effect as to the subject property or any transferee thereafter; provided, however that the County of Maui has been given written notice of default by the Lender, or such lender's assignee or successor in interest, and given the County of Maui 90 days from the date of the receipt of such notice by the County of Maui to purchase the Affordable Housing Unit pursuant to terms contained in this section, or to cure the default within such

90 day period or otherwise given assurances to cure such default in a form and substance acceptable to the Lender, or such Lender's assignee or successor in interest.

Nothing in this Agreement shall impose any obligation on the County of Maui to purchase the Affordable Housing Unit pursuant to Paragraphs E, F, or any other section in this Agreement.

G. Renting on Special Circumstances

In the event of special circumstances, including but not limited to, temporary military assignments and situations requiring medical care in other locations within or outside the State of Hawaii, and with the approval of the DHHC, the Affordable Buyer may rent the Affordable Housing Unit.

H. Required Notice to Send to County

The Affordable Buyer shall promptly provide written notice to the County of Maui of any and all communications informing Affordable Buyer of any alleged default in the terms of the loan secured by a mortgage on the Affordable Housing Unit. The initial notice may be a copy of the initial letter written by the lender to the Affordable Buyer about the default. The Affordable Buyer shall send to the County of Maui within five calendar days after being served, any and all complaints filed against the Affordable Buyer alleging a default on the loan secured by a mortgage.

I. Affordable Buyer Documentation

Within sixty (60) calendar days after the closing of the sale of an Affordable Housing Unit to an Affordable Buyer, Developer shall provide the DHHC with the following:

1. A copy of the fully completed application executed by the Affordable Buyer, notarized by a notary public, and submitted to Developer for the purchase of an Affordable Housing Unit;
2. A copy of the Affordable Buyer's executed federal and Hawaii state income tax returns for the tax year immediately preceding the closing date of the sale of the Affordable Housing Unit, together with either a copy of all W-2, 1099, and other forms or information evidencing the Affordable Buyer's Gross Annual Income for such tax year, or written verification by a recognized lending institution of the Affordable Buyer's Gross Annual Income for such tax year;
3. A copy of the seller's closing statement issued by an escrow company and showing, among other things, the sales price for the Affordable Housing Units sold to the Affordable Buyer; and

4. A copy of the recorded deed conveying the Affordable Housing Unit to the Affordable Buyer.

J. Limits on Encumbrances

During the applicable owner-occupancy period, owners of Affordable Housing Units shall not refinance or further encumber the unit without first securing prior written consent of DHHC. Upon obtaining a new loan approved by DHHC, the Affordable Buyer shall promptly provide a copy of the new note and mortgage to the County of Maui. In no event shall the owner of an Affordable Housing Unit refinance or further encumber the unit in an amount in excess of the original purchase price without the express written consent of DHCC.

K. Affordable Housing Credits

Developer shall receive 27 Residential Workforce Housing Credits. The Credits shall be limited to use in the same community plan area in which the single-family dwelling unit for which the credit was earned was constructed. The Credits shall only be eligible to satisfy the Chapter 2.96, MCC, requirement for single-family dwelling units. The Credits may only satisfy the Chapter 2.96, MCC, requirement for the income group in which the credit was earned, the Credits shall be allocated as follows:

- 7 80% to 100% of Median Annual Income
- 7 101% to 120% of Median Annual Income
- 13 121% to 140% of Median Annual Income

Developer shall work with DHHC regarding the use and tracking of the Credits.

ARTICLE III - VERIFICATION

The DHHC shall have the right to require Developer to provide such information as may be reasonably required for the administration and enforcement of this Agreement.

ARTICLE IV - TERM OF AGREEMENT

Except as approved by the County, this Agreement shall remain in full force and effect until all of the Affordable Housing Units are sold to Affordable Buyers. Developer and the County of Maui agree, however, that all the terms in this Agreement pertaining to each Affordable Buyer's obligation during the ten-year owner-occupancy period shall survive the close of escrow for the sale of the Affordable Housing Unit to the Affordable Buyer, and that Developer shall require the Affordable Buyer to agree that such provisions shall terminate when the ten-year owner-occupancy period terminates for said Affordable Buyer's Affordable Housing Unit or when the County of Maui exercises its option to purchase said Affordable Housing Unit, whichever event occurs sooner.

ARTICLE V - GOVERNING LAW

This Agreement and the rights and obligations of Developer and the County shall be interpreted in accordance with the laws of the State of Hawaii.

ARTICLE VI - CONSENTS; APPROVALS; WAIVERS; NOTICES

A. Consents, Waivers, Approvals.

Whenever under this Agreement the consent, waiver or approval of any party is required or permitted, such consent, waiver or approval shall be evidenced by a writing signed by such party and shall not be unreasonably withheld or delayed. Except where otherwise provided, consent from the County shall mean the consent or approval of the Mayor and the DHHC and any others required by law. No consent or waiver, express or implied, by Developer or the County to or of any breach or default by the other party in the performance of the obligations hereunder shall be construed to be a consent or waiver to or of any other or further breach or default. Failure on the part of Developer or the County to complain of any act or omission by the other party or to declare the other party in default, irrespective of the duration of such failure, shall not constitute a waiver by such party of any of its rights hereunder.

B. 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 personally or sent either by facsimile transmission, telegram, 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 Developer, then to:

JES LLC
67 E. Waiko Road
Wailuku, Hawaii 96793

If to County, then to:

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

cc: Director of Housing and Human Concerns

County of Maui
200 South High Street
Wailuku, Hawaii 96793

Notices given as provided in this section shall be deemed given on delivery or upon receipt if by personal delivery, telegram or facsimile transmission or on the fourth business day following the mailing thereof if by mail.

ARTICLE VII - OTHER PROVISIONS; RESTRICTIONS

A. No Partnership or Joint Venture.

Nothing contained in this Agreement shall constitute or be construed to constitute or create a partnership, joint venture, or lease by and between the parties.

B. Binding Effect.

Subject to the limitations on transferability contained herein, each and all of the covenants, terms, and provisions contained herein shall be binding upon Developer and its successors and assigns. Developer may, without prior consent or approval of the County, assign the benefits, obligations, covenants, representations, and burdens contained in this Agreement to a wholly-owned subsidiary or affiliate of Developer (an affiliate shall be an entity in which Developer or its parent owns or control more than fifty percent (50%) of the voting rights), which subsidiary or affiliate shall assume and thereafter be responsible to perform each and every covenant, obligation, representation, and burden to be observed and performed by Developer as set forth in this Agreement. Developer shall notify the County, in writing, of its intent thirty (30) days prior to the event of any assignment of benefits, obligations, covenants, representations and burdens contained in the Agreement.

Such notification shall include a description of the assignment and the name, mailing address and telephone number of the individual or organization to whom it will be assigned.

C. Indemnification.

Developer shall indemnify, defend, and hold harmless the County, 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.

D. Recordation.

By executing this Agreement, Developer agrees that the County may record this Agreement with the State of Hawaii Bureau of Conveyances, as an encumbrance on the Project Site, so long as Developer or its successor in interest has not fully satisfied the affordable housing requirements that are specified in this Agreement. Once the Developer has satisfied the affordable housing requirements specified in this Agreement, or the Agreement is terminated, the County shall, upon the request of the Developer, promptly execute and record a release of this Agreement.

E. Third Party Beneficiary.

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; provided however, that insofar as this Agreement is incorporated into or referenced by a separate but related agreement between Developer and the County but only to the extent provided in such separate and related agreement.

F. Amendments.

This Agreement, or any provision thereof, may not be modified, altered or changed except by written instrument executed by Developer and the County; provided that any modification, alteration or change to this Agreement shall not affect, limit, or diminish the terms of the separate agreements by and between Developer and the County.

G. Remedies not Exclusive.

Developer agrees that the County has the right to enforce or prosecute any breach of the terms of this Agreement by Developer, its successors or assigns. Except as otherwise specifically set forth herein, any remedies herein provided for breaches of obligations hereunder shall not be exclusive, and shall not impair the right of the County to exercise any other right or remedy it may have, whether for damages, injunction or otherwise.

H. Attorney's Fees.

In the event that any party brings an action or proceeding against any other party to enforce or to prevent the breach of any provision of this Agreement or for damages by reason of any breach of this Agreement, or for any other judicial or administrative remedy, then the prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses.

I. 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.

J. Captions.

Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference and do not define, limit, extend or describe the scope of this Agreement or the intent of any provision thereof.

K. Identification.

Whenever required by the context in which it is used, any pronoun shall include both the singular and plural, and any gender shall include the masculine, the feminine, and the neuter genders.

L. Neither Party Deemed Drafter.


The parties agree that neither party shall be deemed the drafter of this Agreement, and further, that if this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision thereof against any party as the drafter of this Agreement.

M. 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.

DEVELOPER:

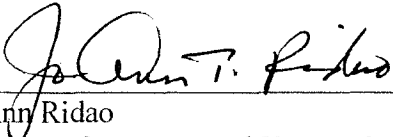
JES LLC dba Spencer Development
a Hawaii limited liability company

By 
Name: Douglas R. Spencer
Its: Member

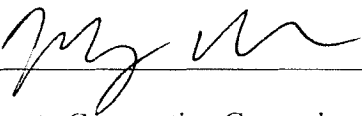
COUNTY OF MAUI

By 
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:

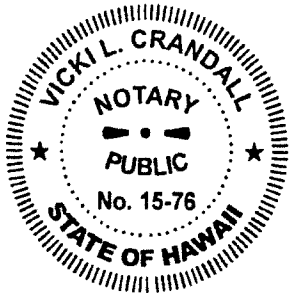

JoAnn Ridao
Director of Housing and Human Concerns

APPROVED AS TO FORM AND LEGALITY:


Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On this 19th day of May, 2015, before me personally appeared **DOUGLAS R. SPENCER**, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that he is a member of JES LLC. , a Hawaii limited liability company, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Vicki L Crandall
Name: Vicki L Crandall
Notary Public, State of Hawaii
My commission expires: 02/22/2019

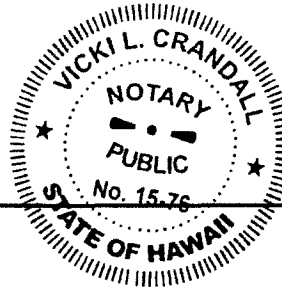
HAWAII NOTARY CERTIFICATION

Date: Undated at time of Notarization # Pages: 18

Name: Vicki L. Crandall Second Circuit

Document Description: Waikapu Gardens Phase II Affordable Housing Agreement

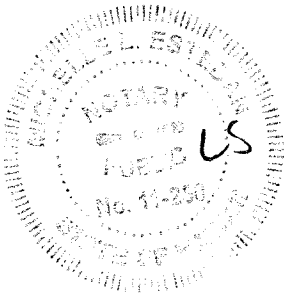
Vicki L Crandall
Notary Signature
Date: May 19, 2015



STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On this 29th day of May, 2015, before me appeared ALAN M. ARAKAWA, to me personally known, who being by me duly sworn did say that he 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 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA 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

HAWAII NOTARY CERTIFICATION

Date: 5-29-2015 # Pages: 18

Name: MICHELLE L. ESTEBAN Second Circuit

Document Description: Waikapu Gardens Phase II Affordable Housing Agreement

Michelle L. Esteban 5/29/2015
Notary Signature

