

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii, 96813

March 7, 2018

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

HCDA Board Members:

SUBJECT: Shall the Authority authorize the dissolution of the Na Lei Hulu Kupuna Limited Partnership?

SUMMARY:

The Na Lei Hulu Kupuna Limited Partnership was formed in 1991 to develop and maintain the Na Lei Hulu Kupuna Apartments (Project). The Limited Partnership subsequently sold the Project to Mark Development, Inc. in December 2017. Following the sale, the Limited Partnership should be dissolved and all proceeds should be distributed.

AUTHORITIES:

As the General Partner of the Na Lei Hulu Kupuna Limited Partnership, the Hawaii Community Development Authority (HCDA) is responsible for managing the business and affairs of the Partnership.

BACKGROUND:

The Na Lei Hulu Kupuna Apartments (Project) is a 75-unit senior affordable rental studio apartment building, located at 610 Cooke Street. The Project was originally owned, developed, managed, and maintained under the Na Lei Hulu Kupuna Limited Partnership (Partnership), which was formed in 1991. The Partnership was comprised of the HCDA as 1% General Partner and Bank of Hawaii as the 99% Limited Partner. The Partnership Agreement is attached hereto as Exhibit A.

On September 30, 2014, Mark Development, Inc. (MDI) submitted a letter to the Partnership with a bid to purchase the Project. The acquisition was contingent on MDI's ability to negotiate lease extensions with the City and HHFDC and to secure financing to acquire and rehabilitate the twenty-four-year-old Project.

On February 11, 2015, the HCDA board voted to approve the sale in accordance with the proposed Purchase Sale Agreement (PSA) for a purchase price of \$2,869,000.00. The executed copy of the PSA is attached hereto as Exhibit B.

After years of delays, the sale of the Project closed on December 29, 2017. MDI is now the new owner of the Project and is responsible for all further management and maintenance of the building.

ANALYSIS:

The Partnership was created to own, develop, manage, and operate the Project. Given that the Partnership no longer owns the Project, the Partnership should be dissolved in accordance with the Partnership Agreement.

The Partnership Agreement notes that upon dissolution, all assets shall be liquidated and distributed amongst the Partners in an amount equal to their original capital contributions (i.e., 1% to HCDA and 99% to Bank of Hawaii). As the Purchase and Sale Agreement included most assets, the only remaining asset belonging to the Partnership is the cash account containing the \$2,869,000.00 from the sale of the Project. If dissolution is approved, this amount will be disbursed to the Partners in the above ratio, less any costs associated with the Partnership's final tax return, financial audit, and compliance reports.

RECOMMENDATION:

HCDA staff recommends that the Board authorize the dissolution of the Na Lei Hulu Kupuna Limited Partnership.

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



Garrett Kamemoto, Interim Executive Director
Hawaii Community Development Authority

Attachments:

Exhibit A – Na Lei Hulu Kupuna Limited Partnership Agreement
Exhibit B – Na Lei Hulu Purchase and Sale Agreement

NA LEI HULU KUPŪNA

LIMITED PARTNERSHIP AGREEMENT

NA LEI HULU KUPUNA
LIMITED PARTNERSHIP AGREEMENT

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NA LEI HULU KUPUNA
LIMITED PARTNERSHIP AGREEMENT

This Limited Partnership Agreement dated as of the 14th day of NOVEMBER, 1991, by and between HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("HCDA"), a body corporate and a public instrumentality of the State of Hawaii, as the General Partner, and BANK OF HAWAII, a Hawaii corporation, having its principal place of business at Financial Plaza of the Pacific, 130 Merchant Street, Honolulu, Hawaii 96813, as the Limited Partner.

W I T N E S S E T H:

WHEREAS, HCDA is the redevelopment agency charged with redevelopment of the Kakaako District, including the provision of housing encompassing a broad cross section of housing opportunities; and

WHEREAS, Limited Partner is a private sector corporate citizen concerned with the welfare of the community in which it derives its income, and is particularly concerned with expanding the supply of affordable, elderly housing; and

WHEREAS, HCDA has identified six parcels which, if consolidated, could provide a site for an elderly housing project containing up to 76 studio units; and

WHEREAS, Limited Partner is willing to commit resources up to Seven Million Nine Hundred Twenty Thousand Dollars (\$7,920,000.00) in consideration of anticipated cash flow and tax benefits derived from the Project; and

WHEREAS, HCDA is willing to undertake the development process, fund necessary front-end costs and assume development risks associated with the proposed Project;

NOW, THEREFORE, the parties hereby form a limited partnership pursuant to the Uniform Limited Partnership Act of the State of Hawaii, upon the following terms and conditions:

1. Name and Place of Business.

The name of the Partnership is NA LEI HULU KUPUNA LIMITED PARTNERSHIP. Its principal place of business is 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813 or such other place or places as the General Partner may determine. Its telephone number is (808) 548-7180.

2. Definitions and Construction.

(a) Definitions. The following terms used in this Agreement shall have the following meanings unless otherwise expressly provided herein or unless the context otherwise requires:

"Act" shall mean the Uniform Limited Partnership Act of the State of Hawaii, Chapter 425D, Hawaii Revised Statutes, as now and hereafter amended or redesignated.

"Agreement" shall mean this limited partnership agreement as amended from time to time.

"Allocation" shall mean the process or result of determining the amount of each item of Partnership Taxable Income, Taxable Loss, Credit and other allocable items assigned to each Partner or to each class of Partners.

"Base Rate" shall mean the primary index rate established by Bank of Hawaii from time to time in the ordinary course of its business and with due consideration of the money market, and published for the benefit of said Bank's loan officers in pricing all of said Bank's loans which float with or above the Base Rate.

"Building" shall mean the improvements to be constructed on the Project site pursuant to the herein below-mentioned design/build contract.

"Capital Account" is defined in section 6(e).

"Capital Contribution" shall mean the amount of cash contributed to the capital of the Partnership by a Partner.

"Certificate" shall mean the certificate of limited partnership of the Partnership, filed or to be filed with the Department of Commerce and Consumer Affairs as such certificate is amended from time to time.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of superseding revenue laws.

"Construction and Occupancy Schedule" shall mean a written schedule setting forth the estimated timetable for completion of the various stages of construction and upon completion of construction the timetable for occupancy of the Building.

"Credit" shall mean the Federal Housing Tax Credit and the State Housing Tax Credit.

"Federal Housing Tax Credit" shall mean the low-income housing tax credit allowed for low-income housing developments pursuant to Section 42 of the Code.

"General Partner" shall mean HAWAII COMMUNITY DEVELOPMENT AUTHORITY.

"General Partner's Interest" shall mean the interest of the General Partner in the Partnership.

"HFDC" shall mean the Housing Finance and Development Corporation.

"Limited Partner" shall mean BANK OF HAWAII or any other person who is hereafter admitted to the Partnership as a limited partner.

"Limited Partner's Interest" shall mean the interest of the Limited Partner in the Partnership.

"Liquidating Distribution" means a distribution of cash or other property to Partners occurring upon the earlier of the date upon which there is a Liquidation of the Partnership, or the date upon which there is a Liquidation of a Partner's interest in the Partnership under Treasury Regulations Section 1.761-1(d).

"Liquidation" means in respect to the Partnership the earlier of the date upon which the Partnership is terminated under Section 708(b)(1) of the Code, or the date upon which the Partnership ceases to be a going concern (even though it may continue in existence for the purpose of winding up its affairs, paying its debts and distributing any remaining balance to its Partners), and in respect to a Partner when the

Partnership is not in Liquidation means the liquidation of a Partner's interest in the Partnership under Treasury Regulations Section 1.761-1(d).

"Nonliquidating Distributions" shall mean cash from any source or other property distributed to the Partners other than a Liquidating Distribution, but shall not include any payments to the General Partner pursuant to section 8.

"Partners" shall mean the General Partner and the Limited Partner.

"Partnership" shall mean the limited partnership governed by this Agreement.

"Person" (whether written with an initial capital letter or not) shall mean an individual, partnership, corporation or other entity.

"Project" see section 3(a).

"Project Development Budget" shall mean the estimated budget of costs including contingency for development, construction, and completion of the Building.

"Project Operating Budget" shall mean a budget of costs for each calendar year (twelve months) setting forth the estimated receipts and expenditures for operating the Building.

"State Housing Tax Credit" shall mean a low-income housing credit allowed against state income tax liability pursuant to the laws of the State of Hawaii.

"Taxable Income" or "Taxable Loss" shall mean the taxable income or taxable loss of the Partnership

determined in accordance with the accrual basis of accounting or such other basis as may be selected by the General Partner from those permitted or required by the Code for tax reporting purposes.

"Transfer" shall mean any sale, exchange, transfer, gift, encumbrance, assignment, pledge, mortgage, hypothecation or other disposition, whether voluntary or involuntary.

"Treasury Regulations" means final, temporary and proposed Regulations issued by the Treasury Department under the Code, including amendments to such Regulations, or any corresponding provisions of any succeeding regulations.

(b) Number and Gender. Whenever required by the context, the singular shall include the plural and vice-versa; the masculine gender shall include the feminine and the neuter genders and vice-versa.

(c) References. References to sections (Arabic numbers), paragraphs (lower case letters) or clauses (lower case Roman numerals) shall refer to sections, paragraphs or clauses of this Agreement unless the context shall require otherwise.

(d) Captions. Captions in this Agreement are used only as a matter of convenience and for reference. Captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provision hereof.

(e) Severance. In the event any portion of this Agreement is declared by a court of competent jurisdiction

to be void, that portion shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in effect.

(f) Application of Hawaii Law. This Agreement shall be construed in accordance with its terms and the laws of the State of Hawaii.

3. Purpose, Powers and Site.

(a) Purpose. The purpose of the Partnership is to own, develop, construct, maintain, operate in compliance with Code Section 42, and manage a housing project for elderly individuals of low and moderate incomes, located on several parcels of land to be consolidated to form a site bounded on three sides by Coral, Halekauwila and Cooke Streets in the Kakaako District of Honolulu, Hawaii and having approximately 75 low-income rental units plus a non-income producing manager's unit (the "Project").

(b) Powers. The powers of the Partnership are to execute, deliver and perform all contracts and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or desirable to carry out the purposes of the Partnership.

(c) Site. The Project site is currently owned by HFDC and the City and County of Honolulu ("City"). The HFDC has entered into a 65-year ground lease at \$1 per year with the City for its portion of the project site. The General Partner expects that the Partnership can obtain a ground lease of the

Project site from HFDC for a minimum of 30 years from the date the Building is placed in service for an annual rent of \$1.

4. Term.

The term of the Partnership shall commence on the date the Certificate is filed with the Department of Commerce and Consumer Affairs of the State of Hawaii and shall continue until the 31st day of December, 2030, unless sooner terminated by one of the following events: (i) the lease underlying the site expires, (ii) the Partnership is dissolved by mutual consent of the Partners, or (iii) the Partnership is terminated in accordance with the provisions of this Agreement or law.

5. Certificate.

The General Partner shall prepare and the Partners shall execute the Certificate, all amendments, and other documents which shall be necessary or desirable to maintain the Partnership as a valid limited partnership under the Act and other applicable laws of the State of Hawaii. Limited Partner shall, at the request of the General Partner, promptly execute such documents and furnish such information as may be necessary for the General Partner to carry out its functions under this section.

6. Capital Contributions.

(a) General Partner's Contributions. (i) The General Partner shall make a Capital Contribution of up to Eighty Thousand and No/100 Dollars (\$80,000.00). The General Partner shall make an initial Capital Contribution of \$1.00 and

shall make additional Capital Contributions, as required, prior to the additional Capital Contribution of the Limited Partner. The General Partner shall also make the Capital Contribution, if any, required by section 15(e).

(b) Limited Partner's Contributions. The Limited Partner shall make a Capital Contribution of up to Seven Million Nine Hundred Twenty Thousand and No/100 Dollars (\$7,920,000.00) in cash. The Limited Partner shall make an initial Capital Contribution of \$99.00, and shall make its additional Capital Contribution in the following installments:

(i) The first installment shall be paid upon the satisfaction of all conditions precedent which are set forth in section 6(f) of this Agreement and shall be in an amount equal to the advances made by the General Partner to that point, in excess of the General Partner's Capital Contribution, and applied to the payment of costs described in the Project Development Budget on Exhibit A.

(ii) Subsequently, the Limited Partner shall make additional installment payments of its Capital Contribution, upon the request of the General Partner, on a monthly basis, subject to the satisfaction of all conditions set forth in section 6(g) of this Agreement, until the Project is ready for occupancy or the cumulative Capital Contributions of the Limited Partner equal \$7,920,000.00.

(c) Excess Capital Contributions. After General Partner has set aside such reasonable reserves as it shall deem necessary or prudent for replacements, repairs,

improvements, working capital and other expenses approved by the Limited Partner, and reasonable reserves for contingencies, General Partner shall distribute any excess Capital Contributions within ninety (90) days after the completion of the construction of the Building, in the following priority and to the following extent:

(i) To reimburse General Partner for funds advanced by it in excess of its Capital Contribution and not previously reimbursed;

(ii) The remainder to be distributed pro rata to the Partners so that after the distribution of excess Capital Contributions, the General Partner shall have made a Capital Contribution of one percent (1%) of all Capital Contributions and the Limited Partner shall have made a Capital Contribution of ninety-nine percent (99%) of all Capital Contributions.

(d) Expenses of Formation. The Partnership shall pay all expenses of its formation.

(e) Capital Account. A Capital Account shall be maintained for each Partner, which reflects that Partner's Capital Contribution and all other Capital Account credits and debits necessary to maintain such account, at all times, in strict accordance with all of the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv).

(f) Conditions to the Limited Partner's First Additional Capital Contributions. The Limited Partner shall have no obligation to make its first additional Capital

Contribution to the Partnership unless and until all conditions set forth in this section 6(f) shall have been satisfied:

(i) The Limited Partner shall have received:

(a) evidence that the General Partner on behalf of the Partnership has executed a design/build contract for the complete design and construction of the Building and that the Partnership has obtained a 100% payment and performance bond covering the obligations of the general contractor, issued by a surety authorized to do business in the State of Hawaii;

(b) evidence that the Partnership has entered into a ground lease with HFDC, demising the Project site to the Partnership for a minimum term of 30 years from the date the Building is placed in service ("Ground Lease") and that the Partnership has obtained an Owner's Title Insurance Policy (ALTA Form B, Extended Coverage, 1970 revision to include survey coverage) insuring title to the leasehold estate free and clear of all material defects and encumbrances other than those approved by Limited Partner;

(c) evidence that the Partnership carries the insurance described in section 13(j) of this Agreement;

(d) a Project Development Budget demonstrating that the Project can be developed with funds available to the Partnership, and a Project Operating Budget (reflecting operating income and expenses) demonstrating that

the Project can be feasibly operated after it is placed in service;

(e) a Construction and Occupancy Schedule satisfying the federal low-income housing tax credit requirements;

(f) evidence that the Project site complies with all subdivision requirements;

(g) a copy of HFDC's board action documenting HFDC's approval to (i) allocate the federal low-income housing credit to the Partnership subject to compliance with Section 42 of the Code and (ii) allocate low-income housing rent assistance to the Project;

(h) the General Partner's written request for the installment payment, which shall be submitted at least three (3) business days prior to the date of the requested installment and which shall state the amount of the installment then due (supported, in reasonable detail, by the manner of calculation thereof) and shall contain the General Partner's certification that the representations and warranties set forth in section 16 of this Agreement are true and correct as of the date of such request;

(i) a memorandum of understanding from HFDC committing HFDC to enter into an agreement with the Partnership under terms similar to the general terms and conditions of HFDC's draft regulatory agreement attached hereto as Exhibit C providing for credit allocations and rental assistance;

(j) evidence that the Partnership has obtained all consents, permits and approvals from governmental authorities, required for the work commenced at that time for the construction of the Building; and

(k) an environmental examination or audit of the Project site, demonstrating (on the basis of existing records and a physical inspection of the Project site) the absence of environmental risks or hazardous materials of a nature which causes the undertaking of the Project to be unacceptable to the Limited Partner prior to the making of such first additional Capital Contribution.

(ii) All instruments referred to in this paragraph (f) shall be in form and substance satisfactory to the Limited Partner. No amendment of any such instrument or any provision thereof shall have been made (or shall thereafter be made) without the Limited Partner's prior written consent. However, in respect of the design/build contract, if the amendment results in an increase in the cost of any one item of less than \$50,000 or an aggregate increase in the cost of all items of less than \$100,000, and does not reduce the number of rentable Units within the Project, no prior consent shall be required.

(iii) The representations and warranties made by the General Partner in section 16 of this Agreement shall be true and correct on and as of the date of the payment of such installment, with the same effect as if made on such

date, and the General Partner shall not have breached any of its covenants or agreements set forth in this Agreement.

(g) Conditions to the Limited Partner's Subsequent Additional Capital Contributions. The Limited Partner shall have no obligation to make any subsequent additional Capital Contribution to the Partnership unless, in respect thereof, the following conditions shall have been satisfied:

(i) All conditions of the first additional Capital Contribution shall have been satisfied and, as to the conditions set forth in sections 6(f)(i)(h), 6(f)(ii) and 6(f)(iii), shall have been satisfied as of the date of such subsequent additional Capital Contribution;

(ii) The construction of the Building shall have progressed in accordance with the Construction and Occupancy Schedule and the General Partner's request for the additional Capital Contribution shall have been accompanied or preceded by an updated Project Development Budget, which demonstrates that the Project is able to be completed with committed contributions by others and/or the balance of the Limited Partner's additional Capital Contributions and evidence of the prior payment of all Project Costs as were intended to have been paid with the proceeds of prior Capital Contributions by the Limited Partner;

(iii) Neither the Building nor the Project site shall have been materially damaged by fire or other casualty, or condemned, or threatened with condemnation except

to the extent (1) such damage is fully covered by insurance (subject only to "deductibles" in a reasonable amount), and (2) that the Project can be completed within the timeframe described in the Construction and Occupancy Schedule; and

(iv) Evidence that the Partnership has obtained all consents, permits and approvals from governmental authorities, required for the work commenced to that time for the construction of the Building.

(h) First Additional Capital Contribution. The Limited Partner shall have fifteen (15) working days from the date of its receipt of the last of the items designated in section 6(f)(i), clauses (a) through (k), to review, approve, notify the General Partner of acceptance and then make the first installment payment of its additional Capital Contribution as required by section 6(b)(i). In the event that the Limited Partner does not provide notification of acceptance or make the required Capital Contribution within said fifteen (15) working days, the General Partner in addition to any remedies it may have, may (1) loan the Partnership the funds at the rate provided in section 13(a)(xi) or (2) admit a substitute or additional limited partner on the terms and for an interest in the Partnership as it may decide in its sole discretion notwithstanding any other provision herein.

(i) Adjustments to Capital Contributions.

(i) The Credits allocated to the Limited Partner for any taxable year of the Partnership shall not be less than Federal Credit Sum or the State Credit Sum as

calculated on Exhibit B to the Agreement. In the event (X) that in 1993 the cumulative Federal Housing Tax Credit or the cumulative State Housing Tax Credit that the Partnership's accountants, based on a 1992 Partnership review, project will be allocated to the Limited Partner over the compliance period is less than the cumulative Federal Credit Sum or cumulative State Credit Sum, and/or (Y) that the Partnership's accountants determine that the Federal Housing Tax Credit or State Housing Tax Credit allocable to the Limited Partner for any taxable year is less than Federal Credit Sum or State Credit Sum or all or part of the Credits must be recaptured pursuant to Section 42(j) of the Code or is unavailable to the Limited Partner, and/or (Z) there is a final determination (including but not limited to a determination made as part of a tax audit) that the Federal Housing Tax Credit or State Housing Tax Credit allocable to the Limited Partner for any taxable year is less than Federal Credit Sum or State Credit Sum or all or part of the Credits must be recaptured pursuant to Section 42(j) of the Code or is unavailable to the Limited Partner, the amount of the Capital Contribution of the Limited Partner shall be reduced by their pro rata share of the amount by which the Credits or cumulative Credits, as the case may be, is less than the Federal Credit Sum, or State Credit Sum, or cumulative Federal Credit Sum or cumulative State Credit Sum as the case may be as described in Exhibit B, (the "Reduction Amount"). If the Limited Partner's ratable share of the Reduction Amount exceeds the sum of all subsequent additional Capital

Contributions of Limited Partner (or if all Additional Capital contributions of Limited Partner have been made), the General Partner shall immediately make a Credit Adjuster Contribution equal to the amount of such excess and the Partnership shall immediately thereafter make a special cash distribution to Limited Partner equal to the amount of such excess. If the Credit Adjuster Contribution is made by the General Partner, it shall increase the General Partner's Capital Account by the percent such Capital Contribution is of the total Capital Contributions of the Partners. Such Distribution will be reflected by a corresponding decrease in the Limited Partner's Capital Account. In the event that the Limited Partner's additional Capital Contributions are reduced by, or the Limited Partner has received a distribution of, the full amount required by this section 6(i), then this section 6(i) shall thereafter be applied using such lesser Credit amount as the Federal Credit Sum or State Credit Sum, as the case may be, for each such taxable year.

(ii) In the event that, for any reason, the General Partner shall fail to make a Credit Adjuster Contribution as and when required under section 6(i), the Limited Partner shall be treated as receiving a return of its Capital Contribution in the form of a constructive Distribution and having made a constructive advance to the Partnership at the time such Credit Advance should have been made (a "Credit Recovery Loan") in an amount equal to such unpaid Credit Adjuster Contribution. Credit Recovery Loans shall be deemed

to bear simple (not compounded) interest from the respective dates on which such principal advances shall have been deemed to have been made under this section 6(i)(ii), at Bank of Hawaii's Base Rate plus one percent (1%).

(j) Exclusions. Notwithstanding any provision to the contrary contained in section 6(i) hereof, the Limited Partner shall not be entitled to any payment under section 6(i) hereof arising as a result of one or more of the following events:

(i) A determination that the partnership is not a Partnership for tax purposes or that the Limited Partner or the Partnership is not the owner of the Building, unless such determination is attributable to an inaccuracy or breach of any representation or warranty or is attributable to any act or omission for which indemnification is expressly provided hereunder;

(ii) Any involuntary sale or other involuntary disposition of the Building or any beneficial interest therein or any interest in the Partnership or any part thereof or any voluntary sale or other disposition of the Building or any beneficial interest therein or any interest in the Partnership or any part thereof by the Limited Partner;

(iii) The failure of the Limited Partner without concurrence of the General Partner, to claim properly or timely the credits on its Federal or State of Hawaii income tax returns;

(iv) Any change in existing Federal and Hawaii State tax law or regulations, rulings, revenue procedures or other interpretations enacted or promulgated after the execution of this Agreement;

(v) The application of any provision of the passive loss rules;

(vi) The application of any provision of any alternative minimum tax;

(vii) The taxable year of the Limited Partner being less than twelve months;

(viii) The failure of the Limited Partner to timely contest any proposed adjustment under terms agreed to by the General Partner;

(ix) The application of any provision of Section 183 of the Code;

(x) The application of Section 704 of the Code to disallow the Partnership's allocation of Credits;

(xi) The application of the provisions of the "at-risk" rules;

(xii) The determination that leased property does not qualify under Section 42 of the Code; and

(xiii) Any action which the Limited Partner has provided its approval in writing.

The General Partner shall not be obligated to pay any amount under section 6(i) to any successor or assign of Bank of Hawaii.

7. Limitation on Liability of Limited Partner.

Notwithstanding any other provision of this Agreement, the liability of the Limited Partner shall be limited to its paid-in Capital Contributions and its additional Capital Contributions if, as and when payable pursuant to the provisions of this Agreement. The Limited Partner shall have no other liability to contribute money to, or in respect of the liabilities, obligations, debts or contracts of the Partnership, nor shall the Limited Partner be personally liable for any liabilities, obligations, debts or contracts of the Partnership, nor shall the Limited Partner be personally liable for any liabilities, obligations, debts or contracts of the Partnership, except as specifically mandated by the Act or this Agreement. The Limited Partner shall have no obligation to make loans to the Partnership.

8. Compensation of the General Partner.

(a) Limitation. No Partner shall receive compensation unless provided for herein. No part of the office overhead or administrative expenses of the General Partner shall be deemed an expense of the Partnership.

(b) Fees. The General Partner shall be entitled to a management fee of five percent (5%) of the gross revenues from the rental of the building and if applicable the interest contemplated by section 13(a)(xi).

(c) Reimbursement. The General Partner shall be entitled to reimbursement from the Partnership of all expenses paid on behalf of the Partnership. Whenever possible,

the General Partner will cause the Partnership, to pay its expenses directly.

(d) Advances. All advances made by the General Partner in excess of the General Partner's initial Capital Contribution shall be reimbursed at cost without interest by the Partnership upon the Limited Partner's first additional Capital Contribution. The General Partner shall transfer to the Partnership its rights and obligations with respect to agreements with architects, contractors and others, housing assistance and rent supplement payments, surveys, tests and borings which it caused to be made in connection with the Project, site plans, architectural plans, specifications, working drawings, engineering reports, market surveys, and other work product related to the Project. No such transfers by General Partner shall increase its interest in the Partnership unless it is not reimbursed for such costs.

9. Allocations and Distributions.

(a) Allocations. Allocations shall be made one percent (1%) to the General Partner and ninety-nine percent (99%) to the Limited Partner unless the Capital Contributions made by the Partners are in a different ratio. In such case, the percentages for this section (a) shall be the ratio of a Partner's actual Capital Contribution (including Credit Adjuster Contribution) over total Partner Capital Contributions.

(b) Other Allocations. Notwithstanding section 9(a), Allocations shall be made in accordance with the following provisions and applied in the following order:

(i) Section 704(c). If Partnership property is reflected in the Capital Accounts of the Partners and on the books of the Partnership at a book value that differs from the adjusted tax basis of such property, then depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to such property, shall be determined so as to take account of the variation between the adjusted tax basis and the book value of such property in the same manner as under Section 704(c) of the Code.

(ii) Qualified Income Offset. To the extent any Limited Partner unexpectedly receives an adjustment, allocation or distribution of any item described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), and such Limited Partner has a deficit balance in his Capital Account which is created or increased thereby, items of income and gain shall be allocated to such Partner in an amount and manner sufficient to eliminate such deficit balance as quickly as possible. This section 9(b)(ii) is intended to comply with the "qualified income offset" provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and this provision shall be interpreted, and allocations hereunder shall be made, in conformity with such regulations.

(iii) Allocation of Credits.

(a) All Credits shall be allocated among the Partners in the manner in which the deductions arising from those expenditures that are the basis for such Credits are allocated among the Partners for the relevant taxable year. It is the intention of the Partners that those expenditures be allocated among the Partners in proportion to their interest in the Partnership as stated in section 9.

(b) Any recapture of any Credits shall be allocated among the Partners in the same manner in which the Partners share the expenditures giving rise to that credit.

(c) Distributions.

(i) Nonliquidating Distributions shall be distributed one percent (1%) to the General Partner and ninety-nine percent (99%) to the Limited Partner unless the Capital Contributions made by the Partners are in a different ratio. In such case, the percentages for this section (c)(i) shall be the ratio of a Partner's actual Capital Contribution (including Credit Adjuster Contribution) over total Partner Capital Contributions.

(ii) Nonliquidating Distributions may be made at the discretion of the General Partner, subject to the obligation of the Partnership to maintain necessary reserves. No Nonliquidating Distributions shall be made in the first twelve (12) months of the Partnership. Liquidating

Distributions shall be made to the Partners in the manner provided in section 15(c) and (d) of this Agreement.

(d) Distributions in Kind. If any asset of the Partnership is to be distributed in kind, such asset shall be valued at its fair market value (taking Code Section 7701(g) into account) on the date of distribution, and the Capital Accounts of the Partners shall be adjusted to reflect the manner in which the unrealized income, gain, loss, or deduction inherent in such asset (that has not been reflected in the Capital Accounts previously) would be allocated among the Partners if there were a taxable disposition of such asset at its fair market value on the date of distribution. The Partners entitled to interests in such asset shall receive such interests as tenants-in-common with all other Partners so entitled.

(e) Approval. Each Partner hereby consents to the methods by which Allocations and Distributions are apportioned, as an express condition of becoming a Partner. Allocations among the Limited Partners shall be made in the ratio in which each Limited Partner's Capital Account balance bears to the Capital Account balances of all Limited Partners.

10. Assignment of Interests.

(a) Permitted. The Limited Partner or its assignees shall have the right to assign its interest in the Partnership by a written instrument, duly executed by the assignor, the terms of which are not in contravention of any of the provisions of this Agreement. An assignee shall notify the

Partnership of any assignment or transfer by operation of law of an interest in the Partnership which occurs without a transfer of record ownership.

(b) Effective Date. An assignee shall be entitled to receive Allocations attributable to the assignee's interest in the Partnership from and after the effective date of the assignment. However, anything herein to the contrary notwithstanding, the Partnership and the General Partner shall be entitled to treat the assignor as the absolute owner of the interest in the Partnership in all respects, and shall incur no liability for Allocations and Distributions which are made in good faith to the assignor, until the written instrument of assignment has been received by the Partnership and the effective date of an assignment has passed. The effective date of an assignment of which the Partnership has actual notice shall be the later of the day upon which the written instrument of assignment is dated or the day upon which notice was received by the Partnership.

(c) Limitation Upon Assignments. Except as provided in this section 10, no assignment of any interest in the Partnership may be made if the interest in the Partnership sought to be assigned, when added to all other interests in the Partnership transferred within the period of twelve (12) consecutive months prior to the proposed date of assignment would, in the opinion of counsel for the Partnership, result in the termination of the Partnership under Section 708 of the Code.

(d) Admission of Another General Partner.

(i) Another general partner may not be admitted to the Partnership without all of the following:

(a) The prior written approval of General Partner, which approval may be granted or denied in General Partner's sole discretion;

(b) Such financial statements, guarantees or other assurances as the General Partner may require with regard to the ability of the proposed General Partner to fulfill the financial and other obligations of a General Partner hereunder;

(c) Acceptance, in form satisfactory to General Partner, of all the terms and provisions of this Agreement and on the same terms and conditions as the General Partner;

(d) A certified copy of a resolution of its Board of Directors (if it be a corporation) authorizing it to become a General Partner under the terms and conditions of this Agreement;

(e) Such other documents or instruments as may be required in order to effect its admission as a General Partner; and

(f) Payment of such reasonable expenses as may be incurred in connection with its admission as a General Partner.

(ii) A substitute General Partner may not be admitted to the Partnership without the written consent of the Limited Partner.

11. Additional Limited Partners.

(a) Conditions to Admission. An assignee shall have the right to become a Limited Partner in place of the assignor when all of the following conditions are satisfied:

(i) A duly executed and acknowledged written instrument of assignment specifying the Limited Partner's interest in the Partnership being assigned and setting forth the intention of the assignor that the assignee succeed the assignor as a Limited Partner shall have been delivered to the Partnership;

(ii) The assignor and assignee shall have executed and acknowledged such other instruments as the General Partner may deem necessary or desirable to permit the admission of the assignee as an additional Limited Partner, including the written acceptance and adoption by the assignee of this Agreement; and

(iii) The written consent of the General Partner to the admission shall have been obtained, the grant or denial of which shall be within the absolute discretion of the General Partner.

12. Books, Records, Accounting and Reports.

(a) Location and Access. The Partnership's books, an executed counterpart of this Agreement, and all amendments thereto, the Certificate and all amendments thereto,

copies of the Partnership's federal, state and local income tax returns and reports for the ten (10) most recent years, and financial statements of the Partnership for the ten (10) most recent years shall be maintained at the principal office of the General Partner. All of these records shall be open to inspection and examination by a Partner or its duly authorized representative at all reasonable times and may be copied at the expense of the Partner.

(b) Annual Reports. The Partnership shall send to each Partner annual financial statements within sixty (60) days after the close of each taxable year of the Partnership.

(c) Information for Tax Returns. The Partnership shall send to all Partners within sixty (60) days after the close of the taxable year of the Partnership the information and reports, prepared on the accrual basis of accounting, necessary to prepare the Partners' federal and state income tax returns.

(d) Tax Returns. The Partnership shall prepare and timely file income and other tax information returns with the appropriate authorities.

(e) Other Reports.

(i) The Partnership shall prepare and timely file all reports required to be filed with federal and state regulatory or administrative agencies. Reports shall be prepared on the accounting or reporting basis required by each agency. Each Partner shall be provided a copy of any report upon request and payment of costs;

(ii) The Partnership shall send to the Limited Partner annual projections of the operating budget by November 30 of the preceding year; and

(iii) The Partnership shall send to the Limited Partner information regarding the availability of its projected allocated Credits and projected allocated Taxable Income or Taxable Loss for the current year by November 30.

(f) Final Statement. As soon as practicable after the dissolution of the Partnership, a final statement of its assets and liabilities shall be prepared by the Partnership's accountant and furnished to the Partners.

13. Rights, Authority and Duties of the General Partner.

(a) Rights, Authority and Duties. The General Partner shall, except as otherwise provided in this Agreement, have all authority, rights and powers conferred by law or required or appropriate for the management of the Partnership. The overall management and control of the business and affairs of the Partnership shall be vested in the General Partner as provided in this Agreement. The General Partner shall be responsible for the implementation of the decisions of the Partnership and for conducting the ordinary and usual business and affairs of the Partnership as more fully set forth in section 13 hereof. The scope of the General Partner's authority shall be limited to policies and programs which conform with the terms and intent of this Agreement. The acts of the General Partner shall bind the Partners (subject,

however, to the provisions of section 7 of this Agreement) and the Partnership when within the scope of the General Partner's authority. By way of illustration, such rights and powers include the right, authority and power:

(i) To implement the purpose of the Partnership described in section 3;

(ii) To employ and discharge persons to assist the Partnership in achieving its purpose including, but not limited to, architect, accountant, general contractor, management agent, title insurance company, operating personnel and consultants, upon such terms and for such compensation as it shall determine;

(iii) To prepare or cause to be prepared reports, statements and other relevant information for distribution to Partners, including reports required by section 12;

(iv) To open accounts and deposits and maintain funds in the name of the Partnership in accounts insured by Federal Deposit Insurance Corporation or successor agency of the United States of America. To determine the number and identity of the persons authorized to draw checks on and make withdrawals from the Partnership bank accounts;

(v) To cause the Partnership to make or revoke any of the elections referred to in Section 754 of the Code or any similar provisions enacted in lieu thereof and to act as tax matters partner, adopting such positions, appearing at such administrative proceedings, and making such admissions

and compromises for the Partnership as it in its sole discretion may determine; provided, however, that nothing herein shall abridge or limit any Limited Partner's right to appear on the Limited Partner's own behalf at any tax administrative proceeding involving a redetermination of Partnership taxable income;

(vi) To select or vary depreciation and accounting methods and make other decisions with respect to treatment of various transactions for state or federal income tax purposes or other financial purposes not otherwise specifically provided for herein, provided that such methods and decisions shall be consistent with the other provisions of this Agreement (the Partnership shall use the accrual method of accounting in maintaining its books);

(vii) To amend the Certificate without the further consent or vote of any Limited Partner in order to reflect the addition of Limited Partners or the reduction of Capital Accounts upon the return of capital to Limited Partners;

(viii) To provide in any Partnership contract that the General Partner shall not have personal liability thereon but that the person or entity contracting with the Partnership shall look solely to the Partnership and its assets for satisfaction;

(ix) To refuse to transfer an interest in the Partnership if the result of such transfer will be a transfer of more than fifty percent (50%) of the interests

within a 12-month period or if such transfer would constitute a violation of any rule, law or regulation regarding the offer or sale of securities;

(x) To reimburse itself for expenditures made on behalf of the Partnership;

(xi) To advance funds for or loan funds to the Partnership and to be repaid, with simple interest at the lower of (A) the rate which would be charged to the Partnership by unrelated lending institutions on comparable loans for the same purpose or (B) the Base Rate plus two percent (2%);

(xii) To obtain and maintain any contract or policy of insurance which the General Partner deems necessary or appropriate for the protection of the Partnership and the Partners, for the conservation of Partnership assets, or for any purpose convenient or beneficial to the Partnership;

(xiii) To give notice of and conduct meetings of the Partners using procedures determined by the General Partner to be comparable (but not necessarily identical) to those governing meetings of stockholders of Hawaii corporations;

(xiv) To grant to any person a power of attorney for the purpose of executing any and all documents, the exercise of which power shall be conclusively presumed to constitute the exercise of a ministerial function of the General Partner;

(xv) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing, and to

take all such action in connection therewith as the General Partners shall deem necessary or appropriate;

(xvi) To borrow, on the credit of the Partnership, funds in excess of the Partners' Capital Contributions, rental proceeds, and rental assistance if required by the Partnership (the "Required Funds"). In the event that General Partner, for any reason, does not obtain such loans, General Partner may lend to the Partnership an amount equal to the Required Funds. Such loans shall be repayable on such terms as may be allowed by the HFDC and as provided for in section 13(a)(xi) hereof;

(xvii) To approve the form or forms of leases and adoption of the terms, conditions and standards (the "lessee guidelines") for the leasing of space within the Building, not in conflict with the provisions of Code Section 42; pursuant to which the General Partner shall be authorized to negotiate and execute on behalf of the Partnership;

(xviii) To construct any improvements or make any capital improvements, repairs, alterations or changes in, to or of the Building or any part thereof;

(xix) To approve all construction and architectural contracts (including a design/build contract) and all architectural plans, specifications and drawings prior to the construction, addition to and/or alteration of the Building or any portion thereof, and any modifications of such contracts, plans, specifications and drawings; and

(xx) To retain counsel for the Partnership or institution of any legal action.

(b) Limitations. The General Partner shall not have the authority without the prior written consent of the Limited Partner:

(i) To cause the Partnership to engage in any business other than as set forth in section 3;

(ii) To possess property or assign the rights of the Partnership in property for other than a Partnership purpose or employ or permit any person to employ the funds or assets of the Partnership in any manner except for the exclusive benefit of the Partnership;

(iii) To buy, sell or lease property to or from the Partnership;

(iv) To perform any act (other than an act required by this Agreement or any act taken in good faith reliance upon an opinion of counsel) which would, at the time such act occurred, subject any Limited Partner to liability as a general partner in any jurisdiction;

(v) To commingle Partnership funds with those of any other person;

(vi) To borrow from the Partnership;

(vii) To acquire additional property after sale of the Project or Building;

(viii) To receive any rebates or other compensation, including any reciprocal business arrangements, which would increase the compensation of the General Partner;

(ix) Voluntarily to cause the dissolution of the Partnership; and

(x) To knowingly lease or otherwise operate any unit within the Project in such a manner that such unit would fail to be treated as a "low-income unit" under Code Section 42(i)(3), or knowingly operate the Project in such a manner that the Project would fail to be treated as a qualified low income housing project under Section 42 of the Code.

Notwithstanding the above, the Limited Partner shall not have the right to vote on or consent to any matter that would cause it to participate in the control of the business within the meaning of the Act.

(c) Indemnification. The Partnership, its receiver or its trustee, shall indemnify and save harmless, to the maximum extent permitted by Hawaii law, the General Partner and its directors, officers or employees from any liability or damage incurred by any act performed or admitted to be performed by them, or in connection with the defense of any action based on any such act or omission (for which attorneys' fees may be paid or incurred), except that neither the General Partner nor its directors, officers or employees shall be indemnified against or relieved from any liability for fraud, willful neglect or gross negligence or a breach of any representation, warranty, covenant or agreement contained in this Agreement. Neither the General Partner nor any of its directors, officers or employees shall be liable for simple negligence. All judgments against the Partnership and the

General Partner in which the General Partner is entitled to indemnification be satisfied out of and to the extent of Partnership assets before the General Partner is responsible for the obligation.

(d) Competition Permitted. Any of the Partners, or any shareholder, officer, director, employee, affiliate or other person holding a legal or beneficial interest in any entity which is a Partner may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to development, rental or sale of real property; and neither the Partnership nor the Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom. Partners may engage and hold interests in other business ventures of every kind and description for their own account including, without limitation, other low- and moderate-income housing projects, whether or not such business ventures are in direct or indirect competition with the Project and whether or not the Partnership also has an interest therein.

(e) General Authority. The General Partner shall, except as otherwise provided in this Agreement, have all the rights and powers and shall be subject to all the restrictions and liabilities of a partner in a partnership without limited partners.

The General Partner shall at all times exercise its responsibilities in a fiduciary capacity, and in a

manner consistent with the objectives of the HCDA as set forth in HRS 206E.

(f) Project Management.

The General Partner, shall enter into an agreement for the property management and leasing of the Project, with a property manager having skill and experience sufficient to properly observe its obligations under such agreement. The General Partner shall diligently enforce all of the obligations of the manager thereunder and shall perform all of the Partnership's obligations as owner thereunder. Upon the termination of the management agreement or any subsequent management agreement, the General Partner shall renew the same or enter into an agreement having substantially similar managing agent obligations and owner remedies, with the same managing agent or another managing agent of at least comparable ability and experience who can reasonably be expected to perform at least as well. All management agreements shall contain specific provisions requiring the manager to rent to low-income tenants at the levels required to maintain the appropriate low-income set-aside requirement, to obtain prior written approval of the General Partner, on behalf of the Partnership, for any deviation from such levels, to keep records of such low-income rental and occupancy, and to prepare elections, certifications, and any other materials contemplated herein to the extent required to qualify for and maintain the Credits and any other available tax benefits in connection with such rental and occupancy.

(g) Management Reports.

The General Partner shall furnish or cause to be furnished to the Limited Partner in writing: (a) as soon as practicable after the end of each calendar year and in any event within ninety (90) days thereafter, a management report on the Project and any other Partnership affairs, containing such information as is reasonably necessary to advise the Limited Partner about its investment in the Partnership and the development or operation of the Project; and (b) upon request from time to time, such other information as may be reasonably requested by the Limited Partner with respect to the Partnership and the Project. Each of such reports shall be in such form and shall include at least such content as agreed upon by the General Partner and the Limited Partner or as may otherwise be agreed by them in writing from time to time.

(h) Tax Credit Requirements.

The General Partner acknowledges the importance to the Limited Partner's tax benefits, of achieving and maintaining the appropriate low-income set-aside requirement and agrees that it shall use best efforts to achieve and maintain such levels and otherwise operate the Project in such a manner as to maintain the qualification of the Project as a "qualified low-income housing project" under Code Section 42. The General Partner shall cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income levels of tenants,

set-aside for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the Credits and any other available tax benefits in connection with low-income occupancy of the Project. In the event at any time it becomes apparent that the tax benefits projected are not likely to be substantially realized, the General Partner shall promptly notify the Limited Partner of the circumstances. The General Partner shall elect the appropriate minimum low-income set-aside requirement within twelve (12) months after placement in service or such other time period as may hereafter be required by the Code or regulations thereunder for such tax credit; provided, however, that in the event it becomes reasonably certain that such set-aside either will not be met or will be exceeded, the General Partner shall promptly so notify the Partners in writing and shall proceed to elect such other minimum set-aside requirement as will best protect or enhance the projected tax benefits to the Partners under the circumstances. The General Partner shall certify compliance with the elected set-aside requirement and report the dollar amount of qualified basis, maximum applicable percentage and qualified basis under housing credit agency allocations, date of placement in service, and any other information required for the aforesaid tax credit within ninety (90) days after the end of the first taxable year for which such tax credit is claimed and for each taxable year thereafter during the compliance period for such credit, or such other time periods as may hereafter be required by the Code or regulations thereunder for

such tax credit. In addition, the General Partner shall use its best efforts to avoid any failure by the Partnership and the Project to satisfy and maintain the requirements for the Hawaii low-income housing credit.

(i) Liability to Partnership and Limited Partner.

The General Partner shall not be liable, responsible or accountable in damages or otherwise to the Partnership or the Limited Partner for any act performed by the General Partner in good faith and reasonably believed by it to be within the scope of the authority conferred on it by this Agreement and in the best interests of the Partnership, except for acts of willful neglect, gross negligence, fraud or breach of any representation, warranty, covenant or agreement herein contained.

(j) Insurance.

The General Partner shall use its best efforts to obtain the following types and amounts of insurance on the Project:

(i) An owner's policy of title insurance in an amount not less than all loans and Capital Contributions made or to be made to the Partnership but not exceeding insurable value, insuring good and marketable title to the leasehold estate and Building, subject to such exceptions as do not materially and adversely affect the value of the leasehold estate or Building or its intended use;

(ii) Property insurance in an amount equal to 100% of insurable replacement cost with an agreed amount endorsement, on an all-risk basis, including without limitation (a) fire, lighting, debris removal, windstorm, hail, aircraft and vehicle damage, riot and civil commotion, vandalism and malicious mischief, explosion, and smoke damage coverage, with (b) personal property coverage for building and contents owned by the Partnership, all subject to a maximum \$25,000 deductible amount, and also (c) rent loss insurance in an amount equal to annual rental income, on an actual loss-sustained basis with no monthly limitation;

(iii) Boiler and machinery insurance on a comprehensive form basis, including repair and replacement coverage and rent loss coverage meeting the requirements of subparagraph (ii)(c) hereinabove with mechanical breakdown extension;

(iv) Flood insurance, if the Project site is in a flood plain or is otherwise susceptible to flooding, covering the Building and its contents in such amounts and with such limitations as are prudent under the circumstances;

(v) Liability insurance on a broad form basis with a minimum combined single limit of \$1,000,000, including public liability, explosion/collapse/underground (x-c-u), and hired and non-owned automobile coverage;

(vi) Workers' compensation insurance in accordance with statutory requirements of the State of Hawaii

and employer's liability insurance in customary form and amounts, maintained by the Partnership if it has employees; and

(vii) Evidence of crime insurance or fidelity bonding of employees maintained by the manager, in an amount equal to not less than two (2) months rental income. The General Partner shall also obtain and maintain prudent and commercially reasonable insurance coverage over and above the minimum requirements specified hereinabove in the event circumstances warrant. All insurance policies shall be with reputable insurance carriers with a Best Key Rating of A or better (or equivalent rating if Best discontinues its present system), in form and content as specified herein and otherwise reasonable and customary. All policies and certificates thereof shall list the Partnership as a named insured and shall have sixty (60) days notice-of-cancellation clauses and shall list the Limited Partner as an additional named insured entitled to notice of cancellation, except under subparagraph (vi) hereinabove. In addition, the General Partner shall give the Limited Partners prompt written notice and a copy of any insurance cancellation notice received by it or the Partnership, and shall give the Limited Partner written evidence of renewals of all insurance required hereunder not later than ten (10) days prior to each expiration date. In the event hereafter there are exclusions, redefinitions, or other modifications by the insurance industry to any standard form of coverage specified hereinabove and such changes materially increase risks to the Partnership, the foregoing requirements

shall, to the extent feasible, be deemed to include the same coverage of such risks as presently required, and the General Partner shall obtain additional insurance coverage accordingly.

14. Rights and Powers of Limited Partner.

(a) No Control. The Limited Partner shall take no part in nor interfere in any manner with the control, conduct or operation of the Partnership and shall have no right or authority to act for or bind the Partnership.

(b) Consents. The Limited Partner's prior written consent shall be required for:

(i) Termination and dissolution of the Partnership;

(ii) Admission of a substitute General Partner;

(iii) Amendment of this Agreement; and

(iv) All matters set forth in this Agreement which expressly require the Limited Partner's prior written consent.

(c) Required Approvals. Matters in section 14(b)(i), (ii), (iii) and (iv) in support of which the Limited Partner's consent is required shall require the written consent of a majority in interest of all limited partners, except (i) admission of a substitute general partner; or (ii) any amendment to this Agreement or the Certificate which would (A) create liability as a general partner for Limited Partners, or (B) adversely affect the status of the Partnership as a partnership for federal income tax purposes; or (C) adversely

effect a Limited Partner's realization of the Credits contemplated by this Agreement; which matters shall require a unanimous written consent of all limited partners and the General Partner.

(d) Limitations Upon Rights. No Limited Partner shall have the right or power; except to the extent otherwise expressly set forth in this Agreement:

(i) To withdraw or reduce a Capital Contribution except as a result of the dissolution of the Partnership or to have any interest in the Partnership redeemed;

(ii) To bring an action for partition against the Partnership;

(iii) To demand or receive property other than cash in return for a Capital Contribution;

(iv) To have priority over any other Limited Partner as to the return of Capital Contributions or as to Allocations and Distributions of the Partnership; or

(v) To, or responsibility to, conduct the business or management of the affairs of the Partnership.

(e) Return of Capital Contributions. Other than in section 6(i) or upon the termination and dissolution of the Partnership, there has been no time agreed upon when the Capital Contribution of any Limited Partner is to be returned.

(f) Liability of Limited Partner. The Limited Partner shall not be obligated to provide any contributions to

the capital of the Partnership in addition to those specified in section 6 of this Agreement.

15. Dissolution of the Partnership.

(a) Events Causing Dissolution. The Partnership shall be dissolved upon the occurrence of the earliest of the following events:

(i) The adjudication of bankruptcy, insolvency of a sole General Partner or the involuntary dissolution of a sole General Partner;

(ii) A vote by Limited Partners holding a majority of the outstanding interest in the Partnership, with the concurrence of the General Partner;

(iii) The expiration of the term of the Partnership; or

(iv) The disposition pursuant to the terms of this Agreement of all assets of the Partnership except cash or short-term investment paper.

(b) No Liquidation. If the dissolution of the Partnership is caused by an event described in section 15(a)(i), the Partnership will not be liquidated if (i) the Limited Partners, acting pursuant to section 14(b)(ii), elect a new general partner, and (ii) the Partnership (or new general partner) purchases the interest of the General Partner.

(c) Liquidation. If the two events described in section 15(b) do not occur upon a dissolution caused by an event described in section 15(a)(i) or if a dissolution is caused by any event other than one described in section

15(a)(i), upon the dissolution of the Partnership, the General Partner shall take full account of the Partnership assets and liabilities, liquidate the assets as promptly as is consistent with obtaining fair value therefor, and apply and distribute the proceeds therefrom on or before the end of the taxable year of such Liquidation or, if later, within ninety (90) days after such Liquidation, in the following order:

(i) To the payment of creditors of the Partnership, excluding secured creditors whose obligations will be assumed, satisfied or otherwise transferred upon the Liquidation of Partnership assets (including costs and expenses of such sale or liquidation);

(ii) To the repayment of Credit Recovery Loans pursuant to section 6(i);

(iii) To the payment of any advances or loans and interest thereon to the Partnership made by any Partner;

(iv) To the Partners in an amount equal to the positive balance in each Partner's Capital Account as of the date of such distribution, as determined after taking into account all Capital Account adjustments for the Partnership taxable year during which such Liquidation occurs; and

(v) To the Partners in accordance with their share of Nonliquidating Distributions described in section 9(c) of this Agreement.

(d) Liquidation of a Partner's Interest.
Subject to the provisions of sections 10, 11 and 15,

Liquidating Distributions to a Partner upon the Liquidation of the Partner's interest in the Partnership shall be in an amount equal to the positive balance in such Partner's Capital Account, as determined after taking into account all Capital Account adjustments for the Partnership taxable year during which such Liquidation occurs, and shall be made by the end of such taxable year (or, if later, within ninety (90) days after the date of such Liquidation).

(e) Deficit Repayment Obligation. Upon the dissolution or Liquidation of the Partnership, or upon the Liquidation of the General Partner's interest in the Partnership, and if there shall then be a deficit balance in a General Partner's Capital Account, the General Partner shall contribute to the Partnership an amount equal to the deficit balance of the General Partner's Capital Account by the end of such taxable year (or, if later, within ninety (90) days after the date of such Liquidation); provided, however, that any such contribution shall be used to pay obligations of the Partnership including obligations, if any, to the Limited Partner created under section 6(i) for which the General Partner has personal liability, to the extent that any such obligations exist.

16. Representations and Warranties of the General Partner.

(a) The General Partner hereby represents and warrants to the Limited Partner that the following are true as of the date of the Limited Partner's initial Capital

Contribution and will be true on the due date for each additional Capital Contribution by the Limited Partner:

(i) The General Partner is a body corporate and a public instrumentality of the State of Hawaii and has all requisite power and authority (and has duly exercised such power and authority) to enter into this Agreement, and the Partnership is a duly organized limited partnership validly existing under the laws of the State of Hawaii and has complied with the filing requirements with proper governmental authority necessary to establish and maintain the good standing of the Partnership under the Act;

(ii) No litigation or proceeding against the Partnership or the General Partner (nor any other litigation or proceeding directly affecting the Project) has been brought or is pending before any court, administrative agency or other governmental authority which would, if adversely determined, have a material adverse effect on the Partnership, its business or operations, except for such matters as to which the likelihood of such a determination adverse to the Partnership is, in the opinion of counsel to the Partnership, remote;

(iii) (a) No default by the General Partner or the Partnership, in any material respect has occurred or is continuing (nor has there occurred, any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under the design/build contract, the Ground Lease of the Project site or

any other contract or agreement executed by the Partnership in respect of the Project; (b) all agreements necessary for the development of the Project at the time are in full force and effect (except to the extent fully performed in accordance with their respective terms) and free of material default by other parties thereto, and none of the Ground Lease, design/build contract or other agreements mentioned above have been amended without the Limited Partner's prior written consent to such amendment;

(iv) All building, zoning and other applicable certificates, permits and licenses necessary to permit the construction of improvements under construction, use, occupancy and operation of the Project have been obtained (other than prior to completion of the Project or a specified portion thereof, such as will be issued only after the completion of the Project or such specified portion thereof) and neither the Partnership nor the General Partner has received any notice or has any knowledge of any violation with respect to the Project of any law, rule, regulation, order or decree of any governmental authority having jurisdiction which would have a material adverse effect on the Project or the construction, use or occupancy thereof, except for violations which have been cured and notices or citations which have been withdrawn or set aside by the issuing agency (or by an order of a court of competent jurisdiction);

(v) The execution and delivery of all instruments and the performance of all acts heretofore or

hereafter made or taken or to be made or taken, pertaining to the Partnership or the Project by the General Partner or other party acting on behalf of the General Partner which is a corporation have been or will be duly authorized by all necessary corporate or other action, and the consummation of any such transactions with or on behalf of the Partnership will not constitute a breach or violation of, or a default under, the charter or bylaws or any such corporation or any agreement by which any such corporation or any of its properties is bound, nor constitute a violation of any law, administrative regulation or court decrees;

(vi) The General Partner is not in default in any material respect in the observance or performance of any provision of this Agreement to be observed or performed by the General Partner;

(vii) To the best of the General Partner's knowledge, the entire Project will qualify, on and after the date of substantial completion of the Project, as a "qualified low-income housing project" under Section 42(g) of the Code and all apartment units in the Project will qualify as "low-income" apartment units under Section 42 of the Code;

(viii) To the best of the General Partner's knowledge, no Hazardous Material (as that term is defined below) was ever or is now stored on (except to the extent any such storage was at all times in compliance with all laws, ordinances, and regulations pertaining thereto), transported, or disposed of on the Project site, except as heretofore

disclosed in Phase I environmental assessment report dated September 9, 1991 and prepared by Harding Lawson Associates in connection with the Project. The Project site is not and has not been a site or location for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, or transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under applicable environmental laws, ordinances or regulations (collectively, "Hazardous Materials") other than those Hazardous Materials described in the environmental report presented to applicable governmental authorities, which Hazardous Materials have been or will be abated to the extent required by such governmental authorities;

(ix) To the best of the General Partner's knowledge, the Project Development Budget attached hereto as Exhibit A, as it may be amended from time to time with the Limited Partner's prior written consent, accurately reflects by line item the currently estimated overall cost of the development of the Project; and

(x) No financial statement or certificate or other statement furnished to the Limited Partner by or on behalf of the General Partner in connection with the Project, and no representation or warranty herein contained, contains

any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading.

17. Arbitration.

Any controversy or claim arising out of this Agreement or the relationships of the Partners shall be settled by arbitration in Honolulu, Hawaii, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. Any Partner may notify the other Partners of the existence of such a claim or controversy and of the intention of the Partner to seek arbitration of that claim or controversy pursuant to this Section. The notice to the other Partners must include a concise statement of the facts which gave rise to the claim or controversy. Failure to provide the notice shall constitute a waiver of the claim. The decision of the arbitrators with respect to the claim or controversy shall be final and binding on all parties hereto. Judgment may be obtained upon the decision of the arbitrators in accordance with law. The cost of any such arbitration pursuant to this section shall be borne equally by the parties thereto unless a different allocation is set forth in this Agreement or determined by the arbitrators.

18. Miscellaneous.

(a) Notices. All notices under this Agreement shall be in writing and shall be given to Partners by personal service or by mail at the address maintained by the Partnership

for the Partner or at such other address as the Partner may specify in writing.

(b) Trial By Jury. The Parties hereby waive trial by jury in any action, proceeding or counterclaim brought by any party against any other party in any matter arising out of or in connection with the subject matter of this Agreement.

(c) Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such, or any other, covenant, agreement, term or condition. Any Partner, by notice pursuant to section 18(a) hereof, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, but shall not be under any duty, or obligation to alter the remainder of this Agreement and each and every covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach.

(d) Rights and Remedies. The rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the implementation of one or more of the provisions of this Agreement shall not preclude the implementation of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be

enforceable by specific performance, injunction or other equitable remedy but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threatened breach of any provision hereof, it being the intention by this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

(e) Separability. The invalidity of any provision hereof shall not affect the validity of the balance of this Agreement and the remaining provisions shall be enforced as if the invalid provisions were deleted.

(f) Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the original or the same counterpart.

(g) Authorization and Representation. Each Partner represents to the other and to the Partnership that it has been authorized to execute and deliver this Agreement and the Certificate of Limited Partnership through the officers signing on its behalf.

(h) Waiver of Partition. Each Partner hereby waives any right to partition of the Partnership property.

(i) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

(j) Approvals. Any approval or consent of the Parties required for any matter hereunder shall be in writing and shall not be unreasonably withheld or delayed unless otherwise indicated herein.

(k) No Party Deemed Drafter. The parties agree that no party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against any party as the drafter of the Agreement.

(l) Exhibits. All Exhibits to this document are incorporated herein by reference.

IN WITNESS WHEREOF, the Partners have executed this Agreement as of date first written above.

GENERAL PARTNER:

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY

By *Michael N. Hayfong*
Its

APPROVED AS TO FORM:

By *Malvin G. Nishimura*
Deputy Attorney General

LIMITED PARTNER:

BANK OF HAWAII

By *R. S. J. J. J.*
Its *Vice Chairman*

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS:
)

On this 14th day of NOVEMBER, 1991, before me personally appeared MICHAEL N. SCARFONE, Executive Director of the Hawaii Community Development Authority, State of Hawaii, to me known, to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed as such Executive Director.

Charlene A. Low

L.S.

Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: 09-14-95

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS:
)

On this 13th day of November, 1991, before me appeared Richard J. Dahl, to me personally known, who, being by me duly sworn, did say that he is Vice Chairman of Bank of Hawaii, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of such corporation, and that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors; and said Vice Chairman acknowledged that he executed such instrument as the free act and deed of such corporation.

Vs.

Henry M. Kanenaka
Notary Public, State of Hawaii

My commission expires: 7-14-95

EXHIBIT A

DEVELOPMENT BUDGET

Feasibility Studies	\$40,000
Design/Build Contract	6,588,000
Other Direct Costs	
Miscellaneous Consultants	25,000
Sewer Charges	125,000
Board of Water Supply	125,000
HECO/HTCO	80,000
Miscellaneous	49,000
Accounting & Legal	50,000
Contingency	593,000
Depreciable Basis	<u>\$7,675,000</u>
Partnership Formation Costs	15,000
OHA Land Settlement	125,000
Operating and Other Reserves	185,000
Total	<u><u>\$8,000,000</u></u>

EXHIBIT B

LIMITED PARTNER'S CAPITAL CONTRIBUTION

(Minus) - Agreed to Reserves + Agreed to Prepaid
Operating Expenses + Lease Premium or
Settlement + Organizational Costs the
total of all items Not to Exceed 8%

SUBTOTAL

(Multiplied By) x Agreed to Applicable Federal Rate

LIMITED PARTNER'S AVAILABLE BASIS

(Multiplied By) x 90%

LIMITED PARTNER'S ANNUAL FEDERAL CREDIT SUM

(Multiplied By) x 10

LIMITED PARTNER'S CUMULATIVE FEDERAL CREDIT SUM

EXHIBIT B

LIMITED PARTNER'S CAPITAL CONTRIBUTION

(Minus) - Agreed to Reserves + Agreed to Prepaid
 Operating Expenses + Lease Premium or
 Settlement + Organizational Costs the
 total of all items Not to Exceed 8%

SUBTOTAL

(Multiplied By) x [Agreed to Applicable Federal Rate x 30%]

LIMITED PARTNER'S AVAILABLE BASIS

(Multiplied By) x 90%

LIMITED PARTNER'S ANNUAL FEDERAL CREDIT SUM

(Multiplied By) x 10

LIMITED PARTNER'S CUMULATIVE STATE CREDIT SUM

EXHIBIT "C"

UNITED STATES DEPARTMENT OF JUSTICE

INVESTIGATION OF THE ACTS OF VIOLENCE
COMMITTED BY THE ORGANIZATION OF
THE BLACK PANTHER PARTY
IN THE CITY OF NEW YORK
ON 10/10/68

EXHIBIT "C"

REPORT OF THE NEW YORK CITY
POLICE DEPARTMENT
ON 10/10/68

NEW YORK CITY POLICE DEPARTMENT

REPORT OF THE NEW YORK CITY
POLICE DEPARTMENT

ON 10/10/68

REPORT OF THE NEW YORK CITY
POLICE DEPARTMENT

ON 10/10/68

JOHN WAIHEE
GOVERNOR



JOSEPH K. CONANT
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
HOUSING FINANCE AND DEVELOPMENT CORPORATION
SEVEN WATERFRONT PLAZA, SUITE 300
500 ALA MOANA BOULEVARD
HONOLULU, HAWAII 96813
FAX (808) 587-0600

IN REPLY REFER TO:

91:HF/4805

October 29, 1991

Mr. David Nakamura
Na Lei Hulu Kupuna Limited Partnership
Hawaii Community Development Authority
677 Ala Moana Boulevard, Suite 1001
Honolulu, HI 96813

Dear David:

SUBJECT: NA LEI HULU KUPUNA REGULATORY AGREEMENTS

This letter supercedes our previous letter to you dated October 18, 1991.

On September 13, 1991, the Board of Directors of the Housing Finance and Development Corporation approved the reservation of federal and state Low-Income Housing Tax Credits in an amount not to exceed \$936,000/year (combined) and \$250/month/unit in Rental Assistance for the Na Lei Hulu Kupuna project.

Pursuant to your request, outlined below is a summary of each of the three documents that will be executed with the partnership upon successful completion of the project. For your reference, a draft copy of each document is enclosed, along with a copy of the Rental Assistance Handbook.

1. Regulatory Agreement - Rental Assistance Program

This document prescribes the manner in which an Eligible Project is to be operated, the rental rates to be charged, the conditions under which distributions may be made from the Eligible Project to the Qualified Owner, and the conditions under which the Sharing of Appreciation would occur.

Some of the key points are as follows:

- (1) A Reserve Fund for Replacements shall be created for the purpose of replacing structural elements or equipment of the Eligible Project. This Fund shall be funded in the annual amount of six-tenths of one percent (0.6%) of the replacement cost of the Eligible Project.

Mr. David Nakamura
October 29, 1991
Page 2

- (2) Contract Rents shall be established with the written approval of the Corporation. No change shall be allowed to these rents without the written approval of the Corporation.
- (3) The maximum distribution of funds from the Eligible Project shall be no more than six percent (6%) of the Owner's Equity in the Eligible Project.
- (4) Sharing of Appreciation would be implemented upon any of the Actuator events listed on Page 9 of the Regulatory Agreement. The determination of the amount of appreciation would be determined as specified in the Rental Assistance Handbook on Pages 45-47.

2. Rental Assistance Contract - Rental Assistance Program

This document is the contractual agreement between the Corporation and a Qualified Owner which will set forth the terms and conditions relative to Rental Assistance Payments committed to the Eligible Project. The Regulatory Agreement shall be attached to the Rental Assistance Contract and made a part thereof.

Some of the key points are as follows:

- (1) The Maximum Commitment, Term of Contract and Effective Date of Contract shall be specified. Exhibits shall include the Contract Rents schedule, as-built drawings, and the tenant Lease Agreement. The tenant Lease Agreement may be modified only with the written approval of the Corporation.
- (2) The Qualified Owner shall submit monthly requests to the Corporation for Rental Assistance Payments, utilizing such forms as are deemed acceptable by the Corporation.
- (3) The Corporation or its agent shall inspect the Eligible Project annually.
- (4) The Qualified Owner shall be responsible for the determination of the eligibility of applicants, and shall recertify the Household Income and family size of each tenant occupying an Assisted Unit at least annually.

All language referring to a Mortgage in these two documents shall remain intact, as it is possible the partnership could take a Mortgage on the Eligible Project at some point in the future. All capitalized words and terms used herein which are defined in the Rental Assistance Handbook shall have the respective meanings given to them in the Handbook.

Mr. David Nakamura
October 29, 1991
Page 3

3. Declaration of Land Use Restrictive Covenants - Low-Income Housing Tax Credit Program

This Declaration promotes long-term use of a low-income housing tax credit project. This document must be recorded against the property as a restrictive covenant.

Some of the key points as required by Section 42 of the Internal Revenue Code are as follows:

- (1) The applicable fraction (the percentage of units set-aside for low-income tenants) shall at no time be less than as stated in the Declaration.
- (2) The right to enforce in any State court the requirement stated above regarding the applicable fraction shall be granted to prospective, present or former occupants of the Project who meet the income limitation.
- (3) The disposition to any person of any portion of the building to which such Declaration applies is prohibited unless the entire building is being disposed of to such individual.
- (4) The Declaration is binding on all successors of the partnership.
- (5) The Declaration must be recorded pursuant to State law as a restrictive covenant on the property.
- (6) The determination of whether a tenant meets the low-income requirements shall be made by the Owner at least annually.

We do not anticipate any material changes to these documents prior to their execution with the Na Lei Hulu Kupuna Limited Partnership; however, we cannot guarantee that there will be no amendments made to the documents.

Should you have any questions, please contact me at 587-0574.

Sincerely,



Scott A. Kami
Manager, Multi-Family Programs

DBS:nl

Enclosures

1. The purpose of this report is to provide a summary of the results of the investigation conducted by the Committee on the activities of the Communist Party, U.S.A., in the field of labor relations.

2. The investigation was conducted in accordance with the provisions of the Smith Act, which requires the Committee to report on the activities of the Communist Party, U.S.A., in the field of labor relations.

3. The results of the investigation are as follows:

(a) The investigation has revealed that the Communist Party, U.S.A., has been active in the field of labor relations for many years.

(b) The investigation has revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many states.

(c) The investigation has revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many industries.

(d) The investigation has revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many organizations.

(e) The investigation has revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many countries.

(f) The investigation has revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many ways.

4. The investigation has also revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many other ways.

5. The investigation has also revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many other ways.

6. The investigation has also revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many other ways.

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10. The investigation has also revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many other ways.

11. The investigation has also revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many other ways.

12. The investigation has also revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many other ways.

13. The investigation has also revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many other ways.

14. The investigation has also revealed that the Communist Party, U.S.A., has been active in the field of labor relations in many other ways.

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL () PICKUP ()

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT is made this _____ day of _____, 19____, by and between the HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii (hereinafter called the "Corporation") and _____, whose address is _____,

its successors, personal representatives, heirs, and assigns (jointly and severally, hereinafter referred to as the "Qualified Owner").

W I T N E S S E T H:

WHEREAS, the Qualified Owner has developed, owns and operates a multifamily rental housing project known as _____ (hereinafter called the "Eligible Project") on that certain parcel of real property more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, pursuant to that certain Rental Assistance Contract of even date herewith, the Corporation agrees to provide Rental Assistance Payments to the Eligible Project under the provisions of Chapter 201E, Part II, Hawaii Revised Statutes, (Rental Assistance Program); and

WHEREAS, pursuant to the Rental Assistance Contract and as a condition for Rental Assistance Payments, the Qualified Owner agrees for itself, its successors, heirs, and assigns, that the real property described in Exhibit A and the Eligible Project, including all Assisted Units, operated thereon, shall be regulated by this Regulatory Agreement which shall be attached to the Rental Assistance Contract and made a part thereof.

NOW THEREFORE, in consideration of these premises, the parties mutually agree as follows:

1. The Qualified Owner shall promptly make all payments due under the Note and Mortgage, as they are herein defined, in accordance with the terms and conditions thereof;

2. (a) The Qualified Owner shall establish or continue to maintain a Reserve Fund for Replacements by the allocation to such reserve fund in a safe, responsible and federally insured depository approved by the Corporation, concurrently with the beginning of payments toward amortization of the principal of the Mortgage Loan, an amount equal to \$_____ per month unless a different date or amount is approved in writing by the Corporation.

Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America, shall at all times be under the sole control of the Mortgagee or such other entity approved by the Corporation. Disbursements from such fund may be made only after receiving the written approval of the Corporation.

(b) The Qualified Owner shall, to the extent such sums may be available, establish and maintain, in addition to the Reserve Fund for Replacements, a Residual Receipts fund by depositing thereto, with a safe, responsible and federally insured depository approved by the Corporation, the Residual Receipts, within ninety (90) days after the end of the annual fiscal period within which such receipts are realized. Residual Receipts shall be under the control of the Mortgagee, or such other entity approved by the Corporation. Disbursements from such fund may be made only after receiving the written approval of the Corporation.

(c) In the event of a default in any of the terms of the Mortgage, the Corporation may authorize the application of the balances in the Reserve Fund for Replacements and the Residual Receipts fund to cure a monetary default, or, where the Mortgage Loan has been accelerated, to the amount due on the Mortgage Loan as accelerated.

(d) The Qualified Owner shall prepare and submit to the Corporation a management plan pursuant to which the Qualified Owner shall detail all aspects of the management and maintenance for the Eligible Project. The management plan shall cover without limitation the following:

(i) Define the role and responsibility of the Qualified Owner and the manner in which Qualified Owner's authority to operate and manage the Eligible Project may be delegated to, for example, a resident manager or management agent;

(ii) Establish personnel policy and staffing arrangements.

(iii) Establish plans for carrying out an effective maintenance and repair program which shall be subject to the Corporation's approval.

(iv) Establish procedures for determining Tenant eligibility and for certifying and recertifying Tenant Household Income in connection with qualifying for Rental Assistance Payments.

In this connection, the Qualified Owner agrees that the Corporation may conduct a management audit of the Eligible Project at least once every twelve (12) months. The Qualified Owner further agrees to carry out or observe such reasonable requirements that the Corporation may recommend under the management audit.

3. (a) The Qualified Owner shall make dwelling accommodations available to Tenants at Contract Rents not exceeding those established in accordance with the Rental Schedule approved in writing by the Corporation. There shall be no deviation from or change in the Rental Schedule without the express written approval of the Corporation.

(b) Accommodations shall not be leased for periods of less than twelve (12) months. Subleasing of dwelling accommodations shall be prohibited and any Lease Agreement shall so provide. Upon discovery of any sublease, the Qualified Owner shall immediately demand cancellation and notify the Corporation thereof.

(c) Upon prior written approval by the Corporation, the Qualified Owner may charge to and receive from any Tenant fees for services, supplies or materials which may be furnished by the Qualified Owner or others to such Tenant upon the Tenant's request, in addition to the facilities and services included in the approved Rental Schedule.

(d) The Qualified Owner may periodically request the Corporation entertain a written request for an increase in Contract Rents covering the dwelling units properly supported by financial statements and other substantiating evidence. Adjustments to the

Rental Schedule necessary to compensate for increases, occurring since the last approved rental schedule, in real property taxes, utility rates and other costs over which the Qualified Owner has no effective control may be granted or disapproved by the Corporation as provided in the Rental Assistance Contract. In the event that the evidence presented indicates that the current Contract Rents are excessive, the Corporation may require a reduction of said Contract Rents.

4. (a) The Qualified Owner shall ensure that at least twenty percent (20%) of the dwelling units of the Eligible Project shall at all times be occupied by and/or made available for occupancy by individuals and families of Low and Moderate Income.

(b) The Qualified Owner shall accept qualified tenant to be placed on a waiting list or admitted to the Eligible Project. No preference or priority of occupancy shall be granted to any party except to the extent that units are required to be leased to Eligible Tenants. No party related to the Qualified Owner shall occupy any unit in the Eligible Project without the prior consent of the Corporation.

5. The Qualified Owner shall not without the prior written approval of the Corporation:

(a) Convey, transfer, or encumber any of the Mortgaged Property, or permit the sale, pledge, assignment, conveyance, transfer or encumbrance of such property;

(b) Assign, transfer, dispose of, or encumber any personal property of the Eligible Project, including rents, or pay out any funds, other than from Surplus Cash, except for reasonable operating expenses and necessary repairs;

(c) Convey, assign, or transfer any right to manage or receive the rents and profits from the Mortgaged Property;

(d) Remodel, add to, reconstruct, or demolish any part of the Mortgaged Property or subtract from any real or personal property of the Eligible Project;

(e) Make, or receive and retain, any Distribution of assets or any income of any kind of the Eligible Project. Distributions shall only be made from Surplus Cash and on the following conditions:

(i) All Distributions shall be made only as of or after the end of the annual fiscal period, and only as permitted pursuant to paragraph 5(e)(v) below;

(ii) No Distribution shall be made from borrowed funds or prior to the completion of the Eligible Project or when there is any Default under this Regulatory Agreement, the Rental Assistance Contract or under the Note or Mortgage;

(iii) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the Eligible Project;

(iv) The maximum Distribution that may be made to the Qualified Owner shall be six percent (6%) of the Owner's Equity in the Eligible Project during the term of the Rental Assistance Contract and this Regulatory Agreement, which Distribution may be cumulative and fundable out of Residual Receipts;

(v) No Distribution of cash or assets shall be made which violates any of the terms or provisions of this Regulatory Agreement.

(f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the Eligible Project.

(g) Require, as a condition of the occupancy or leasing of any unit in the Eligible Project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of the first month's rent. Any funds collected as security deposits shall be kept separate and apart from all other funds of the Eligible Project in a federally insured trust account, the amount of which must at all times equal or exceed the aggregate of all outstanding obligations under said account.

(h) Permit the use of the dwelling accommodations of the Eligible Project for any purpose except the use which was originally intended.

6. The Qualified Owner shall maintain the Mortgaged Property, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the Mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the Mortgage.

7. The Qualified Owner shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors or permit an adjudication in bankruptcy, the taking possession of the Mortgaged Property or any part thereof by a receiver, or the seizure and sale of the Mortgaged Property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within forty-five (45) days.

8. (a) The Qualified Owner shall provide for the management of the Eligible Project in a manner satisfactory to the Corporation. Any management contract entered into by the Qualified

Owner involving the Eligible Project shall contain a provision that it shall be subject to termination, without penalty and with cause, upon written request by the Corporation addressed to the Qualified Owner. For purposes of the preceding sentence, "cause" shall be deemed to mean the managing agent's criminal act, fraud, negligence, willful misconduct, any other breach of its fiduciary duty as the managing agent or the commission of or of the failure to prevent waste to the Eligible Project as a result of the managing agent's actions or inactions. Upon receipt of such request, the Qualified Owner shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Corporation for continuing proper management of the Eligible Project.

(b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies or materials in the area where the services are rendered or the supplies or materials furnished.

(c) The Mortgaged Property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the Corporation or its duly authorized agents. The Qualified Owner shall keep copies of all written contracts and other instruments which affect the Mortgaged Property, all or any part of which may be subject to inspection and examination by the Corporation or its duly authorized agents.

(d) The books and accounts of the operations of the of the Mortgaged Property and of the Eligible Project shall be kept in accordance with generally accepted accounting principles.

(e) Within sixty (60) days following the end of each fiscal year the Qualified Owner shall furnish the Corporation with a complete annual financial report of the Eligible Project based upon an examination of the books and records of the Qualified Owner prepared in accordance with generally accepted accounting principles certified to by the Qualified Owner and prepared and certified by a certified public accountant, or other person acceptable to the Corporation.

(f) At the request of the Corporation, its agents, or employees, the Qualified Owner agrees to timely provide to the Corporation copies of (i) an annual operating budget for the Eligible Project, (ii) monthly operating statements for the Eligible Project and (iii) monthly reports of vacancies in dwelling units and delinquencies in rental payments by Tenants. Furthermore, the Qualified Owner agrees to give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, or condition of the property.

(g) All rental income and other receipts of the Eligible Project shall be deposited in the name of the Eligible Project in a financial institution whose deposits are federally insured. Such funds shall be withdrawn only in accordance with the provisions of this Regulatory Agreement for expenses of the Eligible Project or for Distributions of Surplus Cash as limited by paragraph 5(e) above. Any Qualified Owner receiving funds of the Eligible Project other than by such Distribution of Surplus Cash shall immediately deposit such funds in the Eligible Project bank account and failing so to do in violation of this Regulatory Agreement shall hold such funds in trust. Any Qualified Owner receiving property of the Eligible Project in violation of this Regulatory Agreement shall immediately deliver such property to the Eligible Project and failing so to do shall hold such property in trust. At such time the Qualified Owner shall have lost control and/or possession of the Eligible Project, all funds held in trust shall be delivered to the court appointed receiver or the Mortgagee to the extent that the Mortgage Loan has not been satisfied.

(h) The Qualified Owner shall at all times maintain in full force and effect insurance for liability, fire, property damage and such other insurance coverage as the Mortgagee may require and submit annually to the Corporation certificates of insurance to verify such continued coverage. Insurance contracts must provide that the insurer shall not terminate or cancel such insurance contracts without giving the Mortgagee not less than thirty (30) day's prior notice.

9. The Qualified Owner shall comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, or national origin.

10. The Qualified Owner agrees to notify the Corporation writing within forty-five (45) days of the occurrence of a monetary default or a nonmonetary default under this Regulatory Agreement, the Rental Assistance Contract or under the Note or Mortgage. The Qualified Owner shall also notify the Corporation in writing within ten (10) days of the pendency of any legal proceeding against the Qualified Owner of which the Qualified Owner has knowledge. After either a notice of nonmonetary default or a notice of monetary default has been given, the Qualified Owner shall submit monthly default status reports to the Corporation until a claim for loss is submitted or the default has been cured.

11. Upon a violation of any of the above provisions of this Regulatory Agreement by the Qualified Owner, the Corporation shall give written notice thereof to the Qualified Owner by registered or certified mail addressed to the address stated in this Regulatory Agreement or such other address as may subsequently, upon appropriate written notice thereof to the Corporation designated by the Qualified Owner as the Qualified Owner's legal business address. If such violation is not corrected to the satisfaction of the Corporation within thirty (30) days after the

date such notice is mailed, without further notice the Corporation may declare Default under this Regulatory Agreement effective on the date of such declaration for Default unless the Qualified Owner provides evidence to the Corporation that the Qualified Owner is diligently and timely attempting to remove, correct or cure such violation. Upon such Default the Corporation may:

(a) Declare a default under the Rental Assistance Contract and abate rental assistance payments in whole or in part.

(b) Apply to any court, State or Federal, for specific performance of this Regulatory Agreement, for an injunction against any violation of this Regulatory Agreement, for the appointment of a receiver to take over and operate the Eligible Project in accordance with the terms of the Regulatory Agreement, or for such other relief as may be appropriate, since the injury to the Corporation arising from a Default under any of the terms of this Regulatory Agreement would be irreparable and the amount of damage would be difficult to ascertain.

12. Unless specifically defined herein or unless the context shall clearly indicate some other meaning, for all purposes of this Regulatory Agreement the words and terms used in this Regulatory Agreement which are defined in the Handbook for the Rental Assistance Program shall have the respective meaning given to them in the Handbook:

(a) "Default" means a default declared by the Corporation when a violation of this Regulatory Agreement is not corrected to the satisfaction of the Corporation within the time allowed by this Regulatory Agreement or such further time as may be allowed by the Corporation after written notice;

(b) "Mortgage" means the mortgage and security agreement and any other security for the Note;

(c) "Note" means the promissory note providing the permanent financing for the Eligible Project and secured by a valid first lien on the Eligible Project.

13. This instrument shall bind, and the benefits shall inure to, the Qualified Owner, the Qualified Owner's heirs, personal representatives, executors, administrators, successors, in office or interest, and assigns, and to the Corporation its successors so long as the Corporation shall provide Rental Assistance Payments to the Eligible Project in accordance with the Rental Assistance Contract referred to herein.

14. The Qualified Owner warrants that the Qualified Owner has not, and shall not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

15. The Qualified Owner shall pay to the Corporation upon demand all costs and expenses, including reasonable attorney's fees, incurred by the Corporation in enforcing any of the Qualified Owner's warranties, agreements, obligations, terms and conditions herein contained, and in remedying any breach thereof.

16. The Qualified Owner does not assume personal liability for payments to the Reserve Fund for Replacements, or for matters not under its control, provided the Qualified Owner shall remain liable under this Regulatory Agreement with respect to the following matters:

(a) For funds or property of the Eligible Project coming into its hands which, by the provisions hereof, it is not entitled to retain; and

(b) For its own acts and deeds or acts and deeds of others which it has authorized in violation of the provisions hereof.

17. In accordance with Chapter 201E Part II, HRS (Rental Assistance Program), the Qualified Owner agrees that upon the occurrence of any of the following events, the appreciation in the value of the Eligible Project shall be shared between the Qualified Owner and the Corporation:

(a) Termination of the Rental Assistance Contract;

(b) The sale, transfer or assignment of the Eligible Project to a subsequent owner;

(c) The sale, transfer or assignment of a Substantial Interest in the ownership entity for the Eligible Project; or

(d) A refinancing or prepayment of the Mortgage Loan.

Upon the occurrence of any of the foregoing events, the Qualified Owner shall pay any deferred amounts due the Corporation and the Corporation's share of the Eligible Project's Net Appreciation. The sharing of the Net Appreciation shall be based upon the ratio of the Owner's Equity in the Eligible Project to the aggregate value of the discounted Rental Assistance Payments made by the Corporation to the accordance with Chapter 201E Part II, HRS (Rental Assistance Program). The sums due or to become due hereunder shall constitute a lien and charge on the Eligible Project, including the proceeds from the sale or transfer of the Eligible Project.

18. All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when mailed by certified mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

Corporation: Housing Finance & Development Corporation
Seven Waterfront Plaza, Suite 300
500 Ala Moana Blvd.
Honolulu, HI 96813
FAX: (808) 587-0600

Qualified Owner: _____

Attn: _____

19. The invalidity of any clause, part or provision of this Regulatory Agreement shall not effect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first hereinabove written.

APPROVED AS TO FORM:

HOUSING FINANCE AND DEVELOPMENT
CORPORATION

Deputy Attorney General
State of Hawaii

By: _____ (SEAL)
Its

By: _____ (SEAL)
Its

By: _____
Its

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STATE OF HAWAII

COUNTY OF _____

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ss.

On this _____ day of _____, 19____,
before me personally appeared _____, the
_____ of _____, a
_____, to me known to be the person
described in and who executed the foregoing instrument and
acknowledged that he/she executed the same as his free act and deed
as such _____.

Notary Public, State of Hawaii

My commission expires _____

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "**Agreement**") is made this March 30, 2015 (the "**Effective Date**"), by and between the **NA LEI HULU KUPUNA LIMITED PARTNERSHIP**, a Hawaii limited partnership, whose address is 461 Cooke Street, Honolulu, Hawaii 96813-5415 ("**Seller**") and **MARK DEVELOPMENT INC.**, a Hawaii corporation, whose address is 3165 Waialae Avenue, Suite 200, Honolulu, Hawaii 96816 ("**Buyer**").

Seller and Buyer hereby agree as follows:

1. Definitions. The following terms shall have the following definitions in this Agreement:

(a) "**Assignment**": A limited warranty assignment of sublease is to be used by Seller to convey the Property to Buyer.

(b) "**Bureau**": The Bureau of Conveyances of the State of Hawaii.

(c) "**Closing**" or "**Closing Date**": September 29, 2015, being the time and date when the Assignment is recorded, as described in **Section 15**, which shall occur no later than one hundred twenty (120) days after the expiration of the Due Diligence Period; provided, however, Buyer shall have the one-time right to extend the Closing Date for up to nine (9) months by written notice to Seller not later than thirty (30) business days prior to the scheduled Closing Date.

(d) "**Escrow Agent**": Title Guaranty Escrow Services, Inc. — Main Branch.

(e) "**Event of Default**": Any of the events of default described in **Section 17**.

(f) "**Hazardous Materials**": Any flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproduction toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any Hazardous Materials Laws.

(g) "**Hazardous Materials Laws**": Any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Property.

(h) "**HHFDC**": Hawaii Housing Finance and Development Corporation, formerly known as Housing Finance and Development Corporation.

(i) "**Land**": Those certain parcels of land having an address of 610 Cooke Street, Honolulu, Hawaii 96813 and bearing Tax Map Key Nos. (1) 2-1-051:004 and 038, as more particularly described in the Title Report.

(j) **"Lease"**: That certain Lease for a portion of the Land (as described in the Lease Agreement), by and between the City and County of Honolulu as Lessor and HHFDC as Lessee, dated November 14, 1991, and recorded in the Bureau as Document No. 91-169300.

(k) **"Property"**: Seller's leasehold interest in the Land demised by the Sub-Lease, subject to the Lease, encumbrances of record as described in the Title Report, any recorded and unrecorded tenant leases, licenses and agreements affecting the leasehold interest, and other encumbrances or restrictions disclosed by Seller to Buyer.

(l) **"Purchase Price"**: The sum of **Two Million Eight Hundred Sixty Nine Thousand Dollars (\$2,869,000)**.

(m) **"Sub-Lease"**: That certain Sub-Lease demising the Land, by and between HHFDC as Sublessor, and Seller as Sublessee, dated December 6, 1991, and recorded in the Bureau as Document No. 91-170018.

(n) **"Title Report"**: The preliminary report of title for the Property issued by Title Guaranty of Hawaii, Inc., attached hereto and made a part hereof as **Exhibit A**.

2. Purchase of Property. Seller hereby agrees to sell the Property to Buyer and Buyer hereby agrees to purchase the Property from Seller at the Purchase Price and on the terms, covenants and conditions set forth in this Agreement.

3. Escrow. Seller shall open an escrow with Escrow Agent within two (2) business days after the Effective Date and deliver to Escrow Agent an executed copy of this Agreement. The parties hereby instruct Escrow Agent to act in accordance with the terms of this Agreement. Buyer and Seller shall execute such further escrow instructions as may be required by Escrow Agent to consummate the transactions contemplated by this Agreement, but in the event of any conflict between the provisions of such escrow instructions and this Agreement, the provisions of this Agreement shall control.

4. Due Diligence.

(a) **Due Diligence Period.** Buyer shall have a period of sixty (60) calendar days following the Effective Date (the **"Due Diligence Period"**) to conduct or have its agents conduct such reasonable inspections, investigations, research, inquiry, testing and reports (**"Due Diligence"**) at Buyer's sole cost and expense as Buyer deems necessary or appropriate in connection with Buyer's purchase of the Property. Buyer's Due Diligence shall be subject to such conditions as Seller may require, including without limitation, restrictions on when, where, and what type of physical inspections of the Property may take place.

(b) **Due Diligence Materials; Necessity of Buyer's Own Due Diligence.** During the Due Diligence Period, Seller shall make available in electronic form and/or at Seller's offices or other location in Honolulu designated by Seller for inspection or review by Buyer and its representatives and consultants, copies of such records and contracts in Seller's possession relating to the construction, maintenance, operation and servicing of the Property, if any, but specifically excluding any internal materials (such as staff reports, appraisals, internal communications) or other materials that might be subject to attorney client privilege or work

product (the "**Due Diligence Materials**"). The Due Diligence Materials are provided by Seller for inspection or review by Buyer on a strictly "AS IS" and "WHERE IS" basis. Buyer is required to conduct its Own due diligence investigation of the Property.

(c) **Due Diligence Cut-Off.** Buyer may, at any time prior to 4:00 P.M. (Hawaii Standard Time) on the last day of the Due Diligence Period (the "**Due Diligence Cut-Off**"), cancel this Agreement by sending notice to Seller pursuant to **Section 18(h)** hereof if Buyer wishes to cancel for any reason. If Buyer properly cancels this Agreement, both Buyer and Seller shall be released from all further obligations hereunder other than their respective obligations that specifically survive any cancellation or termination of this Agreement. If Buyer cancels this Agreement as described herein or this Agreement is terminated for any reason, Buyer shall thereafter return to Seller all materials, including copies thereof, provided to Buyer by Seller during the Due Diligence Period and copies of all of Buyer's Due Diligence materials in Buyer's possession. If Buyer fails to give Seller the proper cancellation notice as set forth herein, Buyer shall be deemed to have waived its right to cancel and may not cancel this Agreement pursuant to this **Section 4(c)**.

(d) **Due Diligence Costs and Indemnity.** Buyer shall pay all costs, expenses or charges incurred by Buyer in its performance of any and all of the Due Diligence. Buyer agrees to indemnify, defend and hold harmless Seller and Seller's trustees, employees, representatives and agents from any actions, suits, liens, claims, damages, expenses, losses and liability for damage to any real or personal property or personal injury to the extent arising from or attributable to any acts performed by Buyer or any of Buyer's directors, officers, employees, representatives, consultants or agents with respect to Buyer's entry upon and inspection of the Property or exercise of its rights hereunder, including without limitation, reasonable attorneys' fees and costs. Buyer shall also be solely responsible for, and shall remedy and repair, any and all physical damage to the Property which may be caused by Buyer's physical inspections and tests performed by Buyer. If Buyer (1) does not elect to proceed with the purchase of the Property as provided herein, or (2) elects to purchase the Property but the Property is not conveyed to Buyer for any reason other than the default of Seller, Buyer shall cause the Property to be returned to substantially the same condition as it was prior to any testing done on or with respect to the Property. The terms of this **Section 4(d)** shall survive the Closing and the cancellation or termination of this Agreement.

5. Sale of Property "AS IS," "WHERE IS". Buyer understands and acknowledges that the Property is being sold, and agrees to purchase the Property, in "AS IS," "WHERE IS" condition, and "WITH ALL FAULTS AND DEFECTS" with no representations or warranties by Seller and no performance of any obligations by Seller after the Closing.

(a) **No Representations or Warranties by Seller.** Except as otherwise provided herein, Seller makes no representations or warranties with respect to the Property, whether express or implied. The Property is being sold in its existing condition and subject to the terms and conditions of the Lease. Further, Seller has not made any representations or warranties concerning any increase in the value of the Property, its investment value, or its resale value. Buyer acknowledges that neither Seller nor any agent, attorney, employee or representative of Seller has made or will make any such representations or warranties whatsoever regarding the Property or the subject matter of this Agreement, or any part thereof.

(b) **Buyer's Reliance Solely on Its Due Diligence.** Buyer hereby represents and warrants to Seller that Buyer will know, will have examined, and will have investigated, to the full and complete satisfaction of Buyer, the physical nature and condition of the Property, or Buyer will have waived such knowledge, examination and investigation. Specifically, if Buyer proceeds after the Due Diligence Period, Buyer agrees it has made or caused to be made all inspections, investigations and analyses deemed necessary or appropriate with respect to compliance of the Property with all health and environmental laws, Hazardous Materials Laws, and regulations, and Seller makes no representations or warranties, express or implied, concerning the Property's compliance with said applicable laws. Buyer agrees that Buyer has relied and will be relying solely on Buyer's own inspection, examination, investigation, and review of all aspects of the Property with respect to all of the foregoing matters.

(c) **Buyer's Assumption of Risk and Release of Seller.** Buyer accepts and assumes all risks with respect to the Property, and hereby releases and forever discharges Seller from and against any and all suits, administrative proceedings, claims, demands, causes of action, damages, consequential damages, losses, costs, and expenses of any kind arising from or in connection with Buyer's due diligence and subsequent purchase of the Property, if applicable.

(d) **Buyer's Indemnity.** Buyer shall indemnify, defend and hold harmless Seller from and against any and all claims, demands, actions, losses, damages, penalties, liabilities, costs and expenses for loss or damage, including attorneys' fees and costs, based upon or arising out of or in connection with: (1) Buyer's breach of this Agreement; (2) Buyer's or its consultants' performance of due diligence, including but not limited to, Buyer or its consultants' entry upon the Property for investigations, inspections and tests; (3) any other act or omission in an way relating to or arising out of this Agreement (collectively, "Covered Claims"). This provision shall survive the termination of this Agreement.

6. **Title Report.** The Title Report dated July 17, 2014 is attached hereto and made a part hereof as **Exhibit A**. Seller shall have no obligation to remedy, cure or resolve any matter disclosed by the Title Report and conveyance of the Property will be made subject to the Lease and any matters disclosed by the Title Report. The Property will also be conveyed subject to any and all encumbrances that may affect the Lease.

7. **Seller Representations.** Seller makes the following representations and warranties to Buyer, which representations and warranties are true and correct as of the Effective Date and will be true as of the Closing. Except as otherwise provided in this Agreement, Seller makes no other representations or warranties whatsoever, and none shall be implied with respect to the Property.

(a) Seller is not a "foreign person" as that term is used Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, nor a "nonresident person" as that term is used in Section 235-68, Hawaii Revised Statutes, as amended, and related regulations.

(b) Seller is duly formed and validly existing, and has all requisite power and authority to enter into this Agreement and consummate the transaction contemplated hereby in accordance with the terms hereof.

(c) All documents to be executed by Seller pursuant to this Agreement are, and at Closing will be: (1) duly authorized, executed and delivered by Seller; (2) legal, valid and binding obligations of Seller; and (3) not in violation of the terms of any agreement or undertaking to which Seller is a party or by which Seller is bound or otherwise subject.

8. Buyer Representations. Buyer makes the following representations and warranties to Seller, which representations and warranties are true and correct as of the Effective Date and will be true as of the date of Closing. Except as otherwise provided in this Agreement, Buyer makes no other representations or warranties whatsoever, and none shall be implied with respect to the Property:

(a) Buyer is duly formed and validly existing, and has all requisite power and authority to enter into this Agreement and consummate the transaction contemplated hereby in accordance with the terms hereof.

(b) All documents to be executed by Buyer pursuant to this Agreement are, and at Closing will be: (1) duly authorized, executed and delivered by Buyer; (2) legal, valid and binding obligations of Buyer; and (3) not in violation of the terms of any agreement or undertaking to which Buyer is a party or by which Buyer is bound or otherwise subject.

9. Closing Obligations.

(a) **Seller's Closing Obligations.** On or before 3:00 P.M. on the day which is three business days before the Closing Date, Seller shall:

(1) Deliver to Escrow Agent the following: (i) two (2) original counterparts of the Assignment and all other documents necessary to consummate the transactions contemplated by this Agreement, executed and notarized by Seller; (ii) Seller's closing costs and prorations as provided herein; (iii) a Conveyance Tax Certificate for the Property executed by Seller; and (iv) written certifications in compliance with both the federal Foreign Investment in Real Property Tax Act and the Hawaii Real Property Tax Act; and

(2) Perform and satisfy, or cause to be performed and satisfied, all other obligations and conditions on the part of Seller to be performed or satisfied as of the Closing Date under this Agreement.

(b) **Buyer's Closing Obligations.** On or before 3:00 P.M. on the day which is three (3) business days before the Closing Date, Buyer shall.

(1) Deposit with Escrow Agent sufficient cash to cover the Purchase Price and Buyer's prorations and closing costs described herein;

(2) Execute and acknowledge the Assignment and all other documents necessary to consummate the transactions contemplated by this Agreement; and

(3) Perform and satisfy, or cause to be performed and satisfied, all other obligations and conditions on the part of Buyer to be performed or satisfied as of the Closing Date under this Agreement.

(c) **Buyer's Pre-Closing Obligations.** Seller may terminate this Agreement if Buyer does not satisfy the following Pre-Closing Obligations within thirty (30) days following the end of the Due Diligence Cut-Off:

(1) Buyer shall provide Seller with evidence, reasonably satisfactory to Seller, that Buyer has applied to HHFDC for the allocation of federal and Hawaii low income housing tax credits in the amount of at least \$385,351 per year, for the acquisition and rehabilitation of the Property;

(2) Buyer shall provide Seller with evidence, reasonably satisfactory to Seller, that Buyer has applied to HHFDC and RHTF for the appropriate financing for Buyer's acquisition of the Property and for Buyer's substantial rehabilitation of the interior and exterior of the Property as described in Buyer's letter dated September 30, 2014; and

(3) Buyer shall provide Seller with evidence, reasonably satisfactory to Seller that Buyer has applied to HHFDC for an extension of the term of the Sublease and HHFDC has applied to the City & County of Honolulu for an extension of the term of the Lease to at least December 31, 2070.

10. Buyer's Conditions to Closing. Buyer's obligation to purchase the Property hereunder shall be subject to the satisfaction of the following conditions (collectively, "**Buyer's Conditions**"):

(a) All covenants and agreements made by Seller which are to be completed on or before Closing shall have been performed in all material respects;

(b) Seller has performed Seller's Closing Obligations as set forth in **Section 9(a)** in all material respects;

(c) Buyer has received an allocation of low income housing tax credits sufficient to raise \$3,853,512 in equity for the rehabilitation of the Property;

(d) The term of the Lease and Sublease shall have been extended to December 31, 2070 at no cost or expense to Seller;

(e) All representations and warranties made in this Agreement by Seller shall be true and correct in all material respects at the time made and as of the Closing Date.

11. Failure of Buyer's Conditions. In the event that any of Buyer's Conditions are not satisfied on or before the Closing Date, Buyer, at its election may either (a) by written notice to Seller terminate this Agreement, or (b) proceed with Closing as scheduled. Notwithstanding the foregoing, if Buyer proceeds with Closing, then Buyer shall be deemed to have waived its rights and remedies for any breach by Seller of any of Seller's covenants, representations and warranties with respect to any such Buyer's Condition.

12. Seller's Conditions to Closing. Seller's obligation to sell the Property hereunder shall be subject to the satisfaction of the following conditions (collectively, "**Seller's Conditions**"):

(a) All covenants and agreements made by Buyer which are to be completed on or before Closing shall have been performed in all material respects;

(b) Buyer has performed Buyer's Closing Obligations as set forth in **Section 10(b)** in all material respects;

(c) Seller has obtained all necessary consents to convey the Property;

(d) All representations and warranties made in this Agreement by Buyer shall be true and correct in all material respects at the time made and as of the Closing Date; and

(e) All other conditions to Closing by Seller have been satisfied by Buyer.

13. Failure of Seller's Conditions. In the event that any of Seller's Conditions are not satisfied on or before the Closing Date, Seller, at its election, may (a) by written notice to Buyer terminate this Agreement or (b) proceed with Closing as scheduled.

14. Closing Costs; Prorations. It is the intent of Seller that the Purchase Price is the net amount to be received by Seller excepting only the specific costs that Seller agrees to pay for as provided in this **Section 14**. Expenses in connection with the transactions contemplated by this Agreement shall be paid as follows:

(a) **Buyer's Costs.** Buyer shall pay for the following: (1) Buyer's notary fees; (2) the conveyance tax due on the conveyance of the Property to Buyer; (3) Escrow Agent's fees; (4) all recording and filing fees; (5) Buyer's attorneys' fees; (6) the cost of obtaining any title insurance and endorsements that Buyer elects to obtain for the Property; (7) the cost of obtaining a survey that Buyer elects to obtain for the Property or that Escrow Agent may require in connection with the issuance of any title insurance and endorsements; (8) all costs associated with Buyer's Due Diligence; and (9) all costs associated with the extension of the Lease, the Sublease and the allocation of tax credits.

(b) **Seller's Costs.** Seller shall pay for the following: (1) Seller's notary fees; (2) Seller's attorneys' fees; and (3) the cost of the Title Report.

(c) **Lease Rent.** Rent under the Sublease shall be prorated between Buyer and Seller as of the Closing Date. Buyer must pay, at Closing, any overdue rent under the Sublease, and any overdue property taxes.

(d) **Tenant Rents.** Tenant rents and rights thereto and any related rental subsidies shall be prorated between Buyer and Seller as of the Closing Date. Buyer will cooperate with Seller in collecting delinquent or unpaid tenant rents accruing through the Closing Date. Prior to Closing, Buyer will assist Seller in preparing tenant lists and notifying tenants of the change of ownership of the Property.

15. Closing. Provided this Agreement has not been cancelled, and no Event of Default exists, the Closing of this transaction shall occur as soon as practicable but no later than the Closing Date. Upon each party's performance of all of its respective closing obligations specified herein on or prior to the Closing Date, and notification of Escrow Agent of such

performance by both parties and upon Escrow Agent's receipt of documents and funds required herein, Escrow Agent shall cause the Assignment to be recorded in the Bureau of Conveyances of the State of Hawai'i and/or the Land Court of the State of Hawai'i, as applicable, and as soon as practicable thereafter cause certified copies of the Assignment and all other Closing documents to be released to Buyer and Seller, and the Purchase Price to be released to Seller. Risk of loss and responsibility for insurance coverage shall pass to Buyer at Closing.

16. Condemnation; Damage or Destruction. If, prior to Closing, all or any portion of the Property is taken or condemned by any authority having power of eminent domain, this Agreement shall terminate and Buyer shall have no interest in the Property nor any standing to appear in or contest any proceedings. All proceeds of any condemnation instituted prior to Closing shall belong to and be the sole property of Seller without apportionment to Buyer. If, prior to Closing, all or any portion of the Property or improvements on the Property are damaged or destroyed by casualty or any other cause, such damage or destruction shall not affect Buyer's obligations under this Agreement to purchase the Property, and Buyer shall not be entitled to any reduction of the Purchase Price by the amount of such damage or destruction or to delay Closing.

17. Default and Remedies.

(a) Events of Default. The following shall constitute "Events of Default" under this Agreement:

(1) Buyer shall fail to pay or deposit with Escrow Agent any sum of money when due under this Agreement and such failure shall not be cured within two (2) business days of the specified due date; or

(2) Seller or Buyer shall fail to observe or perform any other term or provision to be observed or performed by such party under this Agreement, and such failure is not cured or otherwise remedied within five (5) business days after receipt of notice of such failure or default is provided to the defaulting party.

(b) Remedies. If any Event of Default shall occur with respect to the buyer, then the other party may terminate this Agreement, and the defaulting party shall reimburse the non-defaulting party for all out of pocket expenses the non-defaulting party may have incurred in negotiating, drafting, executing and fulfilling the requirements of this Agreement, including without limitation, reasonable attorneys' fees, and shall reimburse Escrow Agent for all expenses incurred by Escrow Agent in complying with the requirements of this Agreement. The non-defaulting party shall also be entitled to all other legal or equitable remedies available to the non-defaulting party because of the default. No remedy herein reserved to the non-defaulting party is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity.

18. Miscellaneous Provisions.

(a) Time is of the Essence. Time is hereby expressly declared to be of the essence of this Agreement. Unless otherwise specified herein, the due date for the receipt of any notice or sum of money shall be 4:00 P.M., Hawaii Standard Time, of each respective day.

(b) **Survival of Terms.** All of the agreements, representations, warranties and obligations of the parties set forth in this Agreement shall survive the Closing Date and the conveyance of the Property to Buyer, and shall continue thereafter to be binding upon and inure to the benefit of the parties hereto, and their respective successors, successors in trust, and permitted assigns.

(c) **Hawaii Law; Waiver of Trial by Jury.** This Agreement shall be governed by and construed under the laws of the State of Hawaii. Any legal action hereunder shall be filed in the Hawaii judicial system only, and Seller and Buyer hereby unconditionally submit themselves to the jurisdiction of the courts of the State of Hawaii and the United States District Court for the District of Hawaii. Seller and Buyer each hereby voluntarily and knowingly waives and relinquishes its right to a trial by jury in any action, proceeding or counterclaim brought by either against the other as to any matter whatsoever arising out of or in any way connected with this Agreement.

(d) **Attorneys' Fees.** Seller shall be entitled to recover from the defaulting party all costs and expenses, including reasonable attorneys' fees, incurred by the Seller in enforcing any of the terms and provisions of this Agreement, in remedying any breach by the buyer, collecting any sum due hereunder or in connection with any litigation commenced by the seller or against the buyer to which the seller, without any fault on its part, shall be made a party.

(e) **Interpretation of Agreement.** The parties acknowledge that they have been represented and advised by legal counsel in the negotiation and legal effects of this Agreement, and that they have caused this Agreement to be reviewed and approved by legal counsel of their own choice. Seller and Buyer agree that no party shall be deemed to be the drafter of this Agreement and, further, that if this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision thereof against either party as the drafter of this Agreement.

(f) **Parties; Joint and Several Liability.** The term "Seller," whenever used in this Agreement, will include Seller and its successors in trust and assigns. The term "Buyer" will include Buyer and Buyer's successors, successors in trust, and permitted assigns, and as the context requires, the plural. If there is more than one person who is "Buyer" under this Agreement, then each person will be jointly and severally liable for all of the obligations of Buyer under this Agreement (this means that each Buyer is fully responsible for all of the obligations of "Buyer" under this Agreement). If there is more than one person who is "Buyer" under this Agreement, then the knowledge, approval or consent of one person will be deemed to be the knowledge, approval and consent of all the persons who are "Buyer."

(g) **Sole Agreement; Partial Invalidity.** This is the sole agreement between the parties related to the purchase and sale of the Property. Any and all prior oral or written representations, correspondence, letters of intent and agreements are merged into and superseded by this Agreement and shall be of no force or effect. Any modifications of this Agreement must be in writing and signed by the parties hereto. If any provision hereof is held invalid or not enforceable to its fullest extent, such provision shall be enforced to the extent permitted by law, and the validity of the remaining provisions hereof shall not be affected thereby.

(h) Notices. All notices, requests, demands or documents which are required or permitted to be given or served hereunder shall be in writing and personally delivered, or sent by registered or certified mail, postage prepaid, addressed as follows:

To SELLER at:

Aedward Los Banos, Asset Manager
Hawaii Community Development Authority
461 Cooke Street
Honolulu, HI 96813
Off: 808-594-0343
Fax: 808-594-0290
Aedward.O.LosBanos@hcdaweb.org

and

To BUYER at:

Craig Watase
Mark Development, Inc.
3165 Waialae Ave., Suite 200
Honolulu, HI 96816
Off: 808-735-9099 ext. 11
Fax: 1-781-295-3427
cwatase@hawaii.rr.com

To ESCROW AGENT at:

Title Guaranty Escrow Services, Inc. - Main Office
235 Queen Street
Honolulu, Hawaii 96813
Fax: (808) 394-5250

Such addresses may be changed from time to time by the addressee by serving notice as heretofore provided. Service of such notice or demand shall be deemed complete on the date of actual delivery as shown by the addressee's registry or certification receipt or at the expiration of the third (3rd) day after the date of mailing (whether or not actually received by the addressee), whichever is earlier in time.

(i) Brokers; Broker's Commissions. By signing this Agreement, Seller agrees that Seller is not being represented by any broker or sales agent. Buyer may retain its own broker or sales agent but Seller will pay no commissions to Buyer's broker or sales agent. Any such broker or sales agent retained by Buyer shall be solely the representative or agent of Buyer and will not be a representative or agent of Seller. Any arrangement Buyer makes with a

broker or sales agent is separate and apart from Seller's sale of the Property to Buyer. Accordingly, Buyer agrees that the payment of any commissions or fees to Buyer's broker or sales agent shall be done outside of the escrow established under this Agreement. Buyer also agrees not to enter into any agreement with a broker or sales agent that requires Buyer to instruct Escrow Agent to pay any commissions or fees from the escrow account established under this Agreement.

(j) **Headings of Sections.** The headings of sections and subsections herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Agreement.

(k) **Relationship of Parties.** Seller and Buyer agree that Seller in no event and for no purpose are partners of Buyer in the conduct of any of Buyer's businesses or other affairs or joint ventures or members of a joint enterprise with Buyer or a principal and agent or other association.

(l) **Other Parties; No Assignment.** Nothing in this Agreement shall be construed as giving any person, firm, corporation or other entity, other than the parties hereto, their successors, successors in trust, and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof. Buyer may not assign its rights and obligations under this Agreement without Seller's consent, which may be withheld by Seller in its sole discretion, except as provided herein. No such assignment shall relieve Buyer of liability to Seller under this Agreement. Seller may withhold Seller's consent for any reason whatsoever. Seller may charge Buyer a reasonable consent fee for the right to assign this Agreement to cover the administrative cost of processing the request to assign this Agreement. Notwithstanding anything to the contrary contained herein, Buyer may, without the consent of Seller and without any consent fee, but upon written notice to Seller no later than ten (10) days prior to Closing, assign Buyer's rights and obligations under this Agreement to an affiliate of Buyer or a limited partnership with a general partner that is a non-profit corporation. Buyer agrees that Seller may, without having to obtain Buyer's consent, assign this Agreement and rights and obligations under this Agreement to any person or entity including, without limitation, to any parent, subsidiary or affiliate of Seller.

(m) **Counterparts; Facsimile Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Facsimile reproductions of the signatures affixed to this Agreement shall constitute an original signature and shall signify an agreement of and an acceptance of this Agreement.

(n) **Computation of Deadlines.** If a due date determined herein falls on a Saturday, Sunday or official state or federal holiday, such due date will be deemed to be on the next business day.

(o) **No Waiver.** The waiver by one party of the performance of any covenant, condition or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise hereunder. The waiver by the other or both parties of the time for performing any act shall not constitute a waiver of the time for

performing any other act or identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions of this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

19. Post Closing Covenants of Buyer. Buyer makes the following covenants, all of which shall survive Closing:

(a) No tenants at the Project will be displaced by Buyer's rehabilitation of the Property. Buyer will be responsible for any necessary relocation of tenants during the rehabilitation, at Buyer's expense.

(b) Buyer shall operate the Property in compliance with the Declaration of Restrictive Covenants For Low-Income Housing Credits dated as of November 15, 1992 and recorded at the Bureau of Conveyances on January 22, 1993 as Document Number 93-011165 ("Declaration"). Buyer shall indemnify, defend and hold Seller, Hawaii Community Development Authority ("HCDA"), Bank of Hawaii and their respective agents, affiliates, officers, directors, employees and independent contractors harmless from and against any and all claims, causes of action, damages, losses (including without limitation recapture of tax credits) and reasonable attorney's fees arising from or in connection with the failure or alleged failure of the Property to be operated in in compliance with the Declaration from and after Closing through the end of the Extended Use Period (as defined in the Declaration).

[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

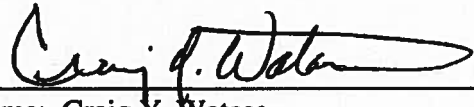
NA LEI HULU KUPUNA LIMITED
PARTNERSHIP, a Hawaii limited partnership

By: Hawaii Community Development Authority,
its General Partner

By: _____
Name:
Title:

"Seller"

MARK DEVELOPMENT INC., a Hawaii
corporation

By: 
Name: Craig Y. Watase
Title: President

"Buyer"

EXHIBIT A

Preliminary Title Report Attached

PRELIMINARY REPORT
(No Liability Hereunder)

This report (and any revisions thereto) is issued solely for the convenience of the titleholder, the titleholder's agent, counsel, purchaser or mortgagee, or the person ordering it for the purpose of facilitating the issuance of a policy of title insurance by Title Guaranty of Hawaii and no liability will arise under this report.

SCHEDULE A

Title Guaranty of Hawaii, Incorporated, hereby reports that, subject to those matters set forth in Schedule "B" hereof, the title to the estate or interest to the land described in Schedule "C" hereof is vested in:

NA LEI HULU KUPUNA LIMITED PARTNERSHIP,
a Hawaii limited partnership,
as Lessee
AS TO ITEM I,
and
as Sublessee
AS TO ITEM II

This report is dated as of July 17, 2014 at 8:00 a.m.

Inquiries concerning this report
should be directed to
CYNTHIA NAKASHIMA.
Email cnakashima@tghawaii.com.
Fax (808) 521-0287.
Telephone (808) 533-5811.
Refer to Order No. 201429435.

Inquiries concerning Escrow
should be directed to
Barbara Paulo.
MAIN OFFICE
Email bpaulo@tghawaii.com.
Fax (808) 521-0280.
Telephone (808) 521-0209.
Escrow No. 14045434

**SCHEDULE B
EXCEPTIONS**

1. Real Property Taxes, if any, that may be due and owing.

Item I is covered by Tax Key: (1) 2-1-051-004.

Item II is covered by Tax Key: (1) 2-1-051-038.

-Note:- Attention is invited to the fact that the premises covered herein may be subject to possible rollback or retroactive property taxes due to possible loss of exemption status.

2. Any and all improvement assessments that may be due and owing.

3. Mineral and water rights of any nature in favor of the State of Hawaii.

4. -AS TO ITEM I, PARCEL THIRD (PARCEL 6B-1):-

DESIGNATION OF EASEMENT "W-1"

PURPOSE : water meter
SHOWN : on map prepared by Masumi Fukushima, Land Surveyor, with R.M. Towill Corporation, dated June 26, 1992, approved by the Department of Land Utilization, City and County of Honolulu, on August 20, 1992

5. -AS TO ITEM I, PARCELS THIRD AND FOURTH:-

The terms and provisions contained in the following:

INSTRUMENT : DEED

DATED : August 1, 1991

RECORDED : Document No. 91-162240

The foregoing includes, but is not limited to, matters relating to minerals, water and prehistoric and historic remains

SCHEDULE B CONTINUED

6. -AS TO ITEM I, PARCELS FIRST AND SECOND:-

EASEMENT (5 feet wide) for electric cable, in favor of HAWAIIAN ELECTRIC COMPANY, INC., as mentioned in instrument dated October 14, 1991, recorded as Document No. 91-169299, and as shown on map prepared by Masumi Fukushima, Land Surveyor, with R. M. Towill Corporation, dated June 26, 1992, approved by the Department of Land Utilization, City and County of Honolulu, on August 20, 1992.

7. -AS TO ITEM II:-

LEASE

LESSOR : CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii

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

DATED : November 14, 1991

RECORDED : Document No.

TERM : 65 years commencing on November 26, 1991

*32 YRS
Remaining*

8. The terms and provisions contained in Sublease, as amended, in Schedule C.

9. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING CREDITS

DATED : November 15, 1992

RECORDED : Document No. 93-011165

SCHEDULE B CONTINUED

10. Title Guaranty of Hawaii, Inc. does not have satisfactory evidence that the Land described herein is a subdivided lot of record under the ordinances of the City and County of Honolulu.

Before title insurance can be issued, written verification should be obtained from the County planning department that the Land is an existing subdivided lot of record.

11. Any facts, rights, interests or claims which are not shown by the public records, but which could be ascertained by making inquiry of the lessors in the lease or leases described or referred to in Schedule C.

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

-AS TO ITEM I, PARCEL THIRD:-

-Note:- A current survey, with metes and bounds description, should be made of said premises.

13. Any unrecorded leases and matters arising from or affecting the same.

-Note:- A properly executed TG Form D.1 should be submitted at closing (i) if there are no unrecorded leases affecting the subject land and the insured requires that said exception be removed from the policy or (ii) if the insured requires the policy to be issued with reference to specific unrecorded leases.

14. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described in Schedule C herein.

SCHEDULE B CONTINUED

-Note:- Before issuance of an ALTA policy, verification is required that there is no renovation or construction in progress at the present time, nor has there been any renovation or construction during the past year, nor has any material been delivered to the site for purposes of renovation or construction in the past year.

END OF SCHEDULE B

SCHEDULE C

SUB-LEASE

SUBLESSOR : HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii (now known as HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII)

SUBLESSEE : NA LEI HULU KUPUNA LIMITED PARTNERSHIP, a Hawaii limited partnership

DATED : December 6, 1991

RECORDED : Document No. 91-170018

TERM : 32 years, from December 1, 1991 to November 30, 2023

ABOVE LEASE AMENDED BY INSTRUMENT

DATED : July 16, 1992

RECORDED : Document No. 92-116021

RE : surrender of 72 square feet

Said Sublease, as amended, demising the following described premises:

-ITEM I:-

-PARCEL FIRST:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, No. 1 to M. Kekuanaoa) situate, lying and being on the southwest side of Halekauwila Street and southeast of Lana Lane at Kaakaukui, Kakaako, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 4B, and thus bounded and described:

SCHEDULE C CONTINUED

Beginning at the east corner of this parcel of land, on the southwest side of Halekauwila Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL", being 4,587.49 feet south and 2,876.55 feet west and running by azimuths measured clockwise from true South:

1. Along remainder of Lot 13, on a curve to the left with a radius of 830.00 feet, the chord azimuth and distance being:
39° 50' 40" 7.85 feet;
2. Thence along same, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:
90° 02' 12.5" 30.85 feet;
3. 140° 30' 30.24 feet along same;
4. 230° 30' 31.50 feet along southeast side of Lana Lane;
5. 320° 30' 48.42 feet along the southwest side of Halekauwila Street, to the point of beginning and containing an area of 1,487 square feet, more or less.

-PARCEL SECOND:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, No. 1 to M. Kekuanaoa) situate, lying and being on the southwest side of and adjacent to Halekauwila Street and southeast of Mother Waldron Playground at Kaakaukui, Kakaako, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 5B, and thus bounded and described:

SCHEDULE C CONTINUED

Beginning at the west corner of this parcel of land, on the northwest side of Lana Lane, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL", being 4,563.97 feet south and 2,936.74 feet west and running by azimuths measured clockwise from true South:

1. 230° 30' 31.50 feet along portion of R.P. 4483, L.C. Aw. 7712, Ap. 6, No. 1 to M. Kekuanaca for V. Kamamalu (Mother Waldron Playground, Executive Order No. 383);
2. 320° 30' 8.00 feet along southwest side of Halekauwila Street;
3. 50° 30' 31.50 feet along Lot 13, Block 12 of the "Kakaako Subdivision";
4. 140° 30' 8.00 feet along portion of Lana Lane, being Parcel 5A of Kakaako Improvement District 3, to the point of beginning and containing an area of 252 square feet, more or less.

-AS TO PARCELS FIRST AND SECOND:-

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII

GRANTEE : HOUSING FINANCE AND DEVELOPMENT CORPORATION, STATE OF HAWAII

DATED : October 14, 1991

RECORDED : Document No. 91-169299

SCHEDULE C CONTINUED

-PARCEL THIRD:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Government Land of Puunui) situate, lying and being at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 6B-1, and thus bounded and described:

Beginning at the north corner of this parcel of land and at the south corner of the intersection of Halekauwila Street and Coral Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 4,424.85 feet south and 3,003.80 feet west, thence running by azimuths measured clockwise from true South:

1. 321° 40' 73.24 feet along the southwest side of Halekauwila Street;
2. 27° 54' 38.20 feet along R.P. 4483, L.C. Aw. 7712, Ap. 6, Part 1 to M. Kekuanaoa for V. Kamamalu;
3. 140° 30' 79.90 feet along Parcel 6A-1 of Halekauwila Street Realignment;
4. Thence along Parcel 6A-1 of Halekauwila Street Realignment on a curve to the right with a radius of 8.00 feet, the chord azimuth and distance being:
185° 30' 11.31 feet;
5. 230° 30' 28.75 feet along the southeast side of Coral Street to the point of beginning and containing an area of 2,882 square feet, more or less.

Excepting and reserving 72 square feet, being more particularly described in instrument dated July 16, 1992, recorded as Document No. 92-116021.

SCHEDULE C CONTINUED

-PARCEL FOURTH:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, Part 1 to M. Kekuanaoa for V. Kamamalu) situate, lying and being at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 6B-2, and thus bounded and described:

Beginning at the south corner of the parcel of land, at the east corner of Parcel 6A-2 of Halekauwila Street Realignment and on the northwest side of Lana Lane, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 4,563.97 feet south and 2,936.74 feet west, thence running by azimuths measured clockwise from true South:

- | | | | |
|----|----------|-------|---|
| 1. | 140° 30' | 62.10 | feet along Parcel 6A-2 of Halekauwila Street Realignment; |
| 2. | 207° 54' | 38.20 | feet along the Government Land of Puunui; |
| 3. | 321° 40' | 76.79 | feet along the southwest side of Halekauwila Street; |
| 4. | 50° 30' | 33.70 | feet along a jog on the southwest side of Halekauwila Street and along the northwest side of Lana Lane to the point of beginning and containing an area of 2,388 square feet, more or less. |

-AS TO PARCELS THIRD AND FOURTH:-

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : STATE OF HAWAII, by its Board of Land and Natural Resources

GRANTEE : HOUSING FINANCE AND DEVELOPMENT CORPORATION, a body corporate and a public instrumentality of the State of Hawaii

SCHEDULE C CONTINUED

DATED : August 1, 1991
RECORDED : Document No. 91-162240

-ITEM II:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 4483, Land Commission Award 7712, Apana 6, No. 1 to M. Kekuanaoa for V. Kamamalu, and Royal Patent 5569, Land Commission Award 10,605, Apana 3, to Iona Piikoi) situate, lying and being at Kaakaukui and Pualoalo, City and County of Honolulu, Oahu, State of Hawaii, being LOT R-1 of the "KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, IMPROVEMENT DISTRICT 3" and thus bounded and described:

Beginning at the southeast corner of this parcel of land, on the northwest side of Cooke Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 4,556.49 feet south and 2,849.08 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-4-114, and running by azimuths measured clockwise from true South:

1. Along the northwest side of Cooke Street, on a curve to the left with a radius of 830.00 feet, the chord azimuth and distance being:

41° 32' 40.5" 41.41 feet;
2. 140° 30' 56.42 feet along Lots 4-B and 5-B of the Kakaako Community Development District, Improvement District 3, along remainder of R.P. 4483, L.C. Aw. 7712, Apana 6, No. 1 to M. Kekuanaoa for V. Kamamalu;
3. 230° 30' 2.20 feet along Lot 6-B of the Kakaako Community Development District, Improvement District 3, along remainder of R.P. 4483, L.C. Aw. 7712, Apana 6, No. 1 to M. Kekuanaoa for V. Kamamalu;

SCHEDULE C CONTINUED

4. 141° 40' 150.13 feet along Lot 6-B of the Kakaako Community District, Improvement District No. 3, along remainder of R.P. 4483, L.C.Aw. 7712, Apana 6, No. 1 to M. Kekuanaoa for V. Kamamalu, along Government Land of Puunui, and along a jog on the southeast side of Coral Street;
5. 217° 19' 20" 4.00 feet along the southeast side of Coral Street;
6. Thence along same, on a curve to the left with a radius of 358.03 feet, the chord azimuth and distance being:
- 218° 01' 51" 100.09 feet;
7. 26° 37' 52.24 feet along remainder of R.P. 5569, L.C.Aw. 10,605, Apana 3 to Iona Piikoi;
8. 325° 40' 202.28 feet along same, to the point of beginning and containing an area of 9,900 square feet, more or less.

Said above described parcel of land having been acquired by the City and County of Honolulu, by Resolution No. 78-62 adopted by the City Council on February 22, 1978, pursuant to Section 264-1, HRS, as set forth in instrument dated July 18, 1978, recorded in Liber 13136 at Page 465.

END OF SCHEDULE C

GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law. Lawful restrictions under state or federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
2. Land Court Order No. 131893, filed June 30, 1998, sets forth HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii, now known as HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII.
3. Land Court Order No. 166725, filed July 3, 2006, sets forth HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, a public body and body corporate and politic of the State of Hawaii, now known as HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION;
4. Land Court Order 166726, filed July 3, 2006, sets forth HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, a public body and body corporate and politic of the State of Hawaii, now known as HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION; and

"2. Act 180, Session Laws of Hawaii 2006 ("Act 180") effective July 1, 2006, separates and divides the HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII into two separate state agencies, to be known as the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION and the HAWAII PUBLIC HOUSING AUTHORITY."

-Note:- Attention is invited to the following:

Title Guaranty of Hawaii, Incorporated is unable to determine which Entity holds title.

GUIDELINES FOR THE ISSUANCE OF INSURANCE

- A. Taxes shown in Schedule B are as of the date such information is available from the taxing authority. Evidence of payment of all taxes and assessments subsequent to such date must be provided prior to recordation.**
- B. Evidence of authority regarding the execution of all documents pertaining to the transaction is required prior to recordation. This includes corporate resolutions, copies of partnership agreements, powers of attorney and trust instruments.**
- C. If an entity (corporation, partnership, limited liability company, etc.) is not registered in Hawaii, evidence of its formation and existence under the laws where such entity is formed must be presented prior to recordation.**
- D. If the transaction involves a construction loan, the following is required:**
 - (1) a letter confirming that there is no construction prior to recordation; or**
 - (2) if there is such construction, appropriate indemnity agreements, financial statements and other relevant information from the owner, developer, general contractor and major sub-contractors must be submitted to the Title Company for approval at least one week prior to the anticipated date of recordation.**

Forms are available upon request from Title Guaranty of Hawaii.

- E. Chapter 669, Hawaii Revised Statutes, sets forth acceptable tolerances for discrepancies in structures or improvements relative to private property boundaries for various classes of real property. If your survey map shows a position discrepancy that falls within the tolerances of Chapter 669, call your title officer as affirmative coverage may be available to insured lenders.**
- F. The right is reserved to make additional exceptions and/or requirements upon examination of all documents submitted in connection with this transaction.**
- G. If a policy of title insurance is issued, it will exclude from coverage all matters set forth in Schedule B of this report and in the printed Exclusions from Coverage contained in an ALTA policy or in the Hawaii Standard Owner's Policy, as applicable. Different forms may have different exclusions and should be reviewed. Copies of the policy forms are available upon request from Title Guaranty of Hawaii or on our website at www.tghawaii.com.**

DATE PRINTED: 7/24/2014

STATEMENT OF ASSESSED VALUES AND REAL PROPERTY TAXES DUE

TAX MAP KEY

DIVISION ZONE SECTION PLAT PARCEL HPR NO.
(1) 2 1 051 004 0000

CLASS: RESIDENTIAL

AREA ASSESSED: 6,937 SF

ASSESSED VALUES FOR CURRENT YEAR TAXES: 2014

The records of this division show the assessed values and taxes on the property designated by Tax Key shown above are as follows:

BUILDING	\$	0
EXEMPTION	\$	0
NET VALUE	\$	0
LAND	\$	1,057,800
EXEMPTION	\$	1,057,800
NET VALUE	\$	0
TOTAL NET VALUE	\$	0

Installment (1 - due 8/20; 2 - due 2/20) Tax Info As Of - 8/20/2014

Tax Year	Installment	Tax Amount	Penalty Amount	Interest Amount	Other Amount	Total Amount	
2014	2	150.00				150.00	PENDING
2014	1	150.00				150.00	PENDING
2013	2	150.00				150.00	PAID
2013	1	150.00				150.00	PAID
2012	2	150.00				150.00	PAID
2012	1	150.00				150.00	PAID

Total Amount Due: 300.00

Penalty and Interest Computed to: 8/20/2014

DATE PRINTED: 7/24/2014

STATEMENT OF ASSESSED VALUES AND REAL PROPERTY TAXES DUE

TAX MAP KEY

DIVISION ZONE SECTION PLAT PARCEL HPR NO.
(1) 2 1 051 038 0000

CLASS: RESIDENTIAL

AREA ASSESSED: 9,900 SF

ASSESSED VALUES FOR CURRENT YEAR TAXES: 2014

The records of this division show the assessed values and taxes on the property designated by Tax Key shown above are as follows:

BUILDING	\$	4,753,500
EXEMPTION	\$	4,753,500
NET VALUE	\$	0
LAND	\$	1,534,500
EXEMPTION	\$	1,534,500
NET VALUE	\$	0
TOTAL NET VALUE	\$	0

Installment (1 - due 8/20; 2 - due 2/20) Tax Info As Of - 8/20/2014

Tax Year	Installment	Tax Amount	Penalty Amount	Interest Amount	Other Amount	Total Amount	
2014	2	150.00				150.00	PENDING
2014	1	150.00				150.00	PENDING
2013	2	150.00				150.00	PAID
2013	1	150.00				150.00	PAID
2012	2	150.00				150.00	PAID
2012	1	150.00				150.00	PAID

Total Amount Due: 300.00

Penalty and Interest Computed to: 8/20/2014