

**PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES ARMY,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
FOR THE
PRIVATIZATION OF FAMILY HOUSING AT
US ARMY GARRISON, HAWAII**

WHEREAS, the US Army Garrison, Hawaii (USAG-HI) pursuant to the Military Housing Privatization Initiative (P.L. 104-106, 110 Stat. 544, Title XXVIII, Subtitle A, Section 2801), which amends 10 U.S.C. 169 by addition of a new subchapter; IV - Alternative Authority for Acquisition and Improvement of Military Housing has determined to privatize family housing at USAG-HI through the Residential Communities Initiative (RCI) (the Undertaking); and

WHEREAS, under RCI, the USAG-HI will select a partner who will participate with the USAG-HI to prepare and finalize a Community Development Management Plan (CDMP) and any necessary agreements (Development Agreement and Ground Lease) to implement the privatization of current and future family housing assets at USAG-HI resulting in the transfer of a long-term interest in the construction, demolition, renovation, rehabilitation, operation, and maintenance of housing and other ancillary facilities at USAG-HI largely independent of direct government control, but intended for the use of soldiers and their families; and

WHEREAS, a separate legal entity known as Army Hawaii Family Housing, a Limited Liability Corporation (AHFH LLC) will be formed after congressional review of the USAG-HI RCI project. The partners of AHFH LLC will be the Department of the Army, acting through the Garrison Commander of USAG-HI, and a developer/partner yet to be selected.

WHEREAS, the developer/partner will be granted a ground lease of the USAG-HI housing areas and the stipulations of this Programmatic Agreement (PA) will be made an exhibit to the ground lease so that the stipulations become an integral part of the ground lease; and

WHEREAS, the Army has retained a historic easement on all USAG-HI Historic Properties; and

WHEREAS, the USAG-HI has determined that implementation of the Undertaking has the potential to adversely affect Historic Properties on or eligible for the National Register of Historic Places (NRHP) and has consulted with the Hawaii State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) in accordance with Sections 106, 110, and 111 of the National Historic Preservation Act (the Act), as amended, (16 U.S.C. 470 et. seq.) and its implementing regulations found at 36 CFR 800 (2000); and

WHEREAS, USAG-HI has consulted with AHFH LLC, the National Park Service, Historic Hawaii Foundation, the Outdoor Circle, the Office of Hawaiian Affairs, the Oahu Burial Council, the Association of Hawaiian Civic Clubs, and Hui Malama I Na Kupuna O Hawaii Nei, and invites them to be Concurring Parties to this Agreement; and

WHEREAS, USAG-HI will provide the public an opportunity to comment on this Undertaking through response to the Environmental Assessment (EA) prepared in conjunction with this agreement, thereby fulfilling requirements of the Agency's National Environmental Policy Act

process, with subsequent public and reviewing agencies' recommendations considered for incorporation into this agreement, and

WHEREAS, the Areas of Potential Effect (APE) shown in Appendix A for the RCI program at USAG-HI includes existing USAG-HI housing areas and any areas proposed for development of new housing and supporting amenities; and

WHEREAS, USAG-HI has conducted an inventory of Historic Properties and does not expect that the Undertaking will result in a substantial alteration or demolition of the Historic Properties listed in Appendix B (except for the treatments described in Stipulation III.D.3.a. through c.), which includes units in the Schofield Barracks Historic District and the Palm Circle National Historic Landmark as well as units at Tripler Army Medical Center, Fort Shafter, and Wheeler Army Airfield; and

WHEREAS, USAG-HI has completed its NRHP eligibility determinations for USAG-HI housing assets in accordance with Section 110(a)(2) of the Act and determined the housing units listed at Appendix B eligible for listing in the NRHP, and the Hawaii SHPO has concurred with these determinations; and

WHEREAS, all Capehart and Wherry Era housing is covered by an Army-wide Program Comment by the ACHP and there are no further preservation or consultation requirements for these housing areas pursuant to 36 CFR Part 800; and

WHEREAS, the developer/partner will comply with the stipulations of all previous applicable Memoranda of Agreement and Programmatic Agreements executed between USAG-HI, the Hawaii SHPO, and ACHP, and

NOW THEREFORE, the USAG-HI, the Hawaii SHPO, and the ACHP agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on Historic Properties.

STIPULATIONS

USAG-HI will ensure that the following measures are carried out:

I. APPLICABILITY, BASELINE INFORMATION, AND PROFESSIONAL QUALIFICATIONS STANDARDS

A. USAG-HI will provide an information package concerning the Historic Properties listed in Appendix B, which includes units in the Schofield Barracks Historic District and the Palm Circle National Historic Landmark as well as units at Tripler Army Medical Center Fort Shafter, and Wheeler Army Airfield to the developer/partner. This information package will describe contributing (NRHP eligible) and non-contributing (not NRHP eligible) structures and buildings, historic landscapes, and archeological sites that may be present within or adjacent to existing housing developments and areas proposed for development of housing and supporting amenities. This packet will include the Cultural Resources Management Plans prepared for Schofield Barracks, Fort Shafter and Wheeler Army Airfield, the management recommendations

for Palm Circle, the *Illustrated Manual for Repair and Maintenance of Historic Military Family Housing in Hawaii* (Appendix C), as well as the draft and final versions of the USAG-HI Integrated Cultural Resource Management Plan (ICRMP). The presence of NRHP eligible or listed properties was disclosed in the Request for Qualifications document used to notify the private sector of the proposed privatization action.

B. Based on analysis of the residential infrastructure and proposed construction sites, USAG-HI has determined in consultation with the Hawaii SHPO that no other existing, residential buildings, structures, objects, districts or landscapes affected by the Undertaking are now National Register of Historic Places eligible under NRHP criteria. USAG-HI will conduct a periodic historic architectural survey of all buildings, structures, and landscapes on USAG-HI property that have reached fifty years of age since the previous survey. These periodic surveys will occur at five-year intervals coinciding with the amendments to the USAG-HI ICRMP. Any new NRHP eligible properties recognized through this process and administered or affected by the developer/partner will be subject to the provisions of this Agreement. This stipulation does not limit any other evaluation and possible nomination that may occur at the discretion of the developer/partner, Hawaii SHPO, or ACHP, as long as the nomination includes only units administered by the developer/partner and the developer/partner coordinates with the USAG-HI Cultural Resources Management Program (CRMP) staff in the preparation of the nomination.

C. USAG-HI has documented existing interior and exterior conditions at contributing (NRHP eligible) structures, buildings, and landscapes in the historic housing areas. USAG-HI will provide the documentation to the signatories and concurring parties to this Agreement in electronic or paper formats. USAG-HI will supplement the documentation as necessary to include information regarding any modifications or alterations to the property to maintain accuracy and record modifications to Historic Properties. One copy of the documentation and any supplemental materials, as they are developed, shall be provided to the developer/partner and to the Hawaii SHPO. This documentation will serve as a reference throughout the term of this Agreement.

D. For the purposes of this Agreement the USAG-HI CRMP will, at a minimum, be staffed or contracted to an individual who meets the Secretary of the Interior's Historic Preservation Professional Qualification Standards (as proposed at 36 CFR 61, Appendix A, Professional Qualification Standards for Architectural History, Historical Architect, Archeologist, or other appropriate profession). The USAG-HI CRMP staff will serve as the point of contact with the Hawaii SHPO and ACHP. This staff member will monitor the project every six months at a minimum, or more frequently during construction and rehabilitation of Historic Properties, to ensure compliance with the stipulations of this PA.

II. CONVEYANCE ACTIVITIES

A. USAG-HI shall ensure that the Ground Lease shall contain such terms and conditions as necessary and appropriate to meet the requirements of Sections 106, 110, and 111 of the Act to provide for adequate consideration and treatment of Historic Properties that may be affected by the RCI program. All relevant portions of this Programmatic Agreement shall be incorporated into and made part of the Ground Lease. The Hawaii SHPO and ACHP will be given an opportunity to review the Ground Lease to ensure that adequate preservation conditions are included.

B. Before execution of any conveyance or finalization of the Ground Lease for the Undertaking, USAG-HI shall provide the developer/partner all previously compiled information on any Historic Properties within the APE to guide the developer/partner in the management and use of the properties. USAG-HI shall indicate that the units listed in Appendix B are subject to alternate and more stringent management requirements pursuant to Stipulation III.

C. Renewal or any modifications to the Ground Lease shall be subject to consultation among the signatories to determine whether such renewal or modifications constitute a new federal undertaking subject to provisions of the Act.

D. Terms of the Development Agreement shall apply equally to any document subordinate to the primary Development Agreement and to all successor individuals and/or entities holding the Development Agreement and Ground Lease. USAG-HI shall include provisions in the Development Agreement and Ground Lease that provide for government review and approval of any successors to ensure that they meet or exceed original RFQ source selection criteria for the developer/partner.

III. HISTORIC PROPERTY MANAGEMENT

A. The Hawaii SHPO has concurred with the USAG-HI determination that “no Historic Properties will be affected” at HMR, AMR, and KKH for architectural concerns, and “no Historic Properties will be affected” at HMR, SB, and TAMC for archaeological concerns.

B. When conducting preservation, maintenance, or rehabilitation measures for Historic Properties, USAG-HI shall conform to the management standards and guidelines for treatment of Historic Properties established by the Secretary of Interior in *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 CFR 68 in Appendix D; and conform to the general maintenance guidelines presented in the August 2002, *Illustrated Manual for Repair and Maintenance of Historic Military Family Housing in Hawaii* in Appendix C; and conform to the principles and precepts from the *Maintenance and Planning Standards at the Palm Circle National Historic Landmark* presented in Appendix E; and maintain or restore the architectural features of historic units as presented in the September 2003, *Historic Structure Report / Condition Assessment of Army Family Housing Dwelling Units in Hawaii* attached as Appendix F, unless the USAG-HI provides exemption, in writing, for particular processes in a manner intended to expedite routine matters. Some such exemptions are listed here under Stipulation IV, and USAG-HI shall incorporate these into the Development Agreement and the Ground Lease. The Development Agreement and Ground Lease shall allow other exemptions via completion and developer/partner adherence to the Historic Tax Credit rehabilitation certification process (See Stipulation III.H.). Any determination by USAG-HI to grant an exemption not part of the original contract constitutes a new federal undertaking subject to consultation under the Act.

C. USAG-HI shall ensure that all landlord/tenant agreements for occupation of Historic Properties incorporate all pertinent conditions of this Agreement. The USAG-HI shall provide the Hawaii SHPO and the ACHP an opportunity to review and comment upon the language of a sample agreement. One aspect of the landlord/tenant agreement will be the protection of significant architectural elements and hardware as described in the *Historic Structure Report / Condition Assessment of Army Family Housing Dwelling Units in Hawaii* (Appendix F) during tenant occupancy.

D. Project Review and Consultation

The USAG-HI CRMP staff will review, screen, and monitor proposed projects and activities of the developer/partner and the property management agent (if different from the developer/partner) to include the review process specified in D.1. through 3., below. The USAG-HI CRMP will be responsible for creating and keeping a record of each project review.

1. In the case of an emergency, the developer/partner will perform those actions necessary for the protection of the Historic Properties with on-site monitoring by Qualified Staff either from the developer/partner or the USAG-HI CRMP staff. The developer/partner is not required to consult with USAG-HI in advance of emergency actions affecting Historic Properties. Where possible, such emergency measures will be limited to the stabilization of the property and will be undertaken in a manner that is consistent with the *Treatment Standards* (Appendix D). The developer/partner will notify the USAG-HI CRMP, who will notify the Hawaii SHPO, following execution of all emergency measures affecting Historic Properties. This emergency provision is limited to Undertakings initiated within 30 days of the emergency.

2. If the developer/partner proposes substantial alteration or demolition of a Historic Property, the developer/partner shall perform an economic analysis to evaluate the economic feasibility for the developer/partner to preserve or maintain specific Historic Properties in accordance with the *Treatment Standards* (Appendix D). The developer/partner will submit the economic analysis and their recommended course of action for the Historic Properties in question to the USAG-HI CRMP for review and consultation with the Hawaii SHPO and, if appropriate, the ACHP and National Park Service (NPS). The developer/partner will ensure that the analysis and recommended course of action includes a consideration of adaptive reuse prior to any demolition in order to meet the obligations of Section 111 of the National Historic Preservation Act. The Hawaii SHPO, ACHP, and NPS will be given 30 days to review and comment on the economic analysis and recommended course of action. If the Hawaii SHPO, ACHP, and NPS agree in writing with the economic analysis findings and the treatment recommendation, the USAG-HI CRMP will inform the developer/partner that they may proceed with the action. If a determination of adverse effect is made by USAG-HI, USAG-HI will consult to resolve the adverse effect pursuant to 36 CFR 800.6.

3. The following alterations and/or demolitions were agreed to in consultation with the Hawaii SHPO.

a. Wheeler Army Airfield: The following anticipated treatments and renovations shall be performed in accordance with this Agreement:

1) It will be acceptable to eliminate the middle (duplex) wall, and/or add bedrooms to the back of the 122, two-bedroom duplexes to make these units larger. The Hawaii SHPO and ACHP will be given 30 days to review and comment on the proposed design.

2) The three apartment buildings comprised of 24, two-bedroom units will be allowed to have interior modifications to make better use of the space. The Hawaii SHPO and ACHP will be given 30 days to review and comment on any proposed alterations.

3) The 10, two-story, four-bedroom single-family houses have undergone kitchen renovations and additions to the backs of the units. Further modifications to

the kitchens and back additions (including the addition of a garage) will not require additional Section 106 consultation. USAG-HI will undertake before and after photographic documentation to record changes.

b. Fort Shafter:

The 35 residences (16 duplexes and 3 single-family houses) at Rice Manor are eligible for the National Register of Historic Places for the integrity of the neighborhood and streetscapes. These units will be demolished under RCI USAG-HI will undertake photographic/narrative documentation meeting the minimum standards of HABS/HAER, and retain the existing streetscape in the Rice Manor Neighborhood.

c. Tripler Army Medical Center:

The 16, two-bedroom units that make up these two apartment buildings have had additions (enclosed lanais) and considerable changes to their interiors and windows. All efforts will be made to retain and re-utilize all eligible units at TAMC. If these units cannot be effectively re-utilized in their present configuration, USAG-HI will re-consult on alternative treatments, which may include demolition.

4. The landscaping in the Schofield Barracks National Historic District and the Palm Circle National Historic Landmark are contributing elements to the respective District/Landmark. Any major changes to the landscaping within these two Historic Districts, including the removal of mature trees and the landscaping around houses, must be reviewed by the USAG-HI horticulturalist and CRMP staff. In addition, the Development Agreement and Ground Lease shall include continued consideration of exceptional trees (Appendices G and H). Exceptional trees and landscaping within the Historic Districts shall be treated in the following manner:

a. The developer/partner shall retain the services of a Certified Arborist with at least 5 years experience in tree pruning. The arborist shall ensure tree branches and root pruning work on Exceptional Trees, as required for construction, is performed in accordance with the standards of the National Arborists Association and International Society of Arboriculture. A certified tree worker under the general supervision of a Certified Arborist may perform tree or root pruning, as needed; and

b. Proper measures shall be taken to protect the Exceptional Tree canopies and root systems from unnecessary damage from construction activities. Exceptional Trees shall be provided proper care to include irrigation and fertilization as necessary to maintain their good health for the duration of the Ground Lease; and

c. During construction activities, the developer/partner shall erect temporary fencing around Exceptional Trees as far from the trunks as possible with the objective of enclosing the areas directly under the canopies; and

d. All excavation work within the drip line shall be performed under the direction of the Certified Arborist; and

e. Material and topsoil stock piling, vehicle parking, construction material mixing, and field office location shall not be allowed within the area bounded by the

drip line; and

f. The Certified Arborist shall evaluate any damage to Exceptional Trees as soon as possible, and appropriate treatments applied.

E. USAG-HI will report to the Hawaii SHPO and the ACHP on the status of the USAG-HI historic housing properties as part of the USAG-HI annual report to the Hawaii SHPO on the Cultural Resources Management Program. This report will include information on the current condition of the Historic Properties, actions taken by the developer/partner to maintain the properties, descriptions of unanticipated problems that could affect the integrity or upkeep of the Historic Properties, projects proposed for the following year, or any other activities or policies that affect or may affect the Historic Properties, including the documentation of project reviews carried out under Stipulation III.D., above.

F. For the purposes of this Agreement, the developer/partner shall have access to and utilize "Qualified Staff," for the development of rehabilitation plans, to review, screen, and monitor proposed projects, and to establish work requirements that affect Historic Properties. This staff member will also prepare the historic housing section of the USAG-HI Cultural Resources Management Program annual report (referenced above) to the Hawaii SHPO on activities of the developer/partner and sub-contractors as they pertain to Historic Properties. This report will include information on the current condition of the Historic Properties, actions taken by the developer/partner to maintain the properties in accordance with agreed upon standards, projects proposed for the following year, and descriptions of problems encountered that could affect the integrity or upkeep of the Historic Properties. The qualified staff will act on behalf of developer/partner in consultations between the USAG-HI CRMP and the Hawaii SHPO when the USAG-HI CRMP requests assistance from the developer/partner in consultations with the Hawaii SHPO. This staff member can either be an employee of the developer/partner or a member of the RCI permanent staff. For the purposes of this Agreement, "Qualified Staff" is defined as an individual who meets the Secretary of the Interior's Historic Preservation Professional Qualification Standards (as proposed at 36 CFR 61, Appendix A, Professional Qualification Standards for Architectural History or Historical Architect for architectural concerns, and an Archaeologist for archaeological concerns).

G. Proposed Undertakings that have the potential to adversely impact Historic Properties shall be reported by the developer/partner to the SHPO and USAG-HI CRMP in a timely manner during the project planning period and separate from the annual report. The report will contain sufficient information on the proposed Undertaking for the SHPO to determine whether the Undertaking would adversely impact Historic Properties. The SHPO will have 30 days to comment following receipt of the report.

H. Tax Credits

1. USAG-HI shall encourage the developer/partner to explore federal and state historic preservation tax credit benefits via the established application process with the Hawaii SHPO and National Park Service (NPS) before the start of rehabilitation projects involving historic buildings.

2. In the event the developer/partner determines to seek the historic preservation tax credits, the proposed project will, upon receipt of an approved Part II certification from the NPS, be exempt from Stipulation III.D., above.

3. In the event that approved plans are subsequently modified and then determined by NPS to not meet the Standards, Stipulation III.D. (above) will again be applicable.

IV. EXEMPT ACTIVITIES

A. Each of the following activities will be exempt from further Section 106 review by the Hawaii SHPO and ACHP. USAG-HI CRMP Qualified Staff will review the following activities to ensure the exemption is appropriate:

1. General operation and maintenance, demolition, rehabilitation and/or renovation of existing housing units outside of historic districts and other than Historic Properties within the RCI footprint, and new construction, provided such new construction does not adversely affect the view plane of Historic Properties, Landmarks, or Districts, or other architectural or landscape features which contribute to Landmarks or Districts as stipulated in NRHP nomination forms and/or Appendix F to this document.

2. Temporary installation of facilities to provide access to the Historic Properties by disabled persons provided these changes make no permanent modification to contributing architectural or landscape elements.

3. The following undertakings will not require further Section 106 review or consultation with the Hawaii SHPO, provided that USAG-HI CRMP Qualified Staff determine that the proposed work will be carried out in accordance with the documents listed in Stipulation III.B.

a. Repairs or replacement in-kind of original siding, trim, or hardware that match original material and architectural finish.

b. Replacement of glazing with best available match to existing or original materials and design, including retention of window lights and muntin bars. Not included is changing the visual appearance of the original glazing by replacing with tinted glass or by adding tinted or reflective film.

c. Refurbishment, repair, and replacement in-kind of steel casement windows and their glazing and hardware to match existing or original materials and design.

d. Repair without replacement of window frames or sashes by patching, splicing, consolidating, or otherwise reinforcing existing materials.

e. Replacement or installation of caulking and weather-stripping around windows, doors, walls, and roofs.

f. Maintenance and repair without replacement of windows and doors and their frames, transom windows, sashes, jambs, and moldings. Appropriate maintenance actions include surface treatments and preparation to apply finishes, such as cleaning, rust removal, limited paint removal, application of epoxy consolidates and fillers, and reapplication of protective coating systems.

g. Maintenance, repair, and replacement of roofs or parts of a roof that are deteriorated, when repair or replacement matches or is compatible with existing or original material and design; maintenance procedures, such as the oiling of cut cedar shingles, that do not alter the integrity of the original material.

h. Repair or replacement of porches and stairs if work matches historic or existing character, material, and design.

i. Removal of building additions and mechanical equipment, such as conduit, pipes, wiring, junction boxes, and air conditioners, determined not to be contributing by Qualified Staff.

j. Replacement of exterior lighting when in accordance with the *Treatment Standards* (Appendix D).

k. Maintenance, repair, replacement, or installation of screens providing the materials and design match the existing screens or match the existing window frame material.

l. Maintenance, repair, replacement, or installation of gutters, down spouts or roofing materials providing the materials and design match existing, or are compatible with the building's period and of a type approved by Qualified Staff.

m. Installation of energy conservation materials that are not readily visible, such as concealed installation of thermal insulation and vapor barrier, or repair of roof ventilation.

n. Removal of existing fixtures, accessories, and cabinets determined not to be contributing by Qualified Staff.

o. Replacement or installation of building fixtures, exterior or interior, with a type previously approved or selected by Qualified Staff.

p. Installation of interpretive signs or exhibit structures that are not attached to a historic property and that do not visually intrude on a Historic Property. Such signs or exhibits shall be constructed of materials and painted colors that are compatible with the Historic Property and its setting.

q. Maintenance or repair of aboveground utilities, such as gas, fuel, electrical and telephone lines, provided that no disturbance occurs outside existing infrastructure.

r. Maintenance or repair of underground utilities, such as sewer, water, storm, electrical, gas, and fuel lines, provided that no excavation or ground disturbance occurs outside existing trenches.

s. Excavations for repair or replacement of building footings or foundation work within two (2) feet of existing footings and foundations, if there are no visual effects to aboveground structures and their finishes.

t. Maintenance, repair, or replacement of equipment, plumbing,

electrical, ventilation or air conditioning systems, provided such work takes place in existing chases, access panels, or on outside of existing walls and is approved by Qualified Staff.

u. Replacement of non-original interior light fixtures in historic interiors.

v. Interior surface treatments, repaired or replaced in-kind, including but not limited to floors, walls, ceilings, woodwork, providing the work is restricted to repainting, refinishing, re-papering, or laying carpet, linoleum, or other recognized floor systems.

w. Replacement, removal, or upgrading of electrical wiring if historic architectural finishes, moldings, and millworks are not affected by the electrical work.

x. Painting exterior surfaces when the new paint matches the existing or original color. Damaged or deteriorated paint may be removed to the next sound layer, using the most gentle methods possible, such as hand scraping or hand sanding. Abrasive methods, such as sandblasting, are not covered in this stipulation.

y. Repair and filling of spalling concrete and cracks if patched to hide repairs. Excluded are patches to historic bomb damage, shrapnel, strafing or bullet marks.

4. Activities that conform to conditions for a Federal historic preservation tax credit that have been approved by the NPS.

5. Any change that has been reviewed by USAG-HI CRMP Qualified Staff to the mechanical systems, kitchen, bathroom or basement spaces of Historic Properties, as long as such change does not detract from any significant exterior or interior historic character defining elements in other rooms of the quarters.

6. Implementation of the terms of an approved historic properties management plan that has been reviewed by USAG-HI CRMP Qualified Staff.

7. Roadway and parking lot repair, resurfacing, or reconstruction that takes place within the previously maintained roadway or parking lot surfaces.

8. Maintenance, repair, or replacement in-kind of existing sidewalks and curbs, not including historic pavements such as bricks, cobblestones, or lava rock.

9. Routine foot-trail maintenance.

10. Routine maintenance including, but not limited to, landscaping, grass cutting and tree trimming in all areas except Historic Landmarks and Districts.

B. Activities not listed above shall be completed as directed in Stipulation III.B.

V. ARCHEOLOGICAL CONCERNS

A. The Hawaii SHPO and consulted Native Hawaiian Organizations have concurred with the USAG-HI determination that “no Historic Properties will be affected” within the RCI

footprint (APE) for archaeological concerns at HMR, AMR, and TAMC provided that USAG-HI complies with Stipulation V.C., below.

B. For all other installations, USAG-HI will perform evaluations for National Register eligibility for archaeological sites within the RCI footprint at Schofield Barracks, Wheeler Army Airfield, and Fort Shafter. This will include the preparation of site forms, site mapping and testing, and preparation of written materials as necessary to document the evaluation process. In addition, the following inadvertent discovery clause, and monitoring clause will take place as described below:

1. The Development Agreement and Ground Lease shall include an inadvertent discovery clause as follows: "In the event of discovery of archeological materials during any activity associated with the Undertaking, the developer/partner shall immediately stop work being performed by it or its contractors in the area of the discovery and notify the USAG-HI CRMP. The developer/partner shall take reasonable measures to protect the discovery until USAG-HI has evaluated the resources, determined if additional compliance requirements under NAGPRA or NHPA apply, and met those requirements. If the additional discovery contains historic properties, USAG-HI will comply with the provisions of 36 CFR 800.13(b) and 43 CFR 10. Any inadvertent discovery of human remains will be treated in accordance with NAGPRA and Section 106 of the NHPA." When a NAGPRA Plan of Action for USAG-HI has been finalized, inadvertent discoveries will be treated in accordance with that Plan of Action.

2. The Development Agreement and Ground Lease shall include an archaeological monitoring clause as follows: "All ground disturbing activities within 100 feet of the culturally sensitive areas indicated in Appendix A shall require a preliminary survey by USAG-HI, or other qualified personnel, and all excavations in those areas shall be monitored by Qualified Staff." The survey will be used to identify the location of the previously recorded cultural site. USAG-HI will coordinate with the Hawaii SHPO, any appropriate NHO, and the developer/partner in assessing potential effects to Historic Properties (if present). Those archaeological resources that may be affected by the undertaking may best be managed by site fencing, or landscaped buffers. Fenced sites will require periodic monitoring by USAG-HI to ensure that the barriers remain in place and the markings do not unduly attract site vandals.

3. The Oahu Council of Hawaiian Civic Clubs will be afforded an opportunity to provide cultural monitoring of ground disturbing activities in culturally sensitive areas.

C. USAG-HI will honor a request by the Office of Hawaiian Affairs to establish a 100-foot landscaped buffer around Site 50-80-13-88, Pu'u Kapu Heiau at Aliamanu Military Reservation.

VI. FISCAL REQUIREMENTS AND SOURCES

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. 1341 (1998)). If compliance with the Anti-Deficiency Act alters or impairs USAG-HI's ability to implement the stipulations of this Agreement, USAG-HI will consult in accordance with the dispute resolution, amendment or termination stipulations as specified in Stipulations VII, and VIII.

VII. DISPUTE RESOLUTION

A. Should any party to this Agreement object within 30 days to any plans or other documents provided by USAG-HI or others for review pursuant to this Agreement, USAG-HI, supported by and in cooperation with the developer/partner will consult with the objecting party to resolve the objection. If USAG-HI determines it cannot resolve the objection, USAG-HI shall promptly forward to the ACHP all dispute-relevant documentation including a proposed resolution of the objection. Within 30 days after receipt of documentation, the ACHP will either:

1. Provide USAG-HI with recommendations, which USAG-HI will take into account in reaching a final decision regarding the dispute; or
2. Notify USAG-HI that it will or will not comment pursuant to 36 CFR 800.7(c). USAG-HI will take into account any comment the ACHP provides in response to such request and do so in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.

B. Any recommendation or comment the ACHP provides pertains only to the subject of the dispute. USAG-HI's responsibility to carry out all other actions under this Agreement, other than those disputed will not change.

VIII. AMENDMENT AND TERMINATION

A. If a change occurs in the Undertaking that creates new circumstances that USAG-HI must address, or, if USAG-HI determines that it cannot carry out the terms of this Agreement, any party to this Agreement may request an amendment. However, only the Signatories may amend the Agreement in accordance with 36 CFR 800.6(c)(7).

B. Should the Signatories to this Agreement not agree on an amendment or in the event of USAG-HI's failure to comply with the stipulations of this Agreement prior to execution of a Ground Lease, this Agreement shall be terminated. In such an event, USAG-HI shall not execute a Ground Lease that has the potential to adversely affect historic properties until applicable stipulations of the Agreement are met or it obtains alternative documentation from the ACHP that it has met the requirements of the NHPA.

C. The refusal of any Concurring Party invited to concur in this Agreement does not invalidate the Agreement per 36 CFR 800.6(c)(3).

D. If any Signatory determines that the terms of this Agreement cannot be or are not being carried out, the Signatories shall consult to seek amendment of the Agreement. If the Agreement is not amended, any Signatory may terminate it per 36 CFR 800.6(c)(8).

IX. EFFECTIVE DATE, END DATE, APPLICABILITY

A. This Programmatic Agreement is effective on the last date that all signatories sign. USAG-HI will comply with all terms and stipulations from that date forward.

B. This Programmatic Agreement will be incorporated into the Ground Lease as an

exhibit and will become an integral part of the Ground Lease. This Agreement will become applicable to the developer/partner when that entity is selected and upon their execution of the Ground Lease. The Ground Lease is expected to be a 50-year lease, with an option to renew that lease for 25 more years upon mutual agreement of the parties.

This Agreement will be in effect so long as the Ground Lease is in effect, unless previously terminated under the provisions of VIII., above. If the parties to the Ground Lease agree to extend the Ground Lease, the parties to this Agreement will consult on the need to renew or amend this Agreement at the same time as the Ground Lease is being considered for renewal.

[Remainder of page intentionally left blank, signature page follows.]

Programmatic Agreement, Military Housing Privatization Initiative, US Army Garrison, Hawaii

Execution of this Programmatic Agreement and implementation of its terms evidences that USAG-HI has afforded the ACHP an opportunity to comment on the Undertaking to privatize family housing at USAG-HI, and its effects on Historic Properties, and that USAG-HI has taken into account the effects of the Undertaking on Historic Properties.

US ARMY GARRISON, HAWAII

By: David L. Anderson Date: 30 Mar '04
David L. Anderson
Colonel, US Army
Garrison Commander

HAWAII STATE HISTORIC PRESERVATION OFFICER

By: Peter Young Date: AUG 19 2004
Peter Young
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 8/31/04
John Fowler
Executive Director

Concurring Parties:

Army Hawaii Family Housing LLC has reviewed the above terms and stipulations of the Programmatic Agreement. We acknowledge that the above terms and stipulations will become a part of the Ground Lease and that, subject to the terms and provisions of the Ground Lease, they will become binding on Army Hawaii Family Housing LLC, as lessee under the Ground Lease, upon the execution and delivery of the Ground Lease by the Army and Army Hawaii Family Housing LLC following the approval by Congress of the RCI project in Hawaii.

ARMY HAWAII FAMILY HOUSING LLC

By: AHFH MANAGING MEMBER LLC,
it's managing member

By: A developer/partner yet to be selected,
its sole member

By: _____ Date: _____
Name:
Title:

OFFICE OF HAWAIIAN AFFAIRS

By: _____ Date: _____
Peter L. Yee
Director
Nationhood and Native Rights
Chairperson

HISTORIC HAWAII FOUNDATION

By: _____ Date: _____
David Scott
Executive Director

APPENDICES

- A. Maps of Historic Properties within RCI areas of potential effect.
- B. List of Historic Properties within RCI areas of potential effect.
- C. *Illustrated Manual for Repair and Maintenance of Historic Military Family Housing in Hawaii.*
- D. *The Secretary of the Interior's Standards for the Treatment of Historic Properties.*
- E. *Maintenance and Planning Standards at the Palm Circle National Historic Landmark.*
- F. *Historic Structure Report / Condition Assessment of Army Family Housing Dwelling Units in Hawaii.*
- G. Exceptional Trees.
- H. Exceptional Tree Guide for Schofield Barracks and Wheeler Army Airfield.