613/11

PURCHASE AGREEMENT
HILO HOUSELOT – MOHOULI SUBDIVISION

THIS AGREEMENT, made this _____ day of _____, 20____, by and between the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii, whose principal place of business and post office address is 677 Queen Street, Suite 300, Honolulu, Hawaii, 96813 (hereafter called "HHFDC"), and _____, a _____, whose post office address is _____ (hereafter called the "Purchaser");

WITNESSETH:

WHEREAS, HHFDC owns a vacant houselot of approximately 6,510 square feet at the southwestern corner of the intersection of Hoopuni and Kumukoa Streets, between Hoopuni Street and Mohouli Park in the Mohouli Subdivision, Section 1, in Waiakea, South Hilo, Big Island, Hawaii, TMK (3) 2-4-059: 032; Lot 55, File Plan 1168, more particularly described in Exhibit "A" (hereinafter referred to as the "Land"), all of which are attached hereto and made parts hereof, together with all improvements, structures, utility facilities, equipment, and appurtenances thereon (hereafter the "Improvements")(hereafter the Land and the Improvements are collectively referred to as the "Property");

WHEREAS, HHFDC is desirous of selling a lease to the Property at one dollar ($1.00) a year for a term of sixty-five (65) years (hereinafter referred to as the "Leasehold Property") to affordable purchaser(s) offering the highest lease premium to HHFDC;

WHEREAS, HHFDC would like to sell the Leasehold Property in an "AS IS, WHERE IS" condition;

WHEREAS, HHFDC posted the availability of the Leasehold Property for sale on the HHFDC website on _____ and published ads in the Honolulu Star Advertiser on _____ in accordance with the Conduct of Sale procedures in the Public Sale Packet for the Leasehold Property;

WHEREAS, the Purchaser is submitting this offer subject to being approved by HHFDC as an affordable purchaser at 140% and below the U.S. Department of Housing and Urban Development ("HUD") area median income

and Purchaser has offered HHFDC the highest lease premium for the Leasehold Property acceptable to HHFDC;

WHEREAS, HHFDC and the Purchaser desire to memorialize the Purchaser's commitment to purchase the Leasehold Property within the required sixty (60) days from the date of acceptance of this Purchase Agreement, or by no later than _____, 20___ (hereafter the "Purchase Deadline"); and

WHEREAS, the Purchaser agrees to purchase the Leasehold Property, and HHFDC agrees to convey the Leasehold Property to the Purchaser, subject to final approval by the HHFDC Board of Directors, all upon the terms and conditions contained herein;

NOW, THEREFORE, HHHFDC and the Purchaser, in consideration of the premises and the mutual covenants and promises contained herein, do hereby agree as follows:

1. Lease Premium. The lease premium for the Leasehold Property is _____ THOUSAND AND 00/100 DOLLARS ($_____) (hereafter the "Lease Premium").

2. Purchase Deadline. The Purchaser must pay the Lease Premium and all of the annual lease rent for the 65-year lease period in full to HHFDC no later than the Purchase Deadline, which is two (2) calendar months after the date of acceptance of this Agreement. HHFDC acknowledges that the Purchaser has already deposited $_____ with HHFDC, representing ten per cent (10%) of the Lease Premium (hereafter the "Deposit"). The Purchaser must remit and pay to HHFDC the full amount of the Lease Premium and all of the annual lease rent, less the amount of the Deposit, by no later than the Purchase Deadline.

3. Residential Lease. Within two (2) calendar weeks of the date upon which the Purchaser fully performs and completes the Purchaser's obligations hereunder to the satisfaction of HHFDC including, without limitation, fully paying the Lease Premium and all of the annual lease rent to HHFDC by the Purchase Deadline, and executing the residential lease and Conveyance Tax Certificate for the Leasehold Property, HHFDC will execute the Residential Lease in the form attached hereto as Exhibit "B" by which the Leasehold Property will be conveyed to the Purchaser (hereafter the "Residential Lease").

The Purchaser shall pay for all closing costs, including escrow and recording fees and conveyance taxes, as indicated by HHFDC, and escrow shall record the Residential Lease at the Bureau of Conveyances of the State of Hawaii. After recordation, a copy of the recorded Residential Lease will be forwarded to the Purchaser and HHFDC.

Title to the Leasehold Property shall remain with HHFDC until the Residential Lease is recorded in the Bureau of Conveyances. Until the Residential Lease is so recorded, the Purchaser shall have no legal or equitable interest in the Property.

4. Disclosure regarding HHFDC's 10-Year Transfer, Use and Sale (Buyback) and Shared Appreciation Equity (SAE) Programs. Purchaser shall be required to comply with the terms and conditions of HHFDC's Buyback and SAE Programs which are attached as Exhibits "B-1" and "B-2" of the Residential Lease. Among other things, Purchaser shall be an owner occupant of the Leasehold Property for as long as the Buyback and SAE Programs are in effect.

5. Increase in Lease Rent. The one dollar ($1.00) a year lease rent for the Leasehold Property shall escalate to market lease rent (in an amount to be determined solely by HHFDC) upon violation of any terms and conditions of HHFDC's Buyback and SAE Programs or the Residential Lease.

6. Disclosure Regarding Ceded Lands. Purchaser is aware that the property is located on 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. It means, and is limited to, the lands and properties that were ceded to the United States by the Republic of Hawaii under the Joint Resolution of Annexation approved July 17, 1989 (30 Stat. 750), or that have been acquired in exchange for lands or properties so ceded.

Purchaser shall also pay to HHFDC additional lease rent of twenty per cent (20%) of all rent Purchaser collects, other than rent of the Leasehold Property from leases to affordable tenants with the prior written approval of HHFDC, payable semi-annually to HHFDC, by the end of the calendar month following the semi-annual period for which such lease rent is based.

7. Purchaser's Financing of Purchase. The Purchaser is fully and solely responsible, at the Purchaser's sole cost and expense, for arranging any financing the Purchaser may require to consummate the purchase of the Leasehold Property. HHFDC shall not be required to perform any act, make any representation, commitment, or attestation, or execute any document in connection with the Purchaser's financing arrangements.

8. "AS IS, WHERE IS" Condition. The Leasehold Property is sold in an "AS IS, WHERE IS" condition as acknowledged and agreed by Purchaser herein and in Exhibit "B" which is attached and incorporated in this Agreement, and the Leasehold Property shall be conveyed by the Residential Lease. HHFDC and its officers, employees, and/or representatives make no warranty or representation with respect to the Leasehold Property, including, without limitation, no warranty or representation as to (a) the suitability of the Leasehold Property for any particular use; (b) the physical condition of the Leasehold

Property and any of the improvements thereon; (c) condition of title to the Leasehold Property; and (d) the presence of any hazardous materials on, under, or about the same. Furthermore, HHFDC makes no warranties about the marketability of the Leasehold Property and will not be responsible for boundary staking or surveying nor clearing the Leasehold Property of structures, vegetation, or debris.

9. Deadline for Completion of Dwelling. The Purchaser shall complete the construction of a single-family dwelling on the Leasehold Property within three (3) calendar years of the date of the Residential Lease in accordance with a building permit and plans and specifications approved in writing by HHFDC, unless extended in writing within the sole discretion of HHFDC. The Purchaser shall submit a copy of the building permit to HHFDC prior to commencement of construction.

10. Submittal of Environmental Report to HHFDC. The Purchaser 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 Leasehold Property 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 facilties 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 HHFDC for review, the Purchaser shall submit to HHFDC an environmental report from a qualified environmental planner approved by HHFDC indicating whether the Leasehold Property is in an environmentally sensitive area.

11. Purchaser's Indemnity and Defense. The Purchaser shall indemnify, defend, and hold harmless HHFDC and the State of Hawaii, their officers, employees, and agents from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses (including attorneys' fees) arising from or connected with any acts or omissions of the Purchaser or any person or entity acting on behalf of the Purchaser relating to the Purchaser's purchase of the Leasehold Property, the

Purchaser's failure to fully or timely perform any of its obligations under this Purchase Agreement, in whole or in part, any financing arrangements made or attempted to be made by or on behalf of the Purchaser to purchase the Leasehold Property or the condition of the Leasehold Property. This provision shall survive the termination or expiration of this Pruchase Agreement.

12. Costs of Litigation. If HHFDC shall be made a party to any litigation commenced by or against the Purchaser (other than condemnation proceedings), the Purchaser shall and will pay all costs and expenses incurred by or imposed on HHFDC in connection with such litigation; furthermore, the Purchaser shall and will pay all costs and expenses which may be incurred by or paid by HHFDC in enforcing the covenants, terms, and condition of this Purchase Agreement, including, without limitation, the Purchaser's obligation to make full payment of the Lease Premium.

13. Closing Costs. The Purchaser shall be responsible for all costs of sale and closing, including fees and costs customarily paid by the seller at closing, including recording fees and conveyance taxes.

14. Reservations. All minerals and surface and ground waters are reserved to the State of Hawaii. The Leasehold Property is also subject to rights of native tenants and regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law, including, without limitation, Chapter 6E, Hawaii Revised Statutes, over burial sites and prehistoric and historic remains found in, on, or under the Leasehold Property.

15. Purchaser's Representation. The Purchaser warrants and represents to HHFDC that the individuals signing this Purchase Agreement on behalf of the Purchaser have been validly authorized by the Purchaser to sign this Purchase Agreement and all related documents, including, without limitation, the Residential Lease, for the Purchaser. HHFDC shall not be obligated to execute this Purchase Agreement unless and until the Purchaser submits to HHFDC written evidence of this valid authorization satisfactory to HHFDC.

16. HHFDC Cancellation. HHFDC may cancel this Purchase Agreement and HHFDC's obligation to convey the Leasehold Property to the Purchaser if HHFDC determines, at its sole discretion, it is in the best interest of HHFDC not to complete the sale of the Leasehold Property to the Purchaser. If HHFDC decides to so cancel the Purchase Agreement and HHFDC's obligation to convey the Leasehold Property, HHFDC shall be obligated to return all deposits and other payments made by the Purchaser (less any amounts HHFDC deems necessary to reimburse HHFDC for any costs incurred by HHFDC to date and/or as a result of the Purchaser's actions or omissions). The Purchaser will not be entitled to any other remedy for such cancellation.

17. HHFDC's Remedies. If the Purchaser fails to timely or fully perform any of the Purchaser's obligations contained herein, in whole or in part, HHFDC may, in addition to any remedies HHFDC may have at law or in equity, retain all deposits paid by the Purchaser to HHFDC in connection with the Purchaser's attempt to purchase the Leasehold Property, including, without limitation, the Deposit and any additional deposits to compensate HHFDC in the case of Purchaser's default. HHFDC and the Purchaser agree that the Purchaser's failure to fully or timely perform any of its obligations, in whole or in part, shall result in Purchaser's default (at HHFDC's option).

No remedy herein provided for shall operate to deprive HHFDC of any other remedy afforded at law or in equity to enforce the payment of the moneys herein contracted to be paid, or to enforce the observance and performance of all the other terms, covenants, and conditions herein contained on the part of the Purchaser to be observed and performed.

18. Compliance With Laws. In performing its obligations under this Purchase Agreement, the Purchaser shall comply with all applicable laws, statutes, rules, regulations, ordinances, and requirements of the U.S. government, the State of Hawaii, and the County of Hawaii pertaining to the Leasehold Property, now in force or which may hereinafter be in force.

19. Assignment. The Purchaser shall not, without the prior written consent of HHFDC, either voluntarily or by operation of law, sell, assign, bargain, convey, lease, or sublease or otherwise transfer or dispose of this Purchase Agreement or any interest therein. Until the Residential Lease is recorded and filed, the Purchaser shall have no legal or equitable right or claim to the Leasehold Property and will therefore be unable to convey, assign, or otherwise transfer any interest in the Leasehold Property to any entity.

20. Governing Law. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Hawaii, and courts of the State of Hawaii shall have exclusive jurisdiction in any action to interpret or enforce this Agreement.

21. Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

22. Waiver. No party hereto shall be deemed to have waived the exercise of any right hereunder unless such waiver is made expressly and in writing, and no such waiver of any such right in any one instance shall be deemed a waiver as to any other instance or any other right. No waiver made by either party with respect to the performance or manner or time thereof, of any

obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other obligation of the other party.

23. Amendments. Neither this Agreement, nor any provision hereof, may be amended, discharged, or terminated orally, and any such amendments must be made by an instrument in writing, signed by the parties hereto.

24. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all other prior or concurrent oral or written letters, agreements or understandings.

25. No Third Party Beneficiary. The parties to this Agreement agree that the Agreement shall not be deemed to run to the benefit of any third party.

26. No Partnership. HHFDC and the Purchaser agree that nothing in this Agreement should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between HHFDC and the Purchaser.

27. Headings. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.

28. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recording, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this _____ day of _____, 20___.

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

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION

By _____
Karen Seddon
Executive Director

Date: _____

PURCHASER

By_____
Print Name:_____
Its:_____

Date: _____

By_____
Print Name:_____
Its:_____

Date: _____

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"

WAIVER & RELEASE

I, as the undersigned Buyer, am purchasing a leasehold interest in the subject vacant property at Lot 55, File Plan 1168; TMK (3) 4-2-059: 032 in Waiakea, South Hilo, Big Island, Hawaii, hereinafter referred to as "Property") from the Hawaii Housing Finance and Development Corporation, hereinafter referred to as "Seller". The Seller has agreed to sell me the Property. AS A CONDITION OF THE SALE, THE SELLER WANTS TO BE SURE THAT IT WON'T BE SUED IN THE FUTURE BY ME, OR BY ANYONE WHO GETS AN INTEREST IN THE PROPERTY FROM ME, FOR ANYTHING RELATED TO THE CONDITION OF THE PROPERTY.

The Seller has recommended that I seek the assistance of an attorney to get a full understanding of this document. I now understand and accept the following:

1. No Other Statements or Promises about the Condition of the Property. I have been informed and understand that the Property shall be sold in an "as is" condition. The Seller has not made or is not making any statements or promises about the present or future condition of the Property or any improvements on or under the Property. No statements, representations or promises are made regarding:

    a. The physical condition of the land including, but not limited to, compaction, stability, composition, geologic conditions, drainage, sewer, erosion, flooding, and soil problems;

    b. The location of boundaries or the area of the Property;

    c. Whether the Property is useful for any other purpose;

    d. Whether the subdivision of the Property is suitable for any particular purpose;

    e. The suitability of any of the improvements on the Property for a particular purpose;

    f. The quality of construction of any improvements on the Property;

    g. The compliance of any easement, right-of-way or driveway with any building, health, zoning, land use, subdivision, setback or other applicable law, ordinance, rule or regulation;

    h. Any matter concerning the electrical, water, gas, plumbing, sewer, or any other utility system;

    i. The existence of any improvements on or under any adjoining lands which go over the boundary lines of any adjoining lands;

j. Any matter concerning any private drainage easement or any drainage system on the Property or on any adjoining land or other lands over which any such drainage easement or drainage system may go; or

k. Any staking or survey done by any person.

THE BUYER ACKNOWLEDGES AND ADMITS THAT NEITHER THE SELLER NOR THE STAFF OF SELLER HAS MADE ANY STATEMENTS OR PROMISES ABOUT THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS ON OR UNDER THE PROPERTY.

2. The Property is sold "AS IS". With knowledge of the extensive disclaimers of Paragraph 1 in this Waiver and Release, the Buyer is aware, understands and agrees that all interest in the Property shall be sold "AS IS" WITHOUT WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO CONDITION, FITNESS OR INTENDED USE, FITNESS FOR ANY PURPOSE WHATSOEVER, MERCHANTABILITY, HABITABILITY, OR COMPLIANCE WITH ANY ZONING, HEALTH RULES OR REGULATIONS. The Buyer hereby agrees, acknowledges and affirms to the Seller that the Buyer has had full opportunity to obtain expert professional advice regarding the Property and accepts the Property "AS IS" including but not limited to the conditions disclosed above. Neither the Seller nor the staff of Seller shall be required to make any repairs to or pay any expenses concerning the condition of the Property. An appropriate "AS IS" clause shall be included in the conveyance document to the Buyer.

   The Buyer further agrees to indemnify, defend, release and hold harmless the Seller, its Directors, Staff, employees, representatives and agents from and against any and all claims arising from or connected with the condition of the Property, whether proven by judgment or not and whether asserted by the Buyer or any third-party. Without limiting the foregoing, if the Buyer sues someone with respect to the Property and that person sues the Seller, its Directors, Staff, employees, representatives and agents, the Buyer agrees to indemnify, defend, hold harmless and release the Seller, its Directors, Staff, employees, representatives and agents from that claim too.

3. Understanding of "AS IS" Language. The Buyer is aware that, by agreeing to and signing this Waiver and Release the Seller, its Directors, Staff, employees, representatives and agents shall not be responsible or liable to the Buyer for any construction or other defects or problems, including any latent or hidden defects in the Property or anything installed or contained therein. The Buyer shall not have the right to file any lawsuit for damages, rescission or other claims against the Seller, its Directors, Staff, employees, representatives and agents for any defects or problems with the Property, currently existing or later discovered by the Buyer. The Buyer must make his or her own due diligence studies concerning the Property and is encouraged to have experts inspect it at the Buyer's expense. The Buyer is also encouraged to discuss this transaction with an attorney at Buyer's expenses before signing this Waiver and Release.

4. Reason for "AS IS" Clause. The Seller shall not sell the Property unless it is assured that the Buyer will not sue the Seller, its Directors, Staff, employees, representatives and agents with respect to the condition of the Property.

THE AGREEMENT TO PURCHASE SHALL BE NULL AND VOID IN THE EVENT THAT BUYER DOES NOT AGREE TO ALL OR ANY PART OF THIS WAIVER AND RELEASE.

Buyer Name	Signature
Buyer Name	Signature
Buyer Name	Signature
Buyer Name	Signature

END OF EXHIBIT "B"