

COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this _____ day of _____, 20____, by and between Hawaii
Community Development Authority

whose address is 547 Queen Street, Honolulu, Hawaii 96814

(hereinafter with its successors and assigns called "Recipient"); and the ECONOMIC DEVELOPMENT ADMINISTRATION, UNITED STATES OF AMERICA, whose address is Main Commerce Building, Washington, D.C. 20230 (hereinafter with its successors and assigns called "EDA"):

RECITALS:

WHEREAS, Recipient submitted an application, designated as EDA Project No. 07 01 07127, for financial assistance pursuant to the Public Works and Economic Development Act of 1965 (Pub. L. 108-373, 42 U.S.C. 3121, et seq.), (hereinafter the "Act"); and

WHEREAS, by offer of Award, dated 09/19/2014, EDA offered to Recipient a financial assistance award in the amount of \$ \$3,000,000 (hereinafter called "Award Amount") to assist in financing Entrepreneur's Sandbox (hereinafter called "Project"); and

WHEREAS, said Project included acquisition of and/or specifically improving the real property described in Exhibit "A" attached hereto and incorporated herein (hereinafter with all improvements thereon called "Property"); and

WHEREAS, on 10/14/14, Recipient accepted the Offer of Award (hereinafter called "Award Agreement") subject to certain terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the applicable requirements of 13 Code of Federal Regulations, Part 314; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore (hereinafter called "Project Purposes"), such alienation and use being prohibited by 13 CFR Part 314 and 15 CFR Part 24, and 15 CFR Part 14; and

WHEREAS, under the authority of the Act, EDA is not authorized to permit Recipient to use the Property for purposes other than the Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Project to any party without prior approval from EDA, unless EDA is repaid its share of the market value of the Project, as set forth below;

WHEREAS, Recipient, as owner of all or part of the real property described in Exhibit "A", attached hereto, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of the Project and all or part of the real property described in Exhibit "A" attached hereto; and

WHEREAS, the State of Hawaii Bureau of Conveyances
located at 1151 Punchbowl Street, Honolulu, Hawaii 96813
is the proper office to record this Covenant;

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the Project is 20 years as determined by the EDA.
2. Recipient agrees that for the estimated useful life set forth above, Recipient will not sell, transfer, convey, or mortgage any interest in the real property acquired or improved in whole or in part with the funds made available through this Award, nor shall Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the Assistant Secretary, Economic Development Administration or his/her designee or successor. Such approval may be withheld until such time as Recipient first pays to EDA the amount of the award funds disbursed or, at the option of the EDA, the federal government's fair share of the Property as provided in the Code of Federal Regulations, Title 13, Part 314. The federal government's fair share of the Property shall be the amount computed by multiplying the percentage of the federal participation in the total cost of the grant program to the fair market value of the Property at the time of the unauthorized use or conveyance of the Property.
3. Recipient further covenants that in the event the Property is used for purposes other than the Project Purposes, or is sold, leased, transferred, conveyed or mortgaged without the prior written approval of the Assistant Secretary, Recipient will compensate the federal government in the amount of the grant funds disbursed or at the option of the federal government, the federal

government's fair share of the Property as described above.

4. Pursuant to 13 CFR 314, Recipient further agrees that, as a prerequisite to accepting the disbursement of any award funds by EDA, Recipient shall execute and place on record against the property acquired or improved in whole or in part with the funds made available through this Award, this Covenant of Purpose, Use and Ownership. Recipient further agrees that whenever the Property is sold, leased or otherwise conveyed pursuant to the Code of Federal Regulations, Title 13, Part 314, Recipient or the transferor shall add to the document conveying such interest a Covenant of Purpose, Use and Ownership. EDA will in its sole discretion determine whether the Covenant is satisfactory. EDA may require an opinion of counsel for Recipient that the Covenant is valid and enforceable according to its terms and has been properly recorded.

5. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the federal interest expressed herein.

6. This Covenant shall run with the land.

IN WITNESS WHEREOF, the Recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to EDA. (The appropriate acknowledgment must be included for recording in Recipient's jurisdiction).

Recipient Hawaii Community Development Authority

By _____
Title Executive Director

APPROVAL AS TO FORM:

By _____

Title Deputy Attorney General
