STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
Kakaako Community Development District
Honolulu, HI 96813

April 4, 2018

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

SUBJECT: Shall the Authority Authorize the Interim Executive Director to execute the "Declaration of Land Use Restrictive Covenant" required by the Hawaii Housing Finance and Development Corporation for 630 Cooke Street parcel [Tax Map Key (1) 2-1-051014] substantially in the form provided in Exhibit A, pending any further review of legal matters by the Deputy Attorney General?

SUMMARY:

The Authority is being asked to authorize the Interim Executive Director to execute the "Declaration of Land Use Restrictive Covenant" required by the Hawaii Housing Finance and Development Corporation (HHFDC) for 630 Cooke Street parcel [Tax Map Key (1) 2-1-051 014] owned by the HCDA for construction of a low-to-moderate income microunit affordable rental housing project (Nohona Hale).

AUTHORITIES:

Under Hawaii Revised Statutes (HRS) §206E-4.

BACKGROUND:

In June 2015, following a competitive Request for Proposals process, the Authority selected Bronx Pro Group as the developer for a low-to moderate income micro unit rental project at 630 Cooke Street. In April 2016, the Authority authorized entering into a development agreement with Bronx Pro Group. Subsequently the development agreement was executed on April 20, 2016. In January 2017, the HHFDC approved issuance of Hula Mae Multi-Family Tax-Exempt Revenue Bonds (HMMF), reservation of Low Income Housing Tax Credits (LIHTC), and Rental Housing Revolving Fund Project Award for Nohona Hale. In October 2017, the HHFDC certified Nohona Hale project for Hawaii Revised Statutes (HRS) §201H-38 exemptions from statutes, ordinances and rules. In December 2017, the City Council adopted resolution exempting the Nohona Hale project from certain City and County of Honolulu requirements. In March 2017, the HCDA Interim Executive Director approved an improvement permit for the project. Staff is currently reviewing the building permit for the project.

ANALYSIS:

As part of the approval for the 201H-38 exemption, HHFDC requires a declaration of land use restrictive covenant to be executed by 630 Cooke Street LP as the developer and the HCDA as the land owner of 630 Cooke Street parcel [Tax Map Key (1) 2-1-051 014]. The covenant requires that Nohona Hale project remain an affordable rental project for a term of 65 years. Nohona Hale is an affordable rental housing project that will provide housing for households with income of 60% or below of the Area Median Income (AMI). The project consists of 110 affordable rental units and one (1) resident manager unit. Eleven units will be set aside for households with income of 30% or below of AMI. A copy of the Declaration of Land Use Restrictive Covenants is provided as Exhibit A.

It is anticipated that the closing of financing for the project will occur by the end of April or early May.

RECOMMENDATION:

Staff recommends that the Authority Authorize the interim Executive Director to execute the "Declaration of Land Use Restrictive Covenant" required by the Hawaii Housing Finance and Development Corporation for 630 Cooke Street parcel [Tax Map Key (1) 2-1-051014] substantially in the form provided in Exhibit A, pending any further review of legal matters by the Deputy Attorney General

Respectfully submitted,

Deepak Neupane, P.E., AIA
Director of Planning & Development

APPROVED FOR SUBMITTAL:

Garett Kamemoto, Interim Executive Director
Hawaii Community Development Authority

Attachments
Exhibit A- Declaration of Land Use Restrictive Covenant

EXHIBIT A

LAND COURT	REGULAR SYSTEM		

Return by MAIL (X) PICK ( ) to:
Hawaii Housing Finance and Development Corporation
Dwelling Unit Revolving Fund
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
Attn:

TITLE OF DOCUMENT:

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

PARTIES TO DOCUMENT:

FEE OWNER: **HAWAII COMMUNITY DEVELOPMENT AUTHORITY**, a body corporate and a public instrumentality of the State of Hawaii

DEVELOPER: **630 COOKE STREET PARTNERSHIP LP**, a Hawaii limited partnership

CORPORATION: **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii

PROJECT: Nohona Hale

ADDRESS: 630 Cooke Street

TAX MAP KEY: (1) 2-1-051:014

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (this "Agreement"), dated as of _____, 2018, made by **HAWAII COMMUNITY DEVELOPMENT AUTHORITY**, a body corporate and a public instrumentality of the State of Hawaii, whose address is 547 Queen Street, Honolulu, Hawaii 96813, as fee owner ("Owner") and **630 COOKE STREET PARTNERSHIP LP**, a Hawaii limited partnership whose address is c/o Bronx Pro Group, LLC, 1605 Dr. Martin Luther King Jr. Blvd., Bronx, New York 10453, and its successors and assigns ("Developer"), is given as a condition of the approval of exemptions from statutes, ordinances and rules for the Project (defined below) pursuant to Section 201H-38, Hawaii Revised Statutes, by **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii, whose address is 677 Queen Street, Suite 300, Honolulu, Hawaii, 96813, together with any successor to its rights, duties and obligations (the "Corporation").

RECITALS

A. Owner is the fee simple land owner of certain real property located at 630 Cooke Street, Kakaako, City and County of Honolulu, State of Hawaii, identified as Tax Map Key No. (1) 2-1-051:014, and more particularly described in **Exhibit A** attached hereto and incorporated herein (the "Property").

B. Developer and the Owner have entered into that certain General Lease No. _____ dated _____, 2018, for the Property, a memorandum of which is filed in the Bureau of Conveyances of the State of Hawaii as Document No. _____ (collectively, the "Ground Lease").

C. Developer intends to develop on the Property a mixed use affordable housing project consisting of one hundred-ten (110) affordable residential units (hereinafter the "Affordable Units"), one (1) resident manager's unit, 3 parking spaces, community facility space, and commercial space (hereinafter "Project").

D. Developer has represented to the Corporation that it will use its best efforts to expeditiously complete development of the Project and rent all of the Affordable Units on the terms and rent schedules hereinafter set forth and for the Term stated herein.

E. Developer and the Owner intend, declare and covenant that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Ground Lease and fee simple title to the Property for the Term stated herein and binding upon all subsequent owners of the Property and Project for such term, and are not merely personal covenants of Developer and Owner.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Developer agree as follows:

SECTION 1. Definitions.

All words and phrases not otherwise defined in this Agreement shall have the meanings as defined under applicable regulations promulgated by the United States Department of Housing and Urban Development ("HUD").

SECTION 2. Affordability Requirements.

The Project must comply with the following affordability requirements, unless otherwise approved by the Corporation:

Target Markets:	11	units at 30% and below AMI
	99	units at 60% and below AMI
	1	resident manager unit
	111	Total Units

a. The Affordable Units shall be rented to tenants with household incomes at or below the applicable AMI at the time of the tenant's admission into the Project.

b. Household income is defined as the total annual income of each member of a tenant's household, excluding minors (i.e., persons eighteen years of age and under).

c. Area Median Income ("AMI") is derived from estimates provided by HUD, as adjusted for household size.

d. If the Project is phased and not fully completed, the cumulative number of Affordable Units completed shall be at least 100% of the total units in all phases completed.

e. To be eligible for General Excise Tax exemptions pursuant to Chapter 15-306, Hawaii Administrative Rules ("HAR"), non-residential uses, including the community facility space and the commercial space, shall be limited to incidental or de minimis uses that are intended to directly benefit the residents of the Project.

f. This Project shall be subject to the following:

(i) Developer's 201H Application to the Corporation submitted on July 7, 2017;

(ii) Approval by the Corporation dated October 12, 2017 for exemptions from statutes, ordinances and rules pursuant to Section 201H-38, HRS;

(iii) Approval by Hawaii Community Development Authority dated _____, 2018, for development of the Project;

(iv) Approval by the City Council of the City and County of Honolulu of Resolution 17-312, CD1, dated December 6, 2017, for exemptions from statutes, ordinances and rules pursuant to Section 201H-8, HRS; and

(v) Development Agreement between the Developer and the Corporation dated _____, 2018, for exemptions from statutes, ordinances and rules pursuant to Section 201H-38, HRS.

g. The Developer shall be responsible for ensuring that there are no material inconsistencies between this Agreement and any other applicable programs for the Project. If there are any inconsistencies between the requirements of this Agreement and other program requirements, the more restrictive requirement shall control.

h. Notwithstanding anything herein to the contrary, the affordability and rent restrictions contained in this Agreement are subject and subordinate in all respects to the lien held by the senior lender (the "Senior Security Instrument") and, in the event of a foreclosure, a transfer of title by deed in lieu of foreclosure, or similar event, of the Senior Security Instrument, such restrictions shall immediately terminate and be of no further effect.

SECTION 3. Rent Restrictions.

a. Rents for Affordable Units must be restricted to be affordable to households with incomes at or below the applicable percentage of AMI.

b. Subject to the provisions of Section 2(h) hereof, the rent for each Affordable Unit must remain subject to such rent restrictions throughout the Term (defined below) of this Agreement.

SECTION 4. Term of Agreement.

The term of this Agreement (the "Term") shall commence on the date of the Agreement and expire on the date which is sixty-five (65) years following the Commencement Date of the Ground Lease as defined therein. Notwithstanding the foregoing, the affordability and rent restrictions set forth in this Agreement, including, without limitation, those set forth in Section 2 and 3 hereof, and the reimbursement and recapture rights set forth in Section 20 hereof, shall terminate and be of no further effect upon a foreclosure of the Senior Security Instrument.

If any Approved Mortgagee (as defined in the Ground Lease) does not make insurance proceeds available for the restoration of the Project, the balance of any insurance proceeds available for restoration of the Project after payment to Approved

Mortgagee, shall be paid to the Hawaii Community Development Authority. Thereafter, the obligations of Developer in connection with the Project under this Agreement and any other documents executed with Developer in connection with the Project shall cease as of the date of the termination of the Ground Lease and only those liabilities explicitly stated as surviving the termination of this Agreement or in any other documents executed with Developer in connection with the Project shall survive.

SECTION 5. Annual Affordability Compliance Certification.

The affordability requirements under this Agreement shall be certified annually to the Corporation through the submission of a report (the "Annual Report"), in such form as reasonably required by the Corporation. The Annual Report must be completed by a qualified and independent firm or individual with industry recognized expertise in the field; provided, however, the Annual Report may be completed by an affiliated property management company of Developer so long as it is certified by an officer with such qualified expertise. The Annual Report will be retained in the Developer's files and shall be due annually to the Corporation within sixty (60) days following the end of each calendar year (the "Annual Report Deadline") during the Term, commencing on the year following the first year in which residential units are first rented to tenants. The Developer must retain the Annual Report and the supporting documentation verifying the information on each Annual Report for a minimum period of three (3) years following the Annual Report Deadline for such Annual Report.

The Developer shall maintain copies of the rental contracts, rent invoices, or other documents relating to the amount being paid by tenants as rent. The Developer will be required to maintain records regarding the number of units (including number of bathrooms and square footage of each bedroom); percentage of rental units that are affordable; rent charged per unit including utility allowances; number of occupants in each unit; and documentation regarding vacancies. All books and records of the Developer for the Project shall be subject to audit and all expenditures of the Developer for the Project shall be subject to cost certification.

SECTION 6. Tenant Income Limit Notice.

Applicants for Affordable Units should be advised early in their initial visit to the Project that there are maximum income limits which apply to the Affordable Units. Property management (i.e., managing agent) should explain to the applicants that the anticipated income of all persons expecting to occupy the Affordable Unit must be verified and included on a Tenant Income Certificate ("TIC") or any form(s) as required by the Corporation prior to occupancy and that their income must be recertified on an annual basis.

SECTION 7. Verification of Income.

The household income figure for each Affordable Unit applicant must be verified to determine the applicant's eligibility and rent. Verification of household income may

only be accepted from the source of income. Applicants may not be permitted to obtain their own verifications. The process used to verify an applicant's income and eligibility must be thoroughly documented in the applicant's file. Verifications shall be valid for a period of ninety (90) days prior to move-in, after which the information must be re-verified in accordance with this Agreement.

SECTION 8. Certification of Income.

Upon acceptance of an Affordable Unit applicant to the Project, a TIC must be completed for the applicant and certified to by the applicant and the property manager. The form is a legal document which, when fully executed, qualifies the applicant to live in the Affordable Unit. The TIC must be executed, along with the tenant lease, prior to move-in. No one may live in an Affordable Unit in the Project unless they are certified under the TIC and have executed a tenant lease. The original TIC form is to be retained by the property manager in the applicant's file. Upon request of the Corporation, a copy of the TIC form shall be sent to the Corporation or its designated representative within thirty (30) days of the tenant's move-in. The property manager must retain the TIC and the supporting documentation verifying the TIC for a minimum of three (3) years following the date of the TIC.

SECTION 9. Recertification.

a. To insure that each tenant of an Affordable Unit is complying with the income restrictions, (1) the property manager shall annually recertify each tenant's income and household composition, and (2) the property manager shall require each tenant to report certain changes in income and household composition which occur between regularly scheduled recertification.

b. If the previously verified income of a tenant in an Affordable Unit increases above 140% of the tenant's applicable AMI, such unit (the "Initial Unit") may continue to be counted as an Affordable Unit so long as the next available unit of comparable or smaller size (the "Next Available Unit") is rented to an income-qualified tenant, and the rent for the Initial Unit continues to be the amount charged for a restricted unit until the Next Available Unit is rented to an income-qualified tenant, provided, however, at no time shall the percentage of Affordable Units in the Project be less than the minimums described in Section 2 of this Agreement.

c. The property manager shall complete each Affordable Unit tenant's annual recertification by the anniversary date of the tenant's move-in date. The request for recertification shall be made between sixty (60) and ninety (90) days before the tenant's move-in anniversary date, and it must clearly state that the tenant has ten (10) calendar days in which to contact the property manager to begin the recertification process. The notice must also state the days and the hours available for the interview, the information the tenant should bring to the interview, and how and whom to contact to schedule the interview.

d. Upon recertification of the Affordable Unit tenant's income, the property manager shall complete a new TIC, which shall be certified by the tenant and the property manager. Upon request of the Corporation, this new TIC shall be sent to the Corporation or its designated representative prior to the tenant's move-in anniversary date.

SECTION 10. Past Due Recertification.

A recertification is considered past due if, upon request of the Corporation, the Corporation or its designated representative has not received executed copies of the TIC form from an Affordable Unit tenant by the anniversary date of the tenant's move-in date. As of that date, the Corporation or its designated representative will notify the Developer of past due certifications and, within sixty (60) days, will process formal notice to the Developer that the Project may not be in compliance with this Agreement.

SECTION 11. Interim Adjustments.

Each Affordable Unit tenant is obligated to report changes in household income and family composition which occur between the regularly scheduled recertification periods. These changes could include, but are not limited to, any household member moving out of the unit, any adult member of the household, who was previously reported as unemployed, obtaining employment, or the tenant's household income increasing. A new TIC must be completed, retained by the property manager in the tenant's files and, upon request of the Corporation, submitted to the Corporation or its designated representative within thirty (30) days of any change to a previously verified tenant's household.

SECTION 12. Initial and Adjusted Rents.

The initial maximum rents that Affordable Unit tenants may pay as of the date of this Agreement are attached and incorporated herein as **Exhibit B** (the "Rent Schedule"). Rents may be increased accordingly as the AMI increases, provided that the rental rates remain affordable to families as stated in Section 2 of this Agreement.

SECTION 13. Eviction of Tenants.

Once an income-qualified tenant has been certified and admitted to the Project, the tenant may not be displaced solely due to an increase in the tenant's household income beyond the restricted limit. This provision shall not limit or restrict the Developer's right to bring action against or evict a tenant for any default under the tenant lease or other lawful cause, including, without limitation, failure to pay rent, failure to meet the reporting requirements under this Agreement or otherwise.

SECTION 14. Audits.

a. The Corporation reserves the right to conduct an audit of the Project by the Corporation or its designated representative at least annually. Notification of an audit shall be given to Developer at least thirty (30) days prior to such audit. The results of the audit and the recommendations for corrective action at the Project shall be transmitted to Developer in writing (the "Audit Report") within thirty (30) days following the completion of the audit.

b. The purpose of the audit will be to conduct a physical inspection of the Project, to review a sampling of the TIC's submitted either in that or any prior year (along with the backup and supporting documentation relevant to the TIC), to review the documentation supporting the Annual Report, and to review any other documentation necessary for the Corporation or its designated representative to make a determination as to whether the Project is in compliance with all applicable statutes.

c. Developer shall have a period of sixty (60) days within which to respond to the findings of the Audit Report. The Corporation or its designated representative shall review the Developer's response to determine the extent to which the recommendations for corrective action set forth in the Audit Report are addressed.

d. In the event there are unresolved issues following the Audit Report and the Corporation or its designated representative's review of the Developer's response, the Corporation or its designated representative shall stipulate the remedial actions to be carried out or observed by the Developer.

SECTION 15. Other Reporting Requirements.

a. TICs shall be submitted, upon request of the Corporation, at the following times during the year:

(i) Thirty (30) days after an Affordable Unit is first rented to a tenant;

(ii) Thirty (30) days after any interim adjustments to a tenant's income and household size have been reported or discovered; and

(iii) Thirty (30) days after the tenant's move-in anniversary date.

In lieu of a TIC submittal for each Affordable Unit as described above, the Corporation may accept a consolidated report for all tenants ("Status Report") if the Status Report is included annually within the overall Annual Report.

b. The Annual Report must be submitted annually by the Annual Report Deadline throughout the Term of this Agreement. The Annual Report must be sent to the Corporation or its designated representative.

c. The TIC, Status Report and the Annual Report forms are available from the Corporation or its designated representative. Additionally, upon the Developer's

request, the Corporation or its designated representative shall provide to Developer data regarding HUD's determination of AMI amounts, maximum rental rates, income verification information and third party verification forms.

SECTION 16. Fees.

A reasonable annual compliance monitoring fee (comparable to current fees) may be charged by the Corporation to the Project for administrative expenses, as permitted by law. If fees are charged, payments shall be submitted with the Annual Report by the Annual Report Deadline for each year during the Term of this Agreement. It will be the responsibility of the Corporation or its designated representative to inform the Developer of any changes in the annual compliance fee prior to the Annual Report Deadline and submittal of fees. The fee may be adjusted annually on July 1 of each year.

SECTION 17. Observance of Laws, Ordinances and Regulations.

The Project shall comply with all applicable rules, regulations, ordinances and codes of the City and County of Honolulu, and any applicable federal and State of Hawaii laws.

SECTION 18. Nondiscrimination.

The operation and use of the Project shall not be in support of any policy which discriminates against anyone based upon race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection.

SECTION 19. Indemnity.

Developer shall indemnify, defend and hold harmless the Corporation, the Owner (except for as set forth in the Ground Lease), and the State of Hawaii and their respective employees, officers, directors, members, affiliates, agents, representatives, successors and assigns from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, accident, fire or other casualty, or cost or expense (including but not limited to reasonable attorney's fees), arising out of or resulting from: (i) any act or omission on the part of Developer or its tenants, licensees, and invitees ("Representatives") relating to their use, occupancy, maintenance, or enjoyment of the Project; (ii) any failure on the part of Developer to maintain the Project, and any sidewalks, roadways and parking areas adjacent thereto that are in Developers' use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of Developer to maintain the Project in a safe condition; (iii) any violation or alleged violation by Developer or its Representatives of any law, ordinance, or regulation now or hereafter enacted during the term of this Agreement, and (iv) from and against all actions, suits damages, and claims by whomsoever brought or made by reason of

Developer's non-observance or non-performance of any of the terms, covenants, and conditions of this Agreement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

SECTION 20. Non-Compliance Remedies.

The Corporation's remedies for non-compliance with this Agreement are at the reasonable discretion of the Corporation, but shall be exercised in compliance with applicable laws and the Corporation's rules and regulations. For projects receiving funds from the Corporation in the form of loans, the commencement of foreclosure proceedings is one alternative remedy for uncured defaults, subject to the terms and conditions of the applicable loan documents, and to the terms and conditions of that certain Subordination and Intercreditor Agreement, dated on or around the date hereof, made by the Corporation in favor of the senior lender. In the event that a default remains uncured beyond all applicable notice and cure periods, the Corporation reserves the right to pursue any and all other legal remedies to recapture the funds awarded to the Project or to seek specific performance or other actions that it deems necessary, as permitted by law and in accordance with any other agreements made between the Corporation and the Developer with respect to the Project.

If the Project is completed with exemptions from Hawaii's General Excise Tax law approved by the Corporation, if the Affordable Units do not remain restricted for income-qualified tenants in accordance with this Agreement for the full remaining Term of this Agreement and this Agreement is terminated for any reason, the Corporation reserves the right to recapture from the Developer and the Project, a proportionate share of the Project construction cost savings resulting from the Corporation's approval of an affordable housing exemption from Hawaii's General Excise Tax law, based on the unexpired portion of the Term that would have been remaining but for the early termination. If the Affordable Units do not remain restricted for income-qualified tenants in accordance with this Agreement for the full remaining Term of this Agreement, but this Agreement is not terminated, the Corporation reserves the right to recapture from the Developer and the Project, a proportionate share of the Project construction cost savings resulting from the Corporation's approval of the exemption from Hawaii's General Excise Tax law, based on the number of non-compliant Affordable Units relative to the total number of Affordable Units and the unexpired portion of the Term as of the date such Affordable Units are no longer restricted for income-qualified tenants. Notwithstanding the foregoing, at any time during the term of this Agreement and within ten (10) days of written notice from Developer, Corporation hereby agrees to provide one or more estoppel certificates to Developer's lenders, investors and/or purchasers certifying that there are not any uncured defaults on the part of Developer under this Agreement, or if any defaults are claimed, specifying such defaults.

Notwithstanding the foregoing, upon determination by the Corporation or its designated representative of non-compliance or other default under this Agreement and prior to bringing an action for such default or recapture of funds, the Corporation shall notify the Developer in writing and the Developer shall be given not less than sixty (60)

days to correct the violation or default; provided, however, if such violation or default cannot be reasonably cured within such time period, the Developer shall be granted an additional period of up to six (6) months to cure such violation or default so long as they commence to cure such violation or default within the 60-day period and diligently prosecute such cure to completion.

A copy of any written notice of default shall also be sent on a best effort basis to the Investor Limited Partner (as such term is defined in the Ground Lease) of the Developer at the addresses set forth in the Section 7.2 of the Ground Lease and any Approved Mortgagee (as such term is defined in the Ground Lease) at the addresses set forth in the Section 7.2 of the Ground Lease. The Investor Limited Partner of the Developer and any Approved Mortgagee will have the right, but not the obligation, to cure such a default, and such cure will be accepted on the same basis as if made by the Developer.

Any cure tendered by Developer's Investor Limited Partner or any Approved Mortgagee will be accepted or rejected on the same basis as cures tendered by Developer; provided, that, the Approved Mortgagee shall have such additional time as may reasonably be required to effect such cures if possession of the Project for the Approved Mortgagee is necessary to complete the required cure.

Notwithstanding the foregoing, any reimbursement and recapture rights contained in this Section 20 are subject and subordinate in all respects to the Senior Security Instrument and, in the event of a foreclosure, a transfer of title by deed in lieu of foreclosure, or similar event, of the Senior Security Instrument, such rights shall immediately terminate and be of no further effect.

SECTION 21. Recording and Filing; Covenants to Run With the Project.

a. Upon execution and delivery of this Agreement by the parties, Developer shall cause this Agreement and all amendments hereto to be recorded in the Bureau of Conveyances of the State of Hawaii, and shall pay all fees and charges incurred in connection therewith. Upon recording, Developer shall immediately transmit to the Corporation a certified copy of the recorded Agreement.

b. Owner and Developer covenant that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Ground Lease and fee simple title to the Project for the Term stated herein and shall be binding upon all subsequent owners of the Project for such Term, and are not merely personal covenants of Owner and Developer.

c. If requested by Owner or Developer, or their successors or assigns, the Corporation shall execute and record a release of this Agreement as to all or any portion of the Property and the Project upon the expiration of the Term or earlier termination of this Agreement.

d. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and said counterparts shall together constitute one and the same agreement, binding of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

SECTION 22. Owner's Limited Role.

Owner has executed this Agreement solely as an accommodation to Developer so that fee simple title to the Property, and the Project, are bound by the terms and conditions of this Agreement. The Corporation acknowledges that under the Ground Lease, Developer has control of the Property and the Project, and that as between Owner and Developer, Developer is the only party responsible for and in a position to, fulfill or otherwise comply with the terms and conditions of this Agreement. Unless and until the Ground Lease expires, or the Developer's and Owner's interests in the Ground Lease merge such that the Ground Lease no longer exists, the Corporation agrees to look solely to Developer to fulfill or otherwise comply with the terms and conditions of this Agreement on the part of Developer. Owner, the Corporation and Developer hereby agree that the Owner shall have no duty or obligation to either the Corporation or the Developer under this Agreement. Any notices given and any documentation provided to Owner under this Agreement are as a courtesy, and Owner shall have no duty or obligation to act upon such notice or documentation.

SECTION 23. Reserved.

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

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed on the date first written above.

APPROVED AS TO FORM:

_____
Deputy Attorney General
State of Hawaii

CORPORATION:

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

By: _____
Craig K. Hirai
Its: Executive Director

APPROVED AS TO FORM:

_____
Deputy Attorney General
State of Hawaii

OWNER:

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

By: _____
_____
Its: Executive Director

DEVELOPER:

630 COOKE STREET PARTNERSHIP LP,
a Hawaii limited partnership

By: Nohona Hale, LLC
its General Partner

By: BPG Hawaii Partners, LLC
its Managing Member

By: The Magistro Family I L.L.C.
its Manager

By: _____
Name: Peter Magistro
Title: Manager

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

On this _____ day of _____, 201___, 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.

_____
Notary Public, State of Hawai'i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Declaration of Land Use Restrictive Covenants _____

_____

_____

Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction: _____Circuit
(in which notarial act is performed)

_____
Signature of Notary

Date of Notarization and Certification Statement

_____
Printed Name of Notary

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

On this _____ day of _____, 201___, 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.

_____
Notary Public, State of Hawai'i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Declaration of Land Use Restrictive Covenants _____

_____

_____

Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction: _____Circuit
(in which notarial act is performed)

_____
Signature of Notary

Date of Notarization and Certification Statement

_____
Printed Name of Notary

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

On the ___ day of _____, in the year ____, before me, the undersigned, a notary public in and for said state, personally appeared _____, of 630 COOKE STREET PARTNERSHIP LP, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public, State of Hawai'i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Declaration of Land Use Restrictive Covenants _____

_____

_____

Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction: _____Circuit
(in which notarial act is performed)

_____
Signature of Notary

Date of Notarization and Certification Statement

_____
Printed Name of Notary

Notary Acknowledgment

EXHIBIT A

End of Exhibit A

EXHIBIT B

Rent Schedule

The 2018 initial maximum rents for Affordable Units shall not exceed the following unless otherwise approved by the Corporation:

Affordability Level	Monthly Rent
30% AMI and below	$500
60% AMI and below	$1,050

Note: Rents are net of applicable utility allowance based on 1/1/18 schedule and based on HUD 2017 income limits which may be further adjusted when future income limits are published in accordance with Section 12 of the Agreement.

End of Exhibit B