Land Court System | Regular System

Return by Mail (X) Pickup ( ) To:

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
Attn: Stan S. Fujimoto, Project Manager

TMK: (3) 2-4-059: 032
MOHOULI SUBDIVISION, SECTION I
File Plan No. 1168
Lot No. 55

RESIDENTIAL LEASE (AFFORDABLE LESSEE)

THIS INDENTURE, made this _____ day of _____, _____, by and between:

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION,
a public body and a body corporate and politic of the State of Hawaii
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

hereinafter called "Lessor", and

hereinafter called "Lessee";

WITNESSETH:

That Lessor, in consideration of the rent hereinafter reserved and the covenants herein contained and on the part of Lessee to be observed and performed, does hereby demise and lease unto Lessee as (check applicable box)

☐ tenants by the entirety with full right of survivorship ☐ tenants in common

☐ joint tenants with full right of survivorship ☐ tenant in severalty

and Lessee does hereby accept and rent:

All that certain property described in **Exhibit "A"** attached hereto and incorporated herein by reference, SUBJECT TO the restrictions on Use, Sale and Transfer provisions set forth in Exhibit "B-1" and the Shared Appreciation Equity ("SAE") Program set forth in Exhibit "B-2", attached hereto and incorporated herein by reference;

SUBJECT TO all easements shown on the map (if any) hereto attached or above referred to, and reserving unto Lessor within said easements rights-of-way and the right to grant to any public utility or governmental authority such rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and similar public services and utilities, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines.

TO HAVE AND TO HOLD the demised premises together with the rights, easements, privileges and appurtenances thereunto belonging and appertaining, unto the Lessee for the term of this lease:

Commencing on: Date of this lease

Renegotiating on: _____

Terminating on: _____ (65 years)

unless sooner terminated as hereinafter provided, the Lessor reserving certain rights and interests and Lessee yielding and paying therefor unto Lessor at the principal office of Lessor, lease rent of ONE AND 00/100 DOLLAR ($1.00) per year for the number of years of the term of the lease (Base Rent) payable in advance upon commencement of this lease.

ADDITIONAL LEASE RENT. The Lessee shall also pay to Lessor additional lease rent of twenty per cent (20%) of all rent Lessee collects, other than rent of the premises from leases to affordable tenants with the prior written approval of Lessor, payable semi-annually to Lessor, by the end of the calendar month following the semi-annual period for which such lease rent is based. The additional lease rent shall be submitted in arrears with an itemized list of all rent Lessee collected, other than rent of the premises from leases for affordable housing, for the semi-annual period which the additional lease rent is based.

INCREASE IN LEASE RENT PAYMENT. Lessee understands and agrees that the rent payable of one dollar ($1.00) for the number of years of the term of this lease is substantially less than the fair market rent for the demised premises and is in furtherance of the public purpose of providing affordable housing opportunities to the original Lessees. Lessee agrees that there shall be an increase in the annual lease rent for any default under the terms of this lease or for as long as the Lessor's Use, Sale, and Transfer Restrictions and SAE Program have not been released or expired as described in Paragraph B hereinbelow, upon occurrence of the following conditions:

1. Upon sale of the premises for a consideration;

2. Upon transfer of the premises which does not meet the criteria under Paragraph D(3) hereinbelow, Permitted Transfers;

3. Upon rental of the premises;

4. The Lessee no longer uses the premises as his principal residence but continues to retain legal and/or equitable title to the leasehold interest in the premises;

5. The Lessee does not obtain Lessor's consent when required by the terms of this lease and the attached exhibits, including but not limited to Lessor's prior written consent to mortgage or written consent to a permitted transfer, and does not properly record the required documents.

The increase in lease rent shall be based upon the following lease rent schedule:

(a) First 10 years at $_____ per annum from _____ to _____;

(b) Second 10 years t $_____ per annum from

_____ to _____;

(c) Third 10 years at $_____ per annum from _____ to _____;

(d) For and during the remaining period, the lease rent shall be equal to the prevailing rate of return for the then prevailing rate of return for similar lands multiplied by the then prevailing fair market value of the fee simple interest in the land as though unencumbered by this lease or any other lease. In the absence of mutual agreement, the lease rent shall be determined by a panel of three appraisers as arbitrators, one each to be appointed and paid for by Lessor and Lessee respectively, and the third to be appointed by the two arbitrators named by Lessor and Lessee. Lessor and Lessee shall each pay 50% of the costs of the third appraiser.

In the event Lessee fails to cooperate with Lessor's process of amending the lease to establish the new lease rents or delays completion of the process, at Lessor's exclusive option without the necessity of obtaining Lessee's acceptance, Lessor shall file at the Bureau of Conveyance, State of Hawaii, an Amendment of Lease Rent ("Amendment") and/or and Affidavit of New Lease Rent ("Affidavit") to establish the new lease rent schedule. Upon filing of the Amendment and/or the Affidavit, Lessee will be responsible for the new lease rent amounts and will be billed accordingly.

Unless otherwise designated by Lessor, lease rents shall be due and payable in advance every six (6) months for such six-month period, on the first of January and July of every calendar year.

AND LESSOR HEREBY COVENANTS with Lessee that upon payment of the rent as aforesaid and upon observance and performance of the covenants by Lessee hereinafter contained, Lessee shall peaceably hold and enjoy said premises for the term hereby demised without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through or under it except as herein expressly provided.

AND LESSEE HEREBY COVENANTS with Lessor as follows:

1. PAYMENT OF RENT. Lessee shall pay or cause to be paid said rent in lawful money of the United States of America at the times and in the manner aforesaid, without any deduction and without any notice or demand, at the office of Lessor or Lessor's duly designated agent.

2. TAXES AND ASSESSMENTS. Lessee shall pay or cause to be paid at least ten (10) days before the same become delinquent all real property taxes

and assessments of every description to which said premises or any part thereof or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable, whether assessed to or payable by Lessor or Lessee, except that such taxes shall be prorated between Lessor and Lessee as of the dates of commencement and expiration respectively of said term; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments together with interest as shall become due and payable during said term.

3. PAYMENT OF RATES AND OTHER CHARGES. Lessee shall pay before the same become delinquent all charges, duties, rates and other outgoings of every description to which said premises or any part thereof or any improvement thereon, or Lessor or Lessee in respect thereof, may during said term be assessed or become liable for electricity, gas, refuse collection, telephone, sewage disposal, water or any other utilities or services, whether made by governmental authority or public or community service company and whether assessed to or payable by Lessor or Lessee.

4. CONSTRUCTION IMPROVEMENTS REQUIRED BY LAW. Lessee shall at Lessee's own expense during the whole of said term make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and other areas which may be required by law to be made, built, maintained and repaired, upon or adjoin or in connection with or for the use of the demised premises or any part thereof.

5. OBSERVANCE OF LAWS. Lessee shall at all times during said term keep said premises in a clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority that is applicable to said premises or any improvement thereon or use thereof, and all recorded protective covenants and restrictions affecting said premises, and shall indemnify Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of said laws, ordinances, rules and regulations or of this covenant.

6. REPAIR AND MAINTENANCE. Lessee shall at Lessee's own expense from time to time and at all times during said term, repair, maintain, amend and keep all buildings and improvements now existing or hereafter built on the demised premises with all necessary reparations and amendments whatsoever in good order and condition, except for damage by unavoidable casualty not herein required to be insured against, and maintain and keep said premises and all adjacent land between any street boundary of said premises and the established curb or street line in a neat and attractive condition.

7. INSPECTION. Lessee shall permit Lessor and Lessor's agents at all reasonable times during said term to enter said premises and examine the state of repair and condition thereof, and Lessee shall repair and make good all defects as required by the provisions of this lease, within thirty (30) days after Lessor's notice. If the Lessee shall fail to commence or complete the repairs within the period provided

above, the Lessor may make such repairs. The Lessor shall not be responsible to the Lessee for any loss or damage that may be caused to the premises by reason hereof. If the Lessor makes such repairs, the Lessee shall pay to the Lessor the cost thereof plus interest at the rate of seven percent (7%) per annum on demand.

8. RESIDENTIAL USE. Lessee shall use and allow the use of said premises only for residential purposes, and shall not at any time during said term erect, place, maintain or allow on said premises more than one single-family dwelling, nor keep or allow to be kept on said premises any livestock, poultry or rabbits, nor use or allow the use of any building or structure on said premises as a tenement house, rooming house or apartment house or for or in connection with the carrying on of any business or trade whatsoever.

Lessee shall complete construction of a single-family dwelling on the premises within three years from the date of this Lease in accordance with a County of Hawaii building permit and plans and specifications approved by Lessor, unless extended in writing within the sole discretion of Lessor. Lessee shall submit a copy of the building permit to Lessor prior to commencement of construction.

Lessee shall comply with the requirements for an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS") pursuant to Chapter 343, Hawaii Revised Statutes ("HRS"). The parties acknowledge that if the premises is not in an environmentally sensitive area, construction of a single-family dwelling less than 3,500 square feet thereon is exempt from the requirements for an EA or EIS pursuant to Chapter 343, HRS, under Exemption Class #3 as follows:

> "Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:
>
> (A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;
>
> ...
>
> (7) Additions or new buildings or structures not exceeding 3,500 square feet."

Prior to submittal of plans and specifications to Lessor for review, Lessee shall submit to Lessor an environmental report from a qualified environmental planner approved by Lessor indicating whether the premises is in an environmentally sensitive area.

9. CONSTRUCTION OF IMPROVEMENTS. Lessee shall not erect or place on said premises any building or structure, including fences and walls, nor make any additions or structural alterations to any building thereon, except in accordance with plans and specifications including a detailed plot plan, which shall be prepared by a licenses architect if so required by Lessor, first submitted by Lessee and approved in writing by Lessor, and shall landscape said premises suitably for the neighborhood.

10. BOND. Lessee shall, before commencing construction of any improvement on the demised premises deposit with Lessor a bond or certificate thereof naming Lessor as an oblige, in a penal sum not less than one hundred percent (100%) of the cost of such construction and with a responsible corporate surety (or with Lessor's written approval, a responsible material house) authorized to do business in Hawaii, guaranteeing the completion of such construction free and clear of all mechanics' and materialmen's liens.

11. SETBACK LINES. Lessee shall observe any setback lines affecting the demised premises, and shall not erect, place or maintain any building or structure in such setback areas except approved fences or walls between any street boundary of the demised premises and the setback line nor maintain any hedge of a greater height than four (4) feet above the ground level between such setback line and street boundary.

12. INSURANCE. Lessee shall at Lessee's own expense at all times during said term keep all buildings now or hereafter erected on the demised premises insured against loss or damage by fire with extended coverage in a responsible insurance company authorized to do business in Hawaii, in an amount as near as practicable to the replacement cost thereof, in the joint names of Lessor, Lessee and mortgagee (if any) as their interests may appear, payable in case of loss to the mortgagee (if any) or in the absence of any mortgage, to Lessor and Lessee as their interests may appear and shall pay all premiums thereon when due and from time to time shall deposit or cause to be deposited promptly with Lessor a true copy or certificate of such current insurance policy, and any money derived therefrom in case of loss shall be held in trust in Hawaii and be immediately available to and used as soon as reasonably possible by Lessee for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the plan and elevation of the buildings so destroyed or damaged or such modified plan as shall be previously approved in writing by Lessor; provided, however, that in case the main dwelling on said premises shall be destroyed by any casualty during the last ten (10) years of the term hereof, Lessee may at his option cancel this lease by giving written notice thereof to Lessor within thirty (30) days after such casualty on condition that before such cancellation becomes effective Lessee shall remove all remains of the damaged buildings and pay to Lessor a sum of money equal to the then present worth of the unearned annual rent for the remainder of said term calculated by compound interest discount at the interest rate then prevailing in Honolulu for residential real estate mortgage loans. In case said dwelling shall be destroyed by any casualty at any time during said term and such restoration thereof shall be prevented by law, Lessee may at his option cancel this lease by giving written notice thereof to Lessor at any time thereafter on condition that Lessee shall before such cancellation becomes effective remove all remains of the damaged buildings and pay to Lessor all rent then accrued hereunder and taxes for the full current year. Upon either such cancellation, all insurance proceeds shall be payable to and be the property of Lessee and mortgagee (if any) as their interests may appear; provided that during such period as the

Department of Housing and Urban Development or Veterans Administration shall own this lease all provisions of this lease requiring insurance and restoration of buildings which are substantially destroyed shall be inoperative, but such Department or Administration shall promptly remove all remains of any damaged buildings not restored in accordance with said provisions.

Additionally, Lessee shall, at Lessee's own expense at all times during the term of this Lease, obtain and maintain liability insurance with the following minimum amount(s), unless otherwise determined by Lessor from any insurance company or companies which is licensed and authorized to engage in the business of insurance in Hawaii naming Lessee as the name insured and Lessor and the State of Hawaii as additional insured and insuring both against and from any and all claims, demands or suits for property damage, personal injury or death arising out of, relating to or proximately caused by the use, maintenance, operation and control by Lessee of the demised premises:

Coverage	Minimum Policy Limits
General Liability and Auto-Mobile Insurance	General liability, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than $500,000 per occurrence and $1,000,000 in the aggregate (the maximum amount paid for claims during a policy term), arising out of or in connection with operations performed on the premises. Automobile insurance, including automobile contractual liability, uninsured and underinsured motorist coverage, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than $500,000 per occurrence and $1,000,000 in the aggregate. If Lessee does not own automobiles, it shall maintain Hired and Non-owned Automobile Liability coverage.

A current policy or certificate of such insurance shall be submitted to Lessor. By endorsement or otherwise, the insurance policy must provide that the insurance company cannot cancel or amend the insurance policy without endeavoring to give Lessor at least 30 days prior written notice.

13. LESSOR'S COSTS AND EXPENSES. Lessee shall pay to Lessor on demand all costs and expenses including reasonable attorneys' fees incurred by Lessor in enforcing any of the covenants herein contained, in remedying any breach by Lessee of said covenants, in recovering possession of said premises, in collecting any

delinquent rent, taxes or other charges payable by Lessee, or in connection with any litigation commenced by or against Lessee in which Lessee is found to be at fault and to which Lessor without any fault on its part shall be made party.

14. INDEMNITY. Lessee shall indemnify and hold Lessor and the State of Hawaii harmless against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of said premises by Lessee or any other person claiming by, through or under Lessee, or any accident or fire on said premises, or any nuisance made or suffered thereon, or any failure by Lessee to keep said premises in a safe condition, and shall reimburse Lessor for all of Lessor's costs and expenses including reasonable attorneys' fees incurred in connection with the defense of any such claims, and shall hold all goods, materials, furniture, fixtures, equipment, machinery and any other property whatsoever on said premises at the sole risk of Lessee and hold Lessor harmless for any loss or damage thereto by any cause whatsoever.

15. WASTE AND UNLAWFUL USE. Lessee shall not make or suffer any strip or waste or unlawful, improper or offensive use of said premises or use said premises for or in connection with the manufacture, sale, storage or keeping for sale or barter of any narcotics or alcoholic beverages or liquors.

16. LIENS. Lessee shall indemnify and hold Lessor harmless against all liens, charges and encumbrances and all expenses in connection therewith including attorneys' fees, with respect to said premises or any improvements thereon.

17. SURRENDER. At the end of said term or other sooner termination of this lease, Lessee shall peaceably deliver up to Lessor possession of the demised premises together with all erections and improvements upon or belonging to the same, by whosoever made, or Lessee shall remove such improvements, at the option of Lessor, in either case, at no cost or expense to Lessor. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive termination of this lease.

18. TERMINATION FOR ILLEGAL PURPOSES. At any time during the term of this lease, Lessor shall have the right, notwithstanding any other provision to the contrary, to immediately terminate this lease if the premises or any part of the premises, appurtenances or improvements are used, or intended to be used, in any manner or in part, to commit or to facilitate the commission of a crime or to endanger public safety.

AND IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as

follows:

A. CONDEMNATION. In case at any time or times during the term hereof the demised premises or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the demised premises so taken or condemned shall at once cease and determine upon acquisition by such authority of title thereto or right to possession thereof, and Lessee shall not by reason of such taking or condemnation be entitled to any claim against Lessor or others for compensation or indemnity for leasehold interest, and all compensation and damages for or on account of any land shall be payable to and be the sole property of Lessor. With regard to all compensation and damages for or on account of any improvements on the demised premises, the Lessee shall be entitled to receive the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the prernises occupied by the Lessee. In the event that only part of the demised premises shall be so taken or condemned, the rent thereafter payable for the remainder of said term shall be reduced in an amount determined by mutual agreement of Lessor and Lessee not later than 30 days thereafter or otherwise in the proportion that the area so taken bears to the area hereby demised, and if the remaining premises shall thereby become unsuitable for residential purposes appropriate for the neighborhood, Lessee shall have the option to surrender this lease within thirty (30) days thereafter and be relieved of further performance hereunder; provided, further, that whenever required so to do Lessee shall peaceably deliver up to Lessor, without any reduction in rent or option to surrender this lease, possession of such portion or portions of the demised land lying within any such street boundary thereof at the commencement of said term as may hereafter be required, taken or condemned for any street widening.

B. RESTRICTIONS ON USE, SALE AND TRANSFER OF LEASED PREMISES AND THE SHARED APPRECIATION (SAE) PROGRAM. The demised premises shall be subject to the following restrictions on Use, Sale and Transfer and the SAE Programs thereof as set forth in Exhibits "B-1" and "B-2" attached hereto and incorporated by reference.

1. LESSEE'S OBLIGATIONS TO LESSOR. The Lessee, for the Lessee, the Lessee's heirs, personal representatives, successors and assigns, does hereby covenant and agree, as a covenant running with the land, that until the tenth anniversary of the date of recordation of this instrument conveying the Premises to the Lessee (at which date such covenant shall automatically terminate and be of no further force and effect without the necessity of filing a release), or until released by Lessor, whichever shall first occur, the Premises shall be held subject to the 10-year provisions of Sections 201H-47, 48, 49, 50 and 51 of the Hawaii Revised Statutes, as amended, relating to Lessor's first option to purchase the Premises, also known as the Buyback Program ("Lessor's Use, Sale and Transfer Restrictions"), a current copy of which is attached as Exhibit "B-1" hereto and made a part hereof, and Lessee, for the Lessee, and the Lessee's heirs, personal representatives, successors and assigns, does hereby

further covenant and agree, as a covenant running with the land, to and with the Lessor and its successors and assigns and also to and with Lessor and its successors and assigns, until such restrictions are released by Lessor or until the tenth anniversary of the date of the filing of this Lease, whichever shall first occur, (a) to observe and perform all covenants, terms and conditions contained in the Lessor's Use, Sale and Transfer Restrictions, (b) that all conveyances of the Premises shall be subject to the Lessor's Use, Sale and Transfer Restrictions, and (c) that each conveyance of the Premises shall incorporate the Lessor's Use, Sale and Transfer Restrictions and shall contain the covenant of the grantee thereunder to observe and perform the Lessor's Use, Sale and Transfer Restrictions. The "Original Cost to the Purchaser" referred to in the Lessor's Use, Sale and Transfer Restrictions is $_____ (which is the "Lease Premium" of the vacant land from the Purchase Agreement between the Lessor and the Lessee.)

2. SHARED APPRECIATION EQUITY PROGRAM. The Lessee, for the Lessee, the Lessee's heirs, personal representatives, successors and assigns, does hereby further covenant and agree, as a covenant running with the land, to and with the Lessor and its successors and assigns and also to and with Lessor and its successors and assigns, until such restrictions are released by Lessor or until such restrictions expire by the terms of the Shared Appreciation Equity Program without the necessity of filing a release as set forth in Exhibit "B-2" attached hereto, which Exhibit "B-2" by this reference is hereby explicitly made a part hereof and incorporated herein, the covenants, terms and conditions contained in said Exhibit "B-2" being herein referred to as the "SAE Program", whichever shall first occur, (a) to observe and perform all covenants, terms and conditions of the SAE Program, (b) that all conveyances of the Premises shall be subject to the restrictions of the SAE Program, and (c) that each conveyance of the Premises shall incorporate the SAE Program and shall contain the covenant of the grantee thereunder to observe and perform the terms, covenants and restrictions of the SAE Program.

3. LIABILITY FOR LESSOR'S USE, SALE AND TRANSFER RESTRICTIONS AND SAE PROGRAM. The Lessee for the Lessee's heirs, personal representatives, successors and assigns, does hereby covenant and agree, as covenants running with the land, that the Lessor's Use, Sale and Transfer Restrictions and the SAE Program restrictions are two separate restrictions, that Lessor shall be solely responsible and liable for and that the Lessor shall not be responsible or liable to the Lessee for the administration of the Lessor's Use, Sale and Transfer Restrictions or the SAE Program, or for any representations or promises made by Lessor in connection with Lessor's Use, Sale and Transfer Restrictions or the SAE Program, or for the observance or performance by Lessor of its obligations or for the enforcement by Lessor of its rights under the Lessor's Use, Sale and Transfer Restrictions and the SAE Program, or for any actions taken or failure to take action by Lessor in connection with the Lessor's Use, Sale and Transfer Restrictions and the SAE Program, and the Lessee hereby assumes all risk of Lessor's administration and enforcement of or failure to administer or enforce the Lessor's Use, Sale and Transfer Restrictions and the SAE Program or any term of provision of either. The Lessee hereby further covenants and

agrees, as a covenant running with the land, to indemnify, defend and hold the Lessor and its successors and assigns harmless from any and all liability, claims, losses, damages, expenses and costs, including attorneys' fees, arising out of or resulting from the administration and enforcement of or the failure to administer or enforce the Lessor's Use, Sale and Transfer Restrictions, the SAE Program, or any term or provision of either.

4. REMEDIES. In addition to increasing the annual lease rent, the violation or breach of any of the covenants, conditions, agreements or restrictions contained herein shall give the Lessor the right to prosecute a proceeding at law or in equity against the Lessee to prevent or enjoin the Lessee from violating or breaching any of the covenants, conditions, agreements or restrictions, or to cause said violation or breach to be remedied, or to recover damages or other remedies available for such violation or breach. In any legal or equitable proceeding for the enforcement of or to restrain the violation or breach of any provision herein or to obtain damages or other suitable remedy, the prevailing party shall be entitled to recover such attorneys' fees and costs as may have been incurred in enforcing or defending its rights hereunder.

C. Upon termination or release of Lessor's Buyback and SAE Programs;

1. If Lessee does not intend to occupy the premises as its primary residence, Lessee shall immediately provide to Lessor, the name of the new occupant(s) and the intended purpose of the premises.

2. If the premises will be utilized as a rental, Lessee shall immediately provide at a minimum, a copy of Lessee's rental agreement identifying the occupants(s) and terms of the rental agreement. Upon request by Lessor, Lessee shall provide additional information and documentation as may be required to fulfill the requirements of the Additional Lease Rent provision included herein.

D. ASSIGNMENT. Except as otherwise provided immediately below and subject to the restrictions on the Use, Transfer and Sale and the SAE Programs as set forth in Exhibits "B-1" and "B-2", Lessee may assign or mortgage this lease with prior written approval and consent of Lessor and the assignee shall have the same rights and obligations hereunder as the original Lessee. No such assignment shall be effective to transfer any interest in this lease unless Lessor shall have received a true executed certified, recorded copy of such assignment from Lessee. In any case other than assignment by way of mortgage or assignment to or by the Department of Housing and Urban Development, Veterans Administration upon foreclosure of mortgage or assignment in lieu of foreclosure, payment of a reasonable service charge and the written undertaking of the assignee to perform all obligations of Lessee under this lease, shall be incorporated in such assignment. No such assignment shall release the assignor from further liability hereunder unless Lessor shall consent in writing to such release. Lessor will not require payment of any money except said service charge for such consent nor withhold such consent unreasonably or because of the assignee's national origin, race, color or creed. Any person acquiring the leasehold estate in

consideration of the extinguishment of a debt secured by mortgage of this lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Lessee by this lease only during the period such person has possession of ownership of the leasehold estate.

1. LESSOR'S FIRST OPTION. Lessee understands and agrees that Lessor has a ten (10) year first option to purchase the lease together with all improvements on the demised premises pursuant to the provisions of Exhibit "B-1".

2. LESSOR'S OPTION TO PURCHASE IF FORECLOSURE ACTION HAS COMMENCED. At any time during the term of this Lease, Lessor shall have the option to purchase this lease together with all improvements on the demised premises, if foreclosure proceedings have commenced against the premises, upon the following terms and conditions:

(a) Written Notice. Lessor must give Lessee or mortgagee bringing foreclosure action written notice of Lessor's desire to exercise its option to purchase in accordance with this section.

(b) Purchase Price. At any time during the term of this lease, should Lessor exercise its option to purchase in accordance with this section, the purchase price shall be determined pursuant to the terms and conditions of Lessor's Buyback and/or SAE Programs.

(c) Closing Costs. Lessor shall be assessed all closing costs assessed against the foreclosure and sale of the premises.

(d) Closing. Time shall be of the essence in the closing of this transaction.

3. PERMITTED TRANSFERS. Lessee or Lessee's agent shall notify Lessor and obtain Lessor's written consent prior to obtaining a Permitted Transfer. Lessee shall record Lessor's Consent to Assignment of Lease and provide Lessor with a certified, recorded copy of the Consent to Assignment of Lease in order for Lessor's Consent to Assignment of Lease to be effective. Upon receiving Lessor's consent, Lessee or Lessee's agent shall sign and have notarized, Lessor's Affidavit for Transfer of Leasehold Property. The following transfers ("Permitted Transfers") shall be permitted and shall not result in an increase of the lease rent becoming due and payable, unless Lessor's prior written consent is not obtained by Lessee:

(a) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(b) A transfer to a relative resulting from Lessee's death;

(c) A transfer where Lessee's spouse or children become an owner of the demised premises;

(d) A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which Lessee's spouse becomes an owner of the demised premises; and

(e) A transfer into an inter vivos trust in which Lessee is and remains the primary beneficiary and which does not relate to a transfer of rights of occupancy in the demised premises. This means that Lessee must continue to use the demised premises together with any residence that has been constructed on the demised premises as Lessee's principal residence after the transfer.

E. DEFEASANCE. This demise is upon this condition, that if Lessee shall fail to pay said rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall fail to observe or perform faithfully any of the other covenants or agreements herein contained and on the part of Lessee to be observed and performed and such default shall continue for thirty (30) days after written notice thereof given to Lessee or mailed to Lessee's last known address, or if Lessee then owning this lease shall become bankrupt and fail to perform any of the covenants of Lessee hereunder or shall abandon said premises, Lessor may at once re-enter said premises or any part thereof in the name of the whole and, upon or without such entry, at its option terminate this lease, without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract, and in case of such termination all buildings and improvements on the demised premises shall become and remain the property of Lessor. If this lease is recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, such termination may but need not necessarily be made effective by recording or filing in such place an affidavit thereof by Lessor or a judgment thereof by a court of competent jurisdiction.

F. PROTECTION OF MORTGAGEE. During the existence of any mortgage of this lease Lessor will not terminate this lease because of any default by Lessee hereunder or other cause whatsoever if, within a period of one hundred twenty (120) days after Lessor has mailed written notice of intention to terminate this lease for such cause to the mortgagee at its last known address and also, if such mortgage is insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration, to such Department or Administration, the mortgagee or such Department or Administration shall either cure such default or other cause or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the covenants of this lease capable of performance by it until such time as this lease

shall be sold upon foreclosure pursuant to such mortgage, and in case of such undertaking Lessor will not terminate this lease within such further time as may be required by the mortgagee or such Administration to complete foreclosure of such mortgage or other remedy thereunder provided (a) that such remedy is pursued promptly and completed with due diligence, and (b) that Lessor is paid all rent and other charges accruing hereunder as the same become due, and upon foreclosure sale of this lease the time for performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance with due diligence. Ownership by or for the same person of both the fee and leasehold estates in said premises shall not effect the merger thereof without the prior written consent of any mortgagee to such merger.

G. HAZARDOUS MATERIALS. Lessee shall not cause or permit any Hazardous Material, as hereinafter defined, to be brought upon, kept, or used in or about the demised premises by Lessee, its agents, employees, contractors, or invitee, or any persons holding under Lessee. Lessee shall not discharge, leak, or emit or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by Lessor, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) health, welfare, or safety of persons, whether located in the demised premises or elsewhere, or (b) the condition, use or enjoyment of any buildings or any other real or personal property.

If Lessee breaches the obligations stated in this paragraph G, entitled Hazardous Material, or if the presence of Hazardous Material on the demised premises caused or permitted by Lessee results in contamination of the demised premises or other premises, or if contamination of said demised premises or other premises by Hazardous Material otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom, then Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of, damages for the loss or restriction on use of, and damages arising from any adverse impact on marketing of said demised premises or other premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the lease term as a result of such contamination. This indemnification of Lessor by Lessee includes all reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under said demised premises or other premises. Without limiting the foregoing, if the presence of any Hazardous Material on said demised premises or other premises caused or permitted by Lessee results in any contamination of said demised premises or other premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the demised premises or other premises to the condition existing prior to the introduction of any such Hazardous Material to the demised premises or other premises; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be

unreasonably withheld so long as such actions would not potentially have any adverse effect on the demised premises or other premises. Lessee's representations, warranties and covenants contained in this paragraph shall survive the term of this Lease.

As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Hawaii or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (vi) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. §6991 et seq. or (vii) any similar state or local laws, ordinances or regulations now or hereafter adopted, published and/or promulgated pursuant thereto.

H. MISCELLANEOUS. Acceptance of rent by Lessor or its agent shall not be deemed to be a waiver by it of any breach by Lessee of any covenant herein contained or of Lessor's right of re-entry for breach of condition. Lessor's waiver of any breach by Lessee shall not operate to extinguish the term, covenant or condition the breach whereof has been waived nor be deemed a waiver of Lessor's right to declare a forfeiture for any other breach thereof. Any approval or consent by Lessor required by any provision hereof shall not be capriciously or unreasonably withheld. The term "premises" herein shall include (except where such meaning would be clearly repugnant to the context) all buildings and improvements now or at any time hereafter built on the land hereby demised. The term “Lessor” used herein, or any pronouns used in place thereof, shall mean and include its successors and assigns. The term "Lessee" used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and their successors, executors, administrators and permitted assigns, according to the context hereof.

I. PURCHASE OF FEE TITLE. The premises is ceded lands. The term “ceded lands” is synonymous with the phrase “public land and other public property” as defined in section 5(g) of The Admissions Act. The fee simple interest in the land is **NO**T available for purchase, except in compliance with Act 176 Session Laws of Hawaii 2009, and unless approved by the Lessor’s Board of Directors. If approved, the terms and conditions of the sale shall be determined by Lessor at that time.

J. LESSEE'S ACCEPTANCE OF PREMISES "AS IS". Lessee understands and agrees that Lessor is leasing the premises to Lessee "AS IS" and without any express or implied warranties of habitability or fitness for any particular purpose and

subject to all risks incident to its use. This means that Lessor has not made and is not making any promises to Lessee concerning the premises. As examples, Lessor makes no promises or statements about the construction, structural soundness, condition or state of repair, operating order, safety or livability of any improvements, the suitability of any improvements for any particular use or the density, stability, structure, erosion or other condition of the soil for building or any other use. Lessee agrees that Lessee will not file any lawsuit for damages against Lessor for any problems concerning the premises, including any improvements on or within the premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on this _____ day of _____.

[The remainder of this page is intentionally left blank;
the next page is the signature page]

LESSOR:

APPROVED AS TO FORM:

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

_____
Deputy Attorney General

_____
Karen Seddon
Its Executive Director

LESSEE:

_____

By _____
Name:
Title:

By _____
Name:
Title:

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

On this _____ day of _____, 20___, before me appeared

KAREN SEDDON, personally known to me, who, being by me duly sworn, did say that she is the EXECUTIVE DIRECTOR of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that this _____-page RESIDENTIAL LEASE (AFFORDABLE LESSEE), MOHOULI SUBDIVISION, SECTION I, dated _____, was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

_____
Name:
Notary Public, State of Hawaii
____ Judicial Circuit

My commission expires: _____

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say 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.

_____
Print Name _____
Notary Public, State of Hawaii
My commission expires:
_____

Document Date:	_____	# of Pages:	____
Notary Name:	_____	1st	Circuit
Doc. Description:	RESIDENTIAL LEASE (AFFORDABLE LESSEE), MOHOULI SUBDIVISION, SECTION I		
	_____ Notary Signature		
NOTARY CERTIFICATION			

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say 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.

_____
Print Name _____
Notary Public, State of Hawaii
My commission expires:
_____

Document Date:	_____	# of Pages:	____
Notary Name:	_____	1st	Circuit
Doc. Description:	RESIDENTIAL LEASE (AFFORDABLE LESSEE), MOHOULI SUBDIVISION, SECTION I		
	_____ Notary Signature		

NOTARY CERTIFICATION

EXHIBIT "A"

All of that certain parcel of land situate in the District of South Hilo, Island and County of Hawaii, State of Hawaii, being LOT 55 of the "MOHOULI SUBDIVISION, SECTION 1", as shown on File Plan Number 1168, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 6,510 square feet, more or less.

Said above parcel of land having been acquired by LAND PATENT GRANT NUMBER S-14,911 issued to HAWAII HOUSING AUTHORITY, a public body and a body corporate and politic, dated December 23, 1970.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. The terms and provisions contained in the following:

   INSTRUMENT : LAND PATENT GRANT NO. S-14,911

   DATED : December 23, 1970

   The foregoing includes, but is not limited to, matters relating to reserving to the STATE OF HAWAII, its successor and assigns as to minerals, surface and ground waters.

3. Any recorded leases and matters arising from or affecting the same.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

[End of Exhibit "A"]

EXHIBIT "B-1"

HHFDC'S USE, SALE AND TRANSFER RESTRICTIONS

Section 201H-47, Hawaii Revised Statutes - Real Property; restrictions on transfer; waiver of restrictions.

(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

(1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the Hawaii Housing Finance and Development Corporation ("corporation") shall have the first option to purchase the real property at a price that shall not exceed the sum of:

(A) The original cost to the purchaser, as defined in rules adopted by the corporation;

(B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and

(C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent a year;

(2) The corporation may purchase the real property either:

(A) By conveyance free and clear of all mortgages and liens; or

(B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by this section shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

(i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;

(ii) Any mortgage insured or held by a federal housing agency; and

(iii) Any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation;

(3) A purchaser may refinance real property developed and sold under this chapter; provided that the purchaser shall not refinance the real property, within ten years from the date of purchase, for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C); provided further that the purchaser shall obtain the corporation's written consent if any restriction on the transfer of the real property remains applicable;

(4) After the end of the tenth year from the date of initial purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the

* "corporation" refers to Hawaii Housing Finance and Development Corporation

property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:

(A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;

(B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as costs under section 201H-45 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;

(C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of the agreement of sale, of the real property. If any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum as computed under paragraphs (1) and (2); and

(D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91, when applicable;

(5) Notwithstanding any provision in this section to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time; and

(6) Notwithstanding any provision in this section to the contrary, the corporation's share of appreciation in the real property described in paragraph (4)(D):

(A) Shall apply when the sales price of the real property that is developed and sold under this chapter is less than the then-current, unencumbered, fair market value of the real property as determined by a real property appraisal obtained prior to the closing of the sale;

(B) Shall be a restriction that runs with the land until it is paid in full and released by the corporation, or extinguished pursuant to subsection (e); and

(C) May be paid, in part or in full, at any time after recordation of the sale.

(b) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201H-32, and upon the terms that preserve the intent of this section and sections 201H-49 and 201H-50, and in accordance with rules adopted by the corporation.

(c) The corporation may waive the restrictions prescribed in subsection (a) or (b) if:

(1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation;

(2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the

* "corporation" refers to Hawaii Housing Finance and Development Corporation

real property; provided that, in this case, the purchaser shall sell the real property and sell or assign the real property to a person who is a "qualified resident" as defined in section 201H-32; and provided further that the purchaser shall pay to the corporation its share of appreciation in the real property as determined in rules adopted pursuant to chapter 91, when applicable; or

(3) The sale or transfer is of real property subject to a sustainable affordable lease as defined in section 516-1.

(d) The corporation may release the restrictions prescribed in subsection (a) or (b) if the real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.

(e) The restrictions prescribed in this section and sections 201H-49 to 201H-51 shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; provided that the mortgage is the initial purchase money mortgage, or that the corporation consented to and agreed to subordinate the restrictions to the mortgage when originated, if the mortgage is not the initial purchase money mortgage; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of:

(1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and

(2) Any intention of the mortgagee to foreclose the mortgage under chapter 667 forty-five days prior to commencing mortgage foreclosure proceedings;

provided that the mortgagee's failure to provide written notice to the corporation shall not affect the mortgage holder's rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to its share of appreciation in the real property as determined under this chapter in lien priority when the payment is applicable, and if foreclosure occurs within the ten-year period after the purchase, the corporation shall also be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount that shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).

(f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(4)(B), a description of the cost items that constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation. In any sale in which the corporation's share of appreciation in real property is a restriction, the terms of the shared appreciation equity program shall be clearly stated and included as an exhibit in any deed, lease, agreement of sale, or any other instrument of conveyance.

(g) This section need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

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(h) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal law or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

Section 201H-48, Hawaii Revised Statutes - Exception of current owners in corporation projects. The corporation may allow a person who is a current owner of a dwelling unit in a multifamily housing project sponsored by the corporation to apply for the purchase of a larger dwelling unit in a project sponsored by the corporation if the applicant's current family size exceeds the permissible family size for the applicant's current dwelling unit, as determined by prevailing county building or housing codes. The applicant shall be required to sell the applicant's current dwelling unit back to the corporation. Notwithstanding any law to the contrary, any applicant, as it pertains to for-sale housing, shall be a "qualified resident" who:

(1) Is a citizen of the United States or a resident alien;
(2) Is at least eighteen years of age;
(3) Is domiciled in the State and shall physically reside in the dwelling unit purchased under this section;
(4) In the case of purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
(5) Except for the applicant's current residence, meets the following qualifications:
    (A) Is a person who either oneself or together with the person's spouse or a household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and
    (B) Is a person whose spouse or a household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71.

Section 201H-49, Hawaii Revised Statutes - Real Property; restrictions on use.

(a) Real property purchased under this chapter shall be occupied by the purchaser at all times during the ten-year restriction period set forth in section 201H-47, except in hardship circumstances where the inability to reside on the property arises out of unforeseeable job or military transfer, a temporary educational sabbatical, serious illness of the person, or in other hardship circumstances as determined by the corporation on a case-by-case basis.

The corporation may waive the owner-occupancy requirement for a total of not more than ten years after the purchase of the dwelling, during which time the dwelling unit may be rented or leased. Waivers may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling, who continue to pay resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster. The ten-year owner-occupancy requirement shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived.

The corporation shall adopt rules under chapter 91 to implement the letter and spirit of this subsection and to prescribe necessary terms and conditions. The rules shall include:

* "corporation" refers to Hawaii Housing Finance and Development Corporation

(1) Application and approval procedures for the waivers;
(2) Exceptions authorized by this subsection;
(3) The amounts of rents that may be charged by persons allowed to rent or lease a dwelling unit; and
(4) Schedules of fees needed to cover administrative expenses and attorneys' fees.

No qualified resident who fails to reoccupy a dwelling unit after any waiver period shall receive more than the maximum to which the person would be entitled under section 201H-47. Any person who disagrees with the corporation's determination under this section shall be entitled to a contested case proceeding under chapter 91.

(b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at its option, to purchase the unit as provided in section 201H-47(a)(1), (2), or (4), as applicable.

(c) Any deed, lease, agreement of sale, or other instrument of conveyance issued by the corporation shall expressly contain the restrictions on use prescribed in this section.

(d) The restrictions prescribed in subsection (a) shall terminate and shall not attach in subsequent transfers of title if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(e) Subsections (a) to (c) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

(f) The corporation shall be authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal law or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

Section 201H-50, Hawaii Revised Statutes - Restrictions on use, sale, and transfer of real property; effect of amendment or repeal.

(a) Restrictions on the use, sale, and transfer of real property shall be made as uniform as possible in application to purchasers of all real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. Purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer; provided that the corporation is paid its share of appreciation in the real property as determined by rules adopted pursuant to chapter 91, as applicable.

(b) The corporation, any department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule, shall notify purchasers of any substantial change in restrictions made by law, ordinance, rule, or regulation not more than one hundred eighty days after a change in restrictions. The notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of real property constructed and sold prior to the effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. Public notice shall also be given at least three times in the State for state agencies and at least three times in a county for county agencies.

(c) For all purchasers of real property prior to June 25, 1990, where the restrictions on use and transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.

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(d) No purchaser shall be entitled to modify the restrictions on use, transfer, or sale of the real property, without the written permission of the holder of a duly-recorded first mortgage on the dwelling unit and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the State or its political subdivisions.

(e) This section shall apply to all real property developed, constructed, and sold pursuant to this chapter and similar programs in the State or its political subdivisions and which are sold on the condition that the purchaser accepts restrictions on the use, sale, or transfer of interest in the real property purchased.

(f) The provisions of this section shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale, or transfer of dwelling units, entered into after June 20, 1977.

(g) The restrictions of this section shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

Section 201H-51, Hawaii Revised Statutes - Corporation's right to repurchase or rent real property; authority to seek recovery.

(a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in section 201H-47 are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect, or when vacant lands developed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial soil defect:

(1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit or land that has a defect, regardless of whether or not the owner wishes to sell; provided that those repurchases shall be in accordance with the following provisions:

(A) The corporation may repurchase a dwelling unit or land if:

(i) The dwelling unit or land is deemed unsafe by the county building department;

(ii) The defects are irreparable; or

(iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than one year to repair;

(B) The corporation's purchase price shall be based on the formula set forth in section 201H-47(a)(1);

(C) After repairs to the unit or land are completed, the former owner shall have the first right of refusal to repurchase the real property;

(D) The corporation shall give preference in all other projects of the corporation to all owners whose real property is repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and

(E) If the corporation exercises its right to repurchase defective real property against an owner's wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;

(2) If the corporation does not opt to repurchase defective real property, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit which has a construction defect or land which has a soil defect. During the period that the real property is being repaired, the corporation shall rent that real

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property from the owner for an amount not to exceed the owner's present mortgage payments; and

(3) If the corporation does not execute either a contract to repurchase the real property or an agreement to repair and rent the real property within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies.

For the purposes of this section:

"Substantial construction defect" includes but is not limited to:

(1) Structural defects such as shifting foundations and bearing walls;

(2) Structural deficiencies due to the use of defective or undersized materials; and

(3) Defects affecting the health and safety of occupants.

"Substantial soil defect" means shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

(b) If moneys are expended by the corporation pursuant to subsection (a)(1) and (2), the corporation shall have the authority to take necessary legal action against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding chapter 657.

(c) If real property developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, is found to have a substantial construction or soil defect, the corporation shall have the right, but not the obligation, to file or cause to be filed a legal action on behalf of or by, the owner or lessee of the real property for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of real property that have similar substantial construction or soil defects.

(d) Nothing in this chapter shall be construed to diminish the rights or remedies of the corporation otherwise provided under common law, by law, or by contract.

(e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(f) This section shall not apply to a particular real property and shall not apply after subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(g) If any subsection, sentence, clause, or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, may be declared unconstitutional or invalid.

End of Exhibit "B-1"

* "corporation" refers to Hawaii Housing Finance and Development Corporation

EXHIBIT "B-2"

Project: **Mohouli Subdivision, Sec. I** Unit No. _____

Model No. _____

GRANTEE'S AGREEMENT TO PAY HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION A SHARE OF THE NET APPRECIATED VALUE OF THE PROPERTY

The real property described in Exhibit "A" together with the improvements thereon ("Property") was developed by the Grantor with assistance from the Hawaii Housing Finance and Development Corporation of the State of Hawaii ("HHFDC"). HHFDC provided such assistance in furtherance of the interest of the State of Hawaii of addressing the need for safe, sanitary and reasonably priced housing.

For the opportunity which HHFDC has created to enable the Grantee to purchase the Property for the "Grantee's Original Purchase Price" rather than for the "Original Fair Market Value", the Grantee named below ("Grantee"), jointly and severally if more than one Grantee, agrees to the "Shared Appreciation or Equity Program" ("Program") of HHFDC. Under the Program, which is described in this Exhibit "C", the Grantee agrees to pay to HHFDC a share of the "Net Appreciation" which the Grantee realizes or is deemed to have realized upon the sale or transfer of the Property (as such terms are defined below).

The Grantee understands and agrees that title to the Property is being conveyed to the Grantee subject to the following terms and conditions.

1. MEANING OF WORDS USED IN THIS EXHIBIT

A. "Original Fair Market Value" means the sum of $_____ which represents the fair market value of the Property (as built but without any additional or upgraded improvements that Grantee may have ordered) as determined by a current:

( ) Federal Housing Administration ("FHA") appraisal
( ) Appraisal obtained by HHFDC.

B. "Grantee's Original Purchase Price" means the sum of $ _____ for which the Grantee is purchasing the Property from Grantor but which does not include the cost or value of any additional or upgraded improvements that Grantee may have ordered.

C. "HHFDC's Percentage Share" means ____ % which was calculated as follows:

$$\frac{\text{Original Fair Market Value minus Grantee's Original Purchase Price}}{\text{Original Fair Market Value}}$$

rounded to the nearest one percent.

D. "Grantee's Original Percentage Share" means ____ % which represents the difference between 100% minus HHFDC's Percentage Share.

FOR FHA GRADUATED MORTGAGE ONLY; If the home was finance with a FHA graduated payment mortgage, any recovery of any accrued negative amortization shall be first collected from the sale of the home, including your share of the net appreciation, and if not fully paid from your proceeds, then any balance due for the negative amortization may be collected from the State's share of the net appreciation.

E. "Fair Market Value" means the fair market value of the Property as determined by an appraisal obtained and performed in the manner described below in Section 3. if and when the Grantee subsequently sells or transfers the Property.

F. "Net Appreciation" means:

Fair Market Value of the Property

minus Grantee's Original Purchase Price

2. HHFDC'S SHARE OF THE NET APPRECIATION DUE ON SALE OR TRANSFER OF THE PROPERTY

Except for a "Permitted Transfer", as that term is defined below, the Grantee promises and agrees that if and when all or any part of or interest in the Property is sold or transferred or if the Grantee shall be divested of title or any interest in the Property, in any manner, voluntarily or involuntarily, including a judicial or non-judicial foreclosure sale, HHFDC will immediately be entitled to a share of the Net Appreciation equal to:

HHFDC's Percentage Share X Net Appreciation

The Grantee agrees to give HHFDC written notice as soon as the Grantee has reached an agreement or understanding for the sale or transfer of the Property together with the specific terms of such sale or transfer. The Grantee shall pay HHFDC's Percentage Share of the Net Appreciation on the effective date of such sale or transfer. If HHFDC's share of the Net Appreciation is not paid when due, interest on HHFDC's share of the Net Appreciation will accrue at the simple annual rate of 12% until paid. In addition, HHFDC will be entitled to be paid reasonable attorneys' fees and costs to enforce its rights hereunder. Subject to the provisions in paragraph 7. below, the obligation to pay HHFDC's share of the Net Appreciation will survive any Permitted Transfer with respect to the Grantee and any person or entity who acquires an interest in the Property as a result of a Permitted Transfer.

A sale or transfer of the Property will be deemed to have taken place upon the occurrence of any of the following events:

(a) When the Grantee sells or transfers the Property or any legal or beneficial right, title or ownership interest in the Property, including by way of an agreement of sale or a lease with an option to purchase the Property;

(b) When the Grantee no longer uses the Property as Grantee's principal residence but continues to retain legal and/or equitable title to the Property; or

(c) When the Grantee rents the Property or any part of the Property to someone else but continues to retain legal and/or equitable title to the Property.

HHFDC may, but is not required to, extend the time by when HHFDC's Share of the Net Appreciation will become due and payable for a period not exceeding one year if the Property is covered by a First Mortgage (as that term is defined below in paragraph 7. which is insured or held by FHA.

HHFDC may extend the time when HHFDC's share of Net Appreciation will become due and payable for a period not exceeding a total of ten years if the transfer is temporary and occurs:

(i) When the Grantee no longer uses the Property as Grantee's principal residence but continues to retain legal and/or equitable title to the Property; or

(ii) When the Grantee rents the Property or any part of the Property to someone else but continues to retain legal and/or equitable title to the Property; and

HHFDC determines, in HHFDC's sole discretion, that the temporary transfer is necessary because of adverse circumstances involving the Grantee, such as, an unforeseen job or military transfer, a temporary educational sabbatical, a serious illness or other hardship circumstances as determined by the HHFDC. The extension may be provided if Grantee is a qualified resident who pays resident state income taxes during the period Grantee owns the Property and will continue to pay resident state income taxes during the temporary transfer extension period. If Grantee fails to reoccupy the Property as Grantee's principal residence at the end of the extension period, HHFDC's share of Net Appreciation will be immediately due and payable.

The following transfers ("Permitted Transfers") will not result in HHFDC's share of the Net Appreciation becoming due and payable. However, the Grantee must still notify HHFDC and obtain HHFDC's consent prior to a Permitted Transfer.

(a) The creation of a lien or other encumbrance which does not relate to a transfer of rights of occupancy in the Property provided that the total amount of all liens and other encumbrance which are secured by the Property must not exceed 80% of the sum of the Grantee's Original Purchase Price plus the Grantee's Original Percentage Share of the Net Appreciation as determined by an appraisal obtained by HHFDC at the Grantee's cost and expense. For example, if the Grantee's Original Purchase Price is $300,000 and if the Grantee's Original Percentage Share of the Net Appreciation is $25,000, the total amount of all liens and other encumbrances, including the first mortgage loan cannot exceed $260,000 (which is 80% of the sum of $300,000 + $25,000.);

(b) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(c) a transfer to a relative resulting from Grantee's death;

(d) a transfer where Grantee's spouse or children become an owner of the Property;

(e) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which Grantee's spouse becomes an owner of the Property; and

(f) a transfer into an inter vivos trust in which Grantee is and remains the primary beneficiary and which does not relate to a transfer of rights of occupancy in the Property (i.e., Grantee must continue to use the Property as Grantee's principal residence after the transfer).

However, if the first mortgage is guaranteed or held by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"), (i) the foregoing Permitted Transfers may result in the Grantee being required to make immediate payment in full of all sums secured by such a first mortgage unless prohibited by federal laws; and (ii) with respect to a transfer described above in (c), (d) and (e), the mortgage may require the transferee to occupy the Home as the transferee's principal residence as a condition for not exercising any right to require the Grantee to make immediate payment in full of all sums secured by such a first mortgage.

3. DETERMINATION OF FAIR MARKET VALUE BY APPRAISAL

Whenever it shall become necessary to determine the Net Appreciation, HHFDC will select an independent appraiser who has any of the qualifications set forth below and who shall prepare a written appraisal of the Fair Market Value of the Property within 45 calendar days after the Grantee has given HHFDC written notice that the Grantee will be selling or transferring the Property together with the terms of such sale or transfer. The appraisal shall be based on the floor plan and improvements and lot size as shown in Exhibit "C". The appraisal shall not include the value of any improvements which the Grantee may have added to the Property after the date of the Deed. Items of repair and maintenance shall no be considered to be improvements. The Grantee will pay the cost of HHFDC's appraisal.

HHFDC will send to the Grantee by first class mail a copy of the written appraisal no later than ten (10) business days after the appraisal has been completed together with a notice informing the Grantee that the Grantee may procure an independent appraisal within 45 calendar days if the Grantee disputes HHFDC's appraisal.

If the Grantee does not dispute HHFDC's appraisal, that appraisal will constitute a final and conclusive determination of the Fair Market Value of the Property. If the Grantee disputes HHFDC's appraisal, the Grantee may, at the Grantee's own expense, procure an appraisal by an independent appraiser who has any of the qualifications set forth below. The Grantee will send a copy of the Grantee's appraisal to HHFDC within 10 business days after it has been completed. If the Grantee's appraisal is lower than HHFDC's appraisal, the Fair Market Value of the Property will be taken to be one-half the sum of the two appraisals. If the Grantee's appraisal is not lower, HHFDC's appraisal will govern.

All appraisals will be made only by an appraiser having one or more of the following current qualifications: (i) State of Hawaii licensed appraiser, or (ii) State of Hawaii certified appraiser.

4. RELEASE OF THIS EXHIBIT

Subject to the provisions of Section 7. below, HHFDC's right to be paid a share of the Net Appreciation will continue in full force and effect and will constitute a lien on the Property until one or both of the following events have occurred:

(a) The Grantee has sold or transferred the Property; and

(b) HHFDC has been fully paid HHFDC's share of the Net Appreciation and any other amounts which the Grantee is obligated to pay to HHFDC.

Thereafter, HHFDC will sign and cause to be recorded a release document which need only be signed by HHFDC and which acknowledges that the Grantee's obligation to pay HHFDC a share of the Net Appreciation has been fully satisfied and that this Exhibit "C" is then being released.

5. SALE OR TRANSFER OF THE PROPERTY TO HHFDC PURSUANT TO HRS. SEC 201E-221

The provisions in this Exhibit "C" will not apply in the case where HHFDC exercises, pursuant to Hawaii Revised Statutes Section 201H-47 as more fully set forth in the foregoing Exhibit "B", HHFDC's first option to purchase the Property during the restriction period after the Grantee has purchased the Property.

If Grantee elects to pay all or any part of HHFDC's share of Net Appreciation in advance without having to sell or transfer the Property and HHFDC exercises its first option to purchase the Property, all funds received by HHFDC will be reimbursed to Grantee with no interest.

6. PAYMENT OF HHFDC'S PERCENTAGE SHARE OF NET APPRECIATION IN ADVANCE

The Grantee may elect to pay all or any part of HHFDC's share of the Net Appreciation at any time and in advance without having to sell or transfer the Property. If the Grantee pays only a part of HHFDC's share of the Net Appreciation in advance, the Grantee's Original Purchase Price will be increased after the payment is made for the purpose of making any later calculation to determine the balance of HHFDC's share of the Net Appreciation. The Grantee's Original Purchase Price, as increased, will be referred to as the "Grantee's Adjusted Purchase Price which will be equal to the sum of:

Grantee's Original Purchase Price
plus Partial Payment Amount divided by HHFDC's Percentage Share
plus Any prior increase(s) to the Grantee's Original Purchase Price

The Grantee's Adjusted Purchase Price will be substituted for the "Grantee's Original Purchase Price" for any subsequent calculation of the Net Appreciation under Section 1.F.

7. FIRST MORTGAGEE PROTECTION

The foregoing provisions shall not apply with respect to:

(a) The first purchase money mortgage ("First Mortgage"), if any, which is being placed on the Property.

(b) The first purchase money mortgagee ("First Mortgagee") named in the First Mortgage, including the first purchase money mortgagee's successors and assigns.

(c) The rights of the First Mortgagee to foreclose or take title pursuant to the remedies in the First Mortgage, to accept a deed in lieu of foreclosure in the event of default by the Grantee, as mortgagor under the First Mortgage, or to sell or lease the Property acquired by the First Mortgagee.

(d) Any person or persons acquiring the Property as a result of foreclosure or by a deed in lieu of foreclosure of the First Mortgage or any successor, transferee, or assignee of such person or persons.

Provided, however, that the Grantee promises and agrees to provide notice to HHFDC of the First Mortgage and to cause the holder of the First Mortgage to provide written notice to HHFDC of any default under the First Mortgage. Provided, further, however, if the First Mortgage is (i) insured or held by FHA or (ii) guaranteed or held by FNMA or FHLMC, the Grantee's failure to cause the holder of the First Mortgage to provide written notice to HHFDC of any default under the First Mortgage or any failure of the holder of the First Mortgage to provide such written notice shall not affect such holder's rights under this paragraph 7.

HHFDC specifically subordinates any lien or contingent lien rights that HHFDC may have under this Exhibit "C" to the lien of the First Mortgage. Any holder of the First Mortgage or any person who acquires legal title to the Property as a result of a foreclosure or a deed in lieu of foreclosure of the First Mortgage shall acquire legal title free of such lien or contingent lien rights that HHFDC may have under this Exhibit "C". this Exhibit "C" shall be null and void upon a conveyance of the Property through a foreclosure sale or a deed in lieu of foreclosure.

8. NOTICE TO THE GRANTEE:
THIS EXHIBIT "C" PROVIDES THAT IF THE GRANTEE SELLS OR TRANSFERS THE PROPERTY, HHFDC WILL BE ENTITLED TO BE PAID IMMEDIATELY A SHARE OF THE NET APPRECIATION OR EQUITY IN THE PROPERTY. THIS EXHIBIT "C" ALSO EXPLAINS WHEN A SALE OR TRANSFER OF THE PROPERTY HAS OR WILL BE DEEMED TO HAVE TAKEN PLACE. IF THE PROPERTY IS SOLD OR TRANSFERRED AND THE GRANTEE DOES NOT PAY HHFDC'S SHARE OF THE NET APPRECIATION OR EQUITY IN THE PROPERTY AS SET FORTH ABOVE, HHFDC MAY TAKE LEGAL ACTION WHICH MAY RESULT IN THE FORECLOSURE SALE OF THE PROPERTY. IF THERE IS A FIRST MORTGAGE COVERING THE PROPERTY WHICH IS INSURED OR HELD BY FHA, FHA MAY NOT BE ABLE TO HELP THE GRANTEE.

GRANTEE:

_____ _____

_____ _____

Exhibit "C-1"

(Replace this page with the Unit's floor plan)