


Reviewed and Approved by Executive Director: 

July 7, 2021

FOR ACTION

I. REQUEST

Authorize the Executive Director to Execute a Consent to Mortgage Approval and Subordination of Equity Sharing Payment for the City and County of Honolulu's Down Payment Loan Assistance Program to Assist Eligible Buyers of Reserved Housing Units.

II. BACKGROUND

The City and County of Honolulu (City) offers a down payment loan assistance program (DPL Program) to assist qualified low- and moderate-income households in meeting the down payment requirements for purchasing a home. The City's DPL Program provides up to \$40,000 in 0% interest 20-year loans to those making up to 80% of the area median income. The program is funded through federal grant funds (HUD-HOME Investment Partnerships Program). A brochure for the City's DPL Program is attached hereto as Exhibit A.

Borrowers under the DPL Program must agree to live in the unit at all times and are responsible for paying back a percentage of the loan balance upon sale or transfer of the unit. Advantageously for the borrower, the percentage of the loan payment due decreases with each year of occupancy. This is because the City provides an equal dollar match for the borrower's loan payments for every year the borrower resides in the unit. By the end of ten years for example, a \$40,000 loan will be paid in-full, as the City would have contributed \$20,000 to match the borrower's \$20,000 in payments.

Currently, the City's DPL Program is open to eligible buyers of many fee-simple properties on Oahu, including affordable housing units developed under Hawaii Housing Finance Development Corporation's (HHFDC) program. The City notes the DPL Program assisted 18 buyers in the HHFDC-assisted Kapiolani Residence project in 2018. There is currently one buyer hoping to use the DPL Program to purchase a unit in the HHFDC-assisted The Central Ala Moana project.

Given the benefits and success of the DPL Program, the City would like to extend the program to include Reserved Housing units regulated by the Hawaii Community Development Authority (HCDA). However, the City requires a Consent to Mortgage and Subordination of Equity Sharing Payment from the HCDA prior to approving any loan for an HCDA Reserved Housing unit.

The City required the same consent to mortgage and subordination approvals from HHFDC prior to opening the DPL Program to Kapiolani Residence. Like the HCDA, HHFDC also has a shared equity interest in all of its affordable units.

In a request letter dated June 3, 2021 and attached hereto as Exhibit B, the City requests such approvals and notes there may still be time for eligible borrowers to take advantage of the DPL Program to purchase Reserved Housing units at Aalii in Ward Village, which is scheduled to close sales in September and October of 2021.

III. DISCUSSION

Currently, the HCDA administratively approves subordinations of its equity sharing payment under certain conditions for those units governed by the 2005 and 2011 Rules. At its August 5, 2020 Kakaako Meeting, the Authority approved several limited actions relating to the administration of HCDA's Reserved Housing Program, including the approval of subordinations to allow owners to refinance their primary mortgage up to 95% of the original purchase price. The minutes for the August 5, 2020 Kakaako Meeting are attached hereto as Exhibit C.

Unless previously subordinated by the HCDA, the HCDA's equity sharing payment is second only to a primary mortgage on a Reserved Housing unit at the time of the original sale. To safeguard the value and collection of HCDA's equity sharing payment and to streamline the subordination process, the HCDA's current policy is to deny all requests to subordinate the HCDA's equity sharing payment to a second mortgage (such as a Home Equity Line of Credit or similar financing tool) that would demote the HCDA's "second position" on the unit.

The subject request from the City would place the HCDA's equity sharing payment in "third position," behind the City's DPL Program loan. Similarly, HHFDC is also in "third position" for the Kapiolani Residence units whose owners participated in the DPL Program.

Although the HCDA would not generally agree to be in "third position" for units governed by the 2005 and 2011 Rules, the HCDA is supportive of the City's DPL Program and believes it will be beneficial to future Reserved Housing unit buyers.

Also important to note, the 2018 Reserved Housing Rules specifically allow for the HCDA to subordinate its shared equity payment for any mortgage created for the initial purchase of a reserved or workforce housing unit. Hawaii Administrative Rules (HAR) §15-218-41(f) is excerpted and attached hereto as Exhibit E, which states the authority's shared equity interest may be subordinated for:

- (1) Any mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of a reserved housing or workforce housing unit;
- (2) Any mortgage insured or held by a federal housing agency; and
- (3) Any mortgage or lien created for any other purpose provided that the authority has previously consented to the mortgage or lien in writing.

While the 2018 Rules would allow for the City DPL Program, the vast majority of HCDA Reserved Housing units are governed by the 2005 Rules, which are silent on subordinations of HCDA's shared equity payment. Approval of the City's subject

request would impact over 800 Reserved Housing units governed by the 2005 Rules, as well as the hundreds to follow that are vested under the Kamehameha Schools and Howard Hughes master plans.

HCDA staff believes consenting to the second mortgage and subordinating HCDA's shared equity payment to the City's loan poses a minimal financial risk to the HCDA. The City's loan is worth a maximum of \$40,000 per unit, and the loan repayment amount decreases over time before being paid in full by year ten. Furthermore, all known Reserved Housing units' appraised values are higher than the original purchase price.

If approved, the City and the HCDA would work together on a suitable form for the Consent to Mortgage and Subordination of Equity Sharing Payment Agreement. A sample agreement of the form used by the HHFDC is attached hereto as Exhibit D.

IV. RECOMMENDATION

Authorize the Executive Director to Execute a Consent to Mortgage Approval and Subordination of Equity Sharing Payment for the City and County of Honolulu's Down Payment Loan Assistance Program to Assist Eligible Buyers of Reserved Housing Units and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

Attachments:


Exhibit A – City DPL Program Brochure


Exhibit B – City Request Letter Dated June 3, 2021

Exhibit C – August 5, 2020 Kakaako Authority Meeting Minutes

Exhibit D – Sample HHFDC Consent to Mortgage Approval

Exhibit E – Excerpt of Hawaii Administrative Rules §15-218-41(f)

Prepared By: Lindsey Doi, Asset Manager 

Reviewed By: Deepak Neupane, P.E., AIA, Executive Director 

*Thinking about
buying a home?
The City wants to help!*

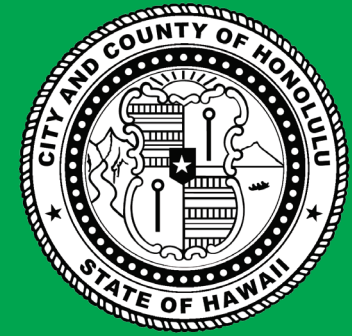
The City and County of Honolulu's Down Payment Loan Program is part of the City's efforts to promote homeownership and create a strong community. Utilizing HOME Investment Partnership Act funds from the U.S. Department of Housing and Urban Development, this program provides a zero interest loan to qualified low- and moderate-income families to meet down payment requirements for home purchase.



MAYOR'S MESSAGE

We are proud to provide another service to help meet our citizens' needs. This brochure outlines a program provided through our Department of Community Services that enables income-qualified homebuyers to become homeowners in our community.

RICK BLANGIARDI
Mayor of Honolulu



CITY AND COUNTY OF HONOLULU

**DOWN PAYMENT
LOAN
PROGRAM**

Frequently Asked Questions (FAQs)

WHO MAY APPLY FOR THE CITY'S DOWN PAYMENT LOAN?

Prospective homebuyers who do not own a primary residential property and whose annual household incomes are under the maximum income shown below:

Number in household	Annual Income
1	\$67,700
2	\$77,350
3	\$87,000
4	\$96,650
5	\$104,650
6	\$112,150
7	\$119,850
8	\$127,600
9	\$135,310
10	\$143,042

These income limits are subject to periodic revision.

WHAT IS THE MAXIMUM LOAN AMOUNT THE HOMEBUYER MAY BORROW?

The loan limit is \$40,000. Loans will be made on a first-come first-served basis subject to the availability of funds.

WHAT IS THE INTEREST RATE AND LOAN FEE?

The interest rate is 0% for all income-eligible borrowers. There is no loan fee.

WHAT KIND OF PROPERTIES MAY BE PURCHASED?

The property must be located on Oahu. The property must be a legally permitted structure meeting all local building codes. In addition, the property must pass a Housing Quality Standards inspection and meet other Federal requirements such as those governing Lead-Based Paint for homes built before 1978 and environmental reviews.

WHAT WILL BE THE MONTHLY PAYMENT?

The monthly payment will be based on a 20-year amortization term. Lower minimum loan payment amounts may be allowed for certain credit qualified borrowers.

IS THERE A HOMEBUYER EDUCATION REQUIREMENT?

Yes, all loan applicants must complete a City-approved homeowner education course prior to loan application.

ARE THERE LOAN RESTRICTIONS?

The borrower must be an owner-occupant at all times. Upon sale or other transfer of the property, unless the new owner is income-eligible, the borrower must pay the City a specified percentage of the loan balance, which

percentage will be reduced for each full year of occupancy.

HOW DO I APPLY?

Step 1 - When applying for a loan from your first mortgage lender, be sure to inform the lender that you are interested in a down payment loan from the City.

Step 2 - After initial loan approval from your first mortgage lender, your lender will submit a loan file to the City for approval. You must complete homebuyer education prior to your loan file submission to the City.

For more information, contact our office at:

City and County of Honolulu
Rehabilitation Loan Branch
51 Merchant Street, First Floor
Honolulu, Hawaii 96813
Phone: 768-7076

Or visit our website for more information at:
www.honolulu.gov/dcs/housing.html

DEPARTMENT OF COMMUNITY SERVICES
CITY AND COUNTY OF HONOLULU

925 DILLINGHAM BOULEVARD, SUITE 200 • HONOLULU, HAWAII 96817

PHONE: (808) 768-7762 • FAX: (808) 768-7792

www.honolulu.gov/dcs

RICK BLANGIARDI
MAYOR



SARAH ALLEN
DIRECTOR

JOY BARUA
DEPUTY DIRECTOR

June 3, 2021

Mr. Deepak Neupane
Executive Director
Hawaii Community Development Authority
547 Queen Street, Room 202
Honolulu, Hawaii 96813

Dear Mr. Neupane:

SUBJECT: Consent to Mortgage Approval for the City and County of Honolulu
Down Payment Loan Program

We request your approval of a Consent to Mortgage (CTM) form for the City & County's Down Payment Loan (DPL) to be utilized to assist eligible buyers in your condominium projects.

The City and County has a down payment program which provides \$40,000 to eligible households with income up to 80% of median income to assist in home purchase. The zero percent interest loan of federal HOME funds is secured by a mortgage and a HOME program recapture agreement.

We currently have an approved CTM for Hawaii Housing and Finance Development Corporation (HHFDC) projects and would like similar support from HCDA. The City's DPL program assisted 18 buyers in the Kapiolani Residence project in 2018.

The following loan documents are provided for your review:

- City and County of Honolulu DPL Program brochure
- HHFDC CTM template used for the Kapiolani Residence;
- DPL Real Estate Mortgage and Owner Occupancy Agreement template; and
- DPL HOME Program Recapture Agreement, 10-Year Recapture Term template.

Mr. Deepak Neupane
June 3, 2021
Page 2

We hope the documents will assist you drafting an acceptable CTM template for Board approval. If approved, the consent may be available for use by the closing deadline for your new condominium project, A'ali'i Ward Village, scheduled for September and October 2021.

Should you need further assistance, please contact Alan Tamanaha, Rehabilitation Loan Branch Chief, at 768-7068.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Allen', with a stylized flourish extending to the right.

Sarah Allen
Director

Attachments

**STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO BUSINESS MEETING**

Wednesday, August 5, 2020

MINUTES

I. CALL TO ORDER/ROLL CALL

A regular business meeting of the Kakaako Members, Hawaii Community Development Authority (“Authority” or “Board”), a body corporate and a public instrumentality of the State of Hawaii, met virtually (utilizing the state-supported Zoom platform) for a meeting on August 5, 2020.

Board Chairperson, John Whalen, called the meeting to order at 10:02 a.m. and conducted board attendance, as follows:

Members Present:

Kevin Sakoda
Chason Ishii
Jason Okuhama
David Rodriguez, DOT (Ex-Officio)
Phillip Hasha
Daniel Ito
Wei Fang
John Whalen, Chair

Members Absent:

Kathy Sokugawa, DPP
Robert Yu, B&F (Ex-Officio)

HCDA Staff Present:

Garett Kamemoto, Interim Executive Director
Lindsey Doi, Asset Manager
Francine Murray, Program Specialist
Garet Sasaki, Administrative Services Officer
Tommilyn Soares, Secretary to the Executive Director

Legal Counsel:

Lori Sunakoda, Deputy Attorney General
Kelly Suzuka, Deputy Attorney General

Acknowledgement that the Meeting is Being Convened Virtually

Chair Whalen reiterated the wording contained in the Meeting Agenda regarding the state's response to the COVID-19 pandemic, the state's efforts to slow the community spread of the virus and Governor David Y. Ige's issuance of Supplementary Emergency Proclamations which suspended Chapter 92 of the Hawaii Revised Statutes to the extent necessary to enable public boards and commissions to conduct business without holding meetings open to the public.

With regard to the foregoing, Chair Whalen reiterated wording contained in the Meeting Agenda noting that HCDA welcomes public attendance via the Zoom link and HCDA's Facebook Page contained in the meeting agenda, HCDA also welcomes public comment and public participation via submission of written and or verbal testimony (consistent with the social distancing guidelines and Emergency Proclamation directives in effect). Chair Whalen stated that individuals from the public who have requested to provide testimony are on standby and will be permitted to speak during the public testimony session of the specific agenda item.

II. ACTION ITEMS

Shall the Authority Delegate to the Interim Executive Director the Authority to Take the Following Limited Actions Relating to the Administration of the HCDA's Reserved Housing Program as Described in the August 5, 2020 Staff Report-Approve Requests Relating to 1) Sale or Transfer After the Regulated Term, 2) Sale or Transfer During the Regulated Term, and 3) Owners' Refinancing Request and Subordination of Shared Equity Interest?

Ms. Doi presented the staff report. Hawaii Community Development Authority (HCDA) staff requests the continuation of its existing Reserved Housing policies governing sales of units during and after the regulated term, as well as refinancing. Without the approval of these blanket policies, each request from a Reserved Housing unit owner will require a separate action item at future Authority meetings.

At the September 7, 2016 General Meeting, the Authority approved several policies relating to the administration of the HCDA Reserved Housing Program for a term of four years. These policies will expire on September 7, 2020, requiring further action by the Authority to allow HCDA staff to continue processing Reserved Housing requests.

The HCDA oversees about a thousand Reserved Housing units governed by Hawaii Administrative Rules (HAR), with several hundred more under construction. These rules allow certain actions with approval by the Authority, such as refinancing or selling a unit during or after the regulated term.

At the September 7, 2016 meeting, the Authority enacted the following Reserved Housing policies until September 7, 2020:

1. **Sale or Transfer After the Regulated Term** – Accept the payment of Shared Equity and execute of the Release of Unilateral Declaration to allow the reserved housing unit owner to sell the unit at market after the regulated term has expired, provided the Shared Equity value is not calculated under the formulas listed in HAR §15-22-187(b)(2) of the 2005 Rules, HAR §15-218-41(b)(2) of the 2011 Rules, or HAR §15-216-41(b)(2) of the Kalaeloa Rules.

The HCDA does not have history of administering these calculations for Shared Equity, as to date, these formulas have always yielded lower results than the standard Shared Equity calculation of the Original Fair Market Value less the Original Sales Price. By rule, the Shared Equity due is the higher of the two formulas.

2. **Sale or Transfer During the Regulated Term** – Exercise the HCDA’s first option to “buy back” a reserved housing unit if the owner needs to sell during the regulated term, provided there are funds available in the Hawaii Community Development Revolving Fund, Reserved Housing subaccount.

The “buy back” price is determined and stipulated by HAR §15-22-186(c)(1) of the 2005 Rules, HAR §15-218-36 of the 2011 Rules, and HAR §15-216-36 of the Kalaeloa Rules. If there are inadequate funds in the Reserved Housing sub-account, and adequate funds elsewhere, staff may propose the buy-back using other funding sources.

3. **Owner’s Refinancing Request and Subordination of Shared Equity Interest** – Approve refinancing of owner’s primary mortgage up to the value of the original acquisition loan amount, provided it is not greater than 80% of the purchase price.

Unless previously subordinated by the HCDA, HCDA’s Shared Equity interest is second only to a primary mortgage on a Reserved Housing unit at the time of the original sale. To safeguard the value and collection of HCDA’s Shared Equity interest, the HCDA denies all requests subordinating the HCDA’s Shared Equity interest to a second mortgage (such as a Home Equity Line of Credit or similar financing tool) that would demote the HCDA’s “second position” on the property.

The above policies approved at the September 7, 2016 meeting were consistent with Authority action in previous years. If any request fell outside of the above parameters, or if the unit owner appealed the HCDA’s policy, the request would be brought back to the Authority for further action.

On August 2, 2017, the Authority approved a Memorandum of Agreement (MOA) with the Hawaii Housing Finance and Development Corporation (HHFDC) to allow HHFDC to serve as the HCDA's designated "buy back" agent for Rycroft Terrace for any Reserved Housing units sold during the regulated term. This MOA allows HHFDC to repurchase such units on HCDA's behalf, then resell them under HHFDC's own affordable housing program to keep them affordable for longer. If HHFDC determines the repurchase is not feasible and declines to proceed, the HCDA releases the unit from the Reserved Housing Program once the owner pays the applicable Shared Equity due to the HCDA.

Two years later, on August 7, 2019, the Authority approved the expansion of this MOA to allow HHFDC to buy back any HCDA Reserved Housing unit sold during the regulated term and resell them as part of HHFDC's own program. Unlike the aforementioned policies, which expire on September 7, 2020, the HHFDC "Buy Back" MOA will remain in place until either the HCDA or HHFDC terminates the agreement.

Regarding **Sale or Transfer After the Regulated Term**, this is largely an administrative matter that requires documentation of the unit being released from the HCDA's Reserved Housing Program and the payment of the Shared Equity due to the HCDA through escrow. HCDA staff recommends no changes and proposes a continuation of the existing policy that has been in effect since September 7, 2016.

Regarding **Sale or Transfer During the Regulated Term**, HCDA staff recommends continuing the existing policy of exercising HCDA's first option to buy back all units offered for sale during the regulated term. This will be done in accordance with the existing MOA with HHFDC. If the HHFDC determines repurchasing the unit is not financially feasible, the HCDA will release the unit from the Reserved Housing Program after the unit owner pays the applicable Shared Equity to the HCDA.

Regarding **Refinancing Requests and Subordinations of HCDA's Shared Equity**

Interest, the recent historic low interest rates prompted many Reserved Housing unit owners and lenders to request higher refinancing limits than what was previously allowed. On June 3, 2020, the Authority temporarily increased the maximum allowable refinancing limit to 95% of the original purchase price for all Reserved Housing unit owners governed by the 2005 and 2011 Rules. Many owners and lenders were pleased with this decision and dozens submitted new requests to refinance under the temporary higher limit, which is also set to expire on September 7, 2020.

HCDA staff recognizes the original Reserved Housing policy that limited refinances to only 80% of the original purchase price or the original loan amount, whichever was lower, negatively impacts owners. This policy penalizes owners who put down large down payments (and therefore had small original loans), as they cannot access their own equity. This policy also penalizes owners who put down small down payments, as they cannot

refinance their full original loan amount which may have been as high as 95% of the original purchase price.

Therefore, HCDA staff proposes making permanent the temporary policy approved on June 3, 2020, which increased the allowable refinancing maximum to 95% of the original purchase price for all Reserved Housing unit owners governed by the 2005 and 2011 Rules. This has proven to be very simple for HCDA staff to administer and has been met favorably by owners and lenders.

Authority members previously inquired about an alternative calculation by which the HCDA could guarantee the protection of its Shared Equity interest. Under this formula, the refinancing maximum would be calculated as the Current Fair Market Value, less the Shared Equity amount. This would place an additional burden on the unit owner by requiring them to procure a certified appraisal for the purposes of calculating the maximum refinancing limit but would likely yield an even higher refinancing maximum.

For the purposes of comparing the above two formulas proposed for calculating the maximum refinancing limit, the following values are from a unit at Ke Kilohana that was recently appraised:

- The current fair market value is \$650,000.
- The original fair market value was \$571,000, and the original purchase price was \$474,289, so the Shared Equity due to the HCDA is \$96,711.
- 95% of the original purchase price is \$450,574.55.
- Current fair market value less the Shared Equity is \$553,289.

In this example, the Ke Kilohana unit owner could refinance \$102,714.45 more if the HCDA changed its policy to allow refinancing up to the value of the Current Fair Market Value, less the Shared Equity.

These results are even more drastic when the Shared Equity amount is low, such as in the case with Reserved Housing units at Pacifica Honolulu. The following are values from a recent Pacifica Honolulu appraisal:

- The current fair market value is \$665,000.
- The original fair market value was \$415,000, and the original purchase price was \$407,000, so the Shared Equity due to the HCDA is \$8,000.
- 95% of the original purchase price is \$386,650.
- Current fair market value less the Shared Equity is \$657,000.

In this example, the Pacifica Honolulu unit owner could refinance \$270,350 more if the HCDA utilized the current fair market value in calculating the maximum refinancing limit.

Although such calculations are very favorable for the unit owner, HCDA staff proposes keeping the current formula of allowing refinances up to 95% of the original purchase price. This adds a buffer of protection to HCDA's Shared Equity interest, is extremely simple to calculate, and is the current practice under the temporary policy.

HCDA staff receive at least half a dozen inquiries from Reserved Housing unit owners seeking to refinance or sell their unit each week. The number of requests for refinancing have increased in recent months due to favorable interest rates.

Reviewing each request at the monthly Authority meeting would be a time-consuming process and would also cause delays that might jeopardize a unit owner's ability to refinance or sell their unit. While HCDA staff acknowledge these decisions are significant, staff can rely on consistent application of rules and past practice to render fair decisions for future requests. Delegating this role to the Interim Executive Director and staff would expedite responses to Reserved Housing unit owners and would also streamline the agenda for future Authority meetings.

If blanket policies are approved, any actions taken in accordance with the policies will continue to be reported to the Authority in the monthly Executive Director's report. Any request that does not fall under the above policies or any appeal of the above policies will be brought to the Authority for further action.

Based on Board discussion, the board's intention is to allow for 95% of the original purchase price.

Chair Whalen noted written public testimony submitted by Mr. Tod Gushiken of Ke Kilohana. Mr. Gushiken noted his support to extend authorization for another six months to allow Homeowners to take advantage of the low rates that will help families during the pandemic.

MOTION:

Member Fang motioned for the Authority to delegate the Executive Director the following limited actions relating to the administration of the HCDA's Reserved Housing Program 1) Sale or Transfer After the Regulated Term, 2) Sale or transfer during the Regulated Term, and 3) Owners' Refinancing Request and Subordination of shared equity interest as detailed in the August 5, 2020 Staff Report, with the following correction added to the section of the staff report Regarding Refinancing Request and Subordinations of HCDA's Shared Equity Interest on page 4:

In regard to Reserved Housing units vested under the 2011 Reserved Housing rules, HCDA staff notes HAR Section 15-218-33 (c) states, "During the regulated term, the Executive Director shall approve any initial or subsequent mortgage placed on a reserved unit which does not exceed eighty per cent of the original purchase price of the unit" This rule does not prohibit the Authority from directing the executive director to approve any subsequent mortgage in accordance with this action item.

Member Okuhama seconded the motion.

Ms. Doi conducted the roll call vote. Motion passed with 7 votes and 2 excused.

Shall the Authority Authorize the Interim Executive Director to Amend the Existing Right of Entry Agreement with KUPU Executed on August 9, 2019 for the Use of a Portion of Oahu Tax Map Key 1-2-001-058: 135 at Kewalo Basin Harbor for the Purposes of Parking and Utility Storage (ROE 1-19) to Extend the Term for an Additional Two Years Until September 30, 2022?

Ms. Doi presented the staff report. Kupu has a continued need for additional storage space, parking, and a propane tank to support its activities at the Net Shed at Kewalo Basin Harbor. Kupu currently holds a one-year Right of Entry (ROE) to utilize a portion of the adjacent NOAA Lot, which is currently pending lease and development by the Howard Hughes Corporation (HHC). Kupu requests an additional two-year extension, as current market conditions related to COVID-19 have delayed both Kupu's and Howard Hughes' plans for developing the lot.

Given the pending lease of the NOAA Lot to HHC, the HCDA cannot enter into any long-term encumbrances for that parcel. Kupu is aware that any ROE for the NOAA Lot will be terminated with at least 30 days written notice once the lease with HHC is executed.

Kupu has engaged in talks with HHC to potentially sublease the NOAA Lot premises from HHC. Both HHC and Kupu believe this could be a mutually beneficial agreement that would still enable HCDA to collect the rent due under the HHC master lease.

Kupu requests amending ROE 1-19 to include a two-year extension that would allow both parties time to reach a long-term agreement that satisfies both their needs. The draft proposed amendment is attached hereto as Exhibit B. Kupu agrees to continue paying \$1,232.50 in monthly rent to HCDA for the duration of the ROE extension period. Given the pending execution of a lease with HHC, the HCDA would otherwise be unable to rent the NOAA Lot site and collect any revenue.

There were no questions and no comments and no public testimony.

MOTION:

Member Okuhama motioned for the Authority to Authorize the Interim Executive Director to Amend the Existing Right of Entry Agreement with KUPU Executed on August 9, 2019 for the Use of a Portion of Oahu Tax Map Key 1-2-001-058: 135 at Kewalo Basin Harbor for the Purposes of Parking and Utility Storage (ROE 1-19) to Extend the Term for an Additional Two Years Until September 30, 2022?

Member Sakoda seconded the motion.

Ms. Doi conducted the roll call vote. Motion passed with 7 votes and 2 excused.

VI. ADJOURNMENT

Chair Whalen adjourned the regular meeting at 10:36 a.m.

Approved and Submitted by,

John P Whalen

John Whalen, Chairperson

February 3, 2021

Date Approved by HCDA Board

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (x) Pickup () TO:

HHFDC

677 Queen Street, Suite 300
Honolulu, Hawaii 96813

#6611000362

TMK No.: (1) 2-3-041:006 CPR No. _____

Project: KAPIOLANI RESIDENCE

Unit/Lot No.: _____

CONSENT TO MORTGAGE UNDER 201H, HRS, AND SUBORDINATION OF SHARED
APPRECIATION EQUITY PROGRAM AGREEMENT

RESTRICTION

HOLDER:

ADDRESS:

HAWAII HOUSING FINANCE AND DEVELOPMENT
CORPORATION

677 Queen Street, Suite 300
Honolulu, Hawaii 96813

GRANTEE:

ADDRESS:

MORTGAGE COMPANY:

ADDRESS:

CITY AND COUNTY OF

HONOLULU Honolulu Hale, 530
South King St Honolulu, HI 96813

CTM-BB

DAG(SAC)-11.01.2010

**CONSENT TO MORTGAGE UNDER 201H, HRS, AND
SUBORDINATION OF SHARED APPRECIATION
EQUITY PROGRAM AGREEMENT**

Project: Kapiolani Residence

Lot/Apt. No.:

KNOW ALL MEN BY THESE PRESENTS:

That HAWAII HOUSING FINANCE AND DEVELOPMENT
CORPORATION, (successor to the Housing and Community Development Corporation
of Hawaii ("HCDCH") pursuant to Act 196, 2005 Session Laws of Hawaii ("SLH") and Act
180, 2006 SLH; HCDCH was successor to the Housing Finance and Development
Corporation pursuant to Act 350, 1997 SLH), (hereinafter referred to as "HHFDC"), a
public body and body corporate and politic of the State of Hawaii, the holder of certain
rights, reservations and restrictions under that certain LIMITED WARRANTY UNIT
DEED, ENCUMBRANCES AND RESERVATION OF RIGHTS WITH POWER OF
ATTORNEY WITH USE, SALES AND TRANSFER RESTRICTIONS AND SHARED
APPRECIATION EQUITY KAPIOLANI RESIDENCE dated _____
filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as
Document No. _____, duly noted on Transfer Certificate of Title No.
_____ made to _____, unmarried, as Grantee, covering real
property described in Exhibit "A" attached and made a part of this Consent To Mortgage
Under 201H, HRS, And Subordination Of Shared Appreciation Equity Program Agreement
(hereinafter referred to as "the Deed") pursuant to the terms of Section 201H-47, Hawaii
Revised Statutes (HRS), does hereby consent to the execution of that certain Mortgage
dated _____, recorded as Document No. _____, made by said

, unmarried, as Mortgagor, in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii (hereinafter called "Mortgagee"), in the amount of \$40,000.00 (hereinafter called "Mortgage and Note").

This consent shall not authorize, nor be deemed to authorize, any further or other conveyance or mortgage of the property described in Exhibit A, or the execution of any other or further agreement to convey or pledge the same. All rights of the HHFDC under the Deed dated , 2018, are expressly reserved, and this consent shall not be deemed or construed as a release of Grantee from any obligations under the Deed, and nothing shall be construed as being a waiver of any of the terms, covenants and conditions of the Deed. In the event of conflict between the terms of the Deed and the terms of the Mortgage, the Deed shall control.

Shared Appreciation Equity Agreement. That the Deed dated , 2018 included a Shared Appreciation Equity Agreement (hereinafter referred to as "SAE") which was incorporated in the Deed in favor of HHFDC; and

WHEREAS, Mortgagee requires that the lien or charge of the SAE be subordinated to the lien or charge of the Mortgagee's Mortgage and Note and/or credit agreement; and

WHEREAS, HHFDC is entering into this Consent To Mortgage Under 201H, HRS, And Subordination Of Shared Appreciation Equity Program Agreement as an inducement to Mortgagee to make the Mortgage and Note and/or credit agreement to the Grantee; and

WHEREAS, the Grantee is willing to consent to such subordination;

NOW, THEREFORE, for valuable consideration, receipt of which the parties acknowledge to induce the Mortgagee to make the Mortgage and Note and/or credit agreement to the Grantee, the parties agree as follows:

Subordination. The Mortgagee's Mortgage and Note and/or credit agreement shall be and remain at all times a lien or charge upon the real property prior and superior to the lien or charge of the SAE. The Mortgagee's Mortgage and Note and/or credit agreement will be prior and superior to the SAE even if Mortgagee subsequently sells or transfers all or any part of its interest in the Mortgage and Note and/or credit agreement.

Law. This Consent To Mortgage Under 201H, HRS, And Subordination Of Shared Appreciation Equity Program Agreement shall be construed and interpreted in accordance with the laws of the State of Hawaii.

Binding Effect. This Consent To Mortgage Under 201H, HRS, And Subordination Of Shared Appreciation Equity Program Agreement shall inure to the benefit of and be binding upon the respective heirs, personal representatives, successors and assigns of the parties.

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

IN WITNESS WHEREOF, the undersigned has executed this instrument
this _____ day of _____, _____.

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION

BY _____
Its

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

On this ____ day of _____, 20____, before me appeared _____, personally known to me, who, being by me duly sworn, did say that (s)he is the of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that this ____ page Consent To Mortgage Under 201H, HRS, And Subordination Of Shared Appreciation Equity Program Agreement dated _____, was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

Name: _____
Notary Public, State of Hawaii
1st Judicial Circuit

My commission expires: _____

By signing this Consent To Mortgage Under 201H, HRS, And Subordination Of Shared Appreciation Equity Program Agreement document, Grantee agrees to the above.

GRANTEE/MORTGAGOR

Grantee: _____

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

On this ____ day of _____, 20 ____, before me personally appeared _____, to me known to be the person described in and who executed this ____-page Consent To Mortgage Under 201H, HRS, And Subordination Of Shared Appreciation Equity Program Agreement dated _____, and acknowledged that (s)he executed the same as his/her free act and deed.

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

My commission expires: _____

Kapiolani Residence, Apartment No.
1631 Kapiolani Boulevard, Honolulu, Hawaii 96814
Tax Map Key No.: (1) 2-3-041-006 C.P.R. No.
(Old Republic Title)

EXHIBIT A

FIRST:

Unit No. , located in that certain Condominium Project known as "**KAPIOLANI RESIDENCE**" (the "Project"), as shown on Condominium Map No. 2331, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as may be amended from time to time (the "Condominium Map"), and described in the Declaration of Condominium Property Regime of Kapiolani Residence dated September 9, 2016, filed on September 13, 2016, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-9752342, as the same may be amended from time to time (the "Declaration").

TOGETHER WITH easements appurtenant to the Unit established by and described in the Declaration, including the following:

(A) The exclusive right to use those certain limited common elements of the Project which are described in the Declaration as being appurtenant to the Unit, including the parking stall(s) and one (1) assigned mailbox, as set forth in the Declaration.

(B) Nonexclusive easements in the common elements, including the limited common elements, and in the Project, designed for such purposes as ingress to, egress from, utility services for, support of, and, as necessary, for the maintenance and repair of the Unit and the limited common elements appurtenant thereto; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Declaration, and in the other units in the building in which the Unit is located for support; subject to the provisions of Section 514B-38 of the Hawaii Revised Statutes, as amended.

SECOND:

An undivided 0.179515% interest appurtenant to the Unit, in all common elements of the Project, as established for the Unit by the Declaration, or such other fractional or percentage interest as hereafter established for the Unit by any amendment to the Declaration, as tenant in common with all other owners and tenants thereof.

TOGETHER WITH and subject to, as to **FIRST** and **SECOND** above, the covenants, agreements, easements, obligations, conditions, exceptions, reservations and other matters and provisions of the Declaration, the Bylaws of the Association of Unit Owners of Kapiolani Residence, and the House Rules, each as may be amended from time to time, all of which are incorporated herein by this reference and which constitutes and shall constitute covenants running with the land, equitable servitudes and liens to the extent set forth therein and provided by law.

Excepting and reserving and subject to all easements as provided in the Declaration, including, but not limited to, (i) easements for encroachments appurtenant to other units or the common elements,

now or hereafter existing thereon; (ii) easements for access to the Unit and/or limited common element appurtenant thereto from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project or for any other purpose reasonably related to the exercise of the rights and obligations under the Declaration, or, without notice, at any time for (a) making emergency repairs therein necessary to prevent damage to any unit or limited common element, (b) abating any nuisance or dangerous, unauthorized, prohibited or unlawful activity, (c) protecting property rights of any Owner, or (d) preventing death of serious bodily injury to any Owner or other Occupant therein; and (iii) easements necessary to complete improvements to the Project, for noise and dust, to conduct sales activities upon the Project, and to install and operate central telecommunication receiving and distribution systems and services, all as provided in the Declaration.

The land upon which said Condominium Project "**KAPIOLANI RESIDENCE**" is located is described as follows:

All of those certain parcels of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

PARCEL FIRST:

LOTS 49, area 12,500.0 square feet, and **50**, area 12,500.0 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 20 of Hawaiian Dredging Company, Limited.

TOGETHER WITH a non-exclusive, irrevocable and perpetual easement and right-of-way for purposes of ingress and egress and utilities over, under, in and through Lots 1, 3, 4, 5 and 6, as shown on Map 1 of Land Court Consolidation No. 65 and Lots 1, 2 and 3, as shown on Map 1 of Land Court Consolidation No. 70, as granted by Easement Agreement filed on June 28, 1982, as aforesaid as Land Court Document No. 1121201, as amended by Amendment to Easement Agreement filed on April 7, 1983, as aforesaid as Land Court Document No. 1160791.

PARCEL SECOND:

All of those certain parcels of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 51, area 12,500.0 square feet, and **52**, area 12,500.0 square feet, more or less, as shown on Map 2, and **53-A**, area 6,250 square feet more or less, as shown on Map 8, the maps above referred to by numbers filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 20 of Hawaiian Dredging Company, Limited.

TOGETHER WITH a non-exclusive, irrevocable and perpetual easement and right-of-way for purposes of ingress and egress and utilities over, under, in and through Lots 1, 3, 4, 5 and 6, as shown on Map 1 of Land Court Consolidation No. 65 and Lots 1, 2 and 3, as shown on Map 1 of Land Court Consolidation No. 70, as granted by Easement Agreement filed on June 28, 1982, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 1121201, as amended by Amendment to Easement Agreement filed on April 7, 1983, as aforesaid as Land Court Document No. 1160791.

Being all the property described in Limited Warranty Unit Deed, Encumbrances and Reservation of Rights With Power of Attorney With Use, Sales and Transfer Restrictions and Shared Appreciation Equity Kapiolani Residence dated OCT 13 2018, 2018, by and between Samkoo Pacific, LLC, a Hawaii limited liability company, as Grantor, and _____, unmarried, as Tenant in Severalty, as Grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. _____.

AS TO PARCELS FIRST AND SECOND:

Being the property described in and covered by **Transfer Certificate of Title No.** _____ issued to _____, unmarried.

SUBJECT, HOWEVER, to the following:

1. Terms and provisions as contained in the Easement Agreement filed on June 28, 1982, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 1121201.

Which, among other things, provides: cost and expenses of maintenance and repair shall be shared among all parties in the percentage shares described in Exhibit "F" attached thereto.

Amendment thereof by instrument filed on April 7, 1983, as aforesaid as Land Court Document No. 1160791.

2. Terms and provisions as contained in the Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO) by Samkoo Pacific, LLC, a Hawaii limited liability company, dated January 27, 2016, filed on February 10, 2016, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. T-9536264.

3. Terms and provisions as contained in the Declaration of Land Use Restrictive Covenants for Kapiolani Residence for Sale Housing Project by and between Hawaii Housing Finance and Development Corporation, a public body and a body corporate and politic of the State of Hawaii, pursuant to Chapter 201H, Hawaii Revised Statutes, and Samkoo Pacific, LLC, a Hawaii limited liability company, dated May 11, 2016, filed on May 31, 2016, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. T-9647340.

4. Condominium Map No. 2331, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

5. Terms and conditions contained in the Declaration of Condominium Property Regime filed on September 13, 2016, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. T-9752342.

Said Declaration was amended by the following instrument(s):

DATED:	RECORDED:	DOCUMENT NO.:
May 24, 2018	May 25, 2018	T-10371323

August 30, 2018

August 30, 2018

T-10468313

6. By-Laws of the Association of Unit Owners of Kapiolani Residence filed on September 13, 2016, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. T-9752343.

Said Bylaws was amended by instrument dated May 24, 2018, filed on May 25, 2018, as aforesaid as Land Court Document No. T-10371324.

action and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record, up to a maximum of the authority's share of equity in the unit. The person in default shall be entitled to any amount remaining after payment of the authority's share of equity in the unit. [Eff 11/11/11; am and comp **JUL 09 2018**]
] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-39 Transfers of title pursuant to a mortgage foreclosure. The conditions prescribed in section 15-218-35 and section 15-218-41 shall be automatically extinguished and shall not attach to subsequent transfers of title pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. [Eff 11/11/11; am and comp **JUL 09 2018**]
] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-40 Incorporation in deed. The provisions of sections 15-218-35 and 15-218-41 shall be incorporated in any deed, lease, mortgage, agreement of sale, or other instrument of conveyance for reserved housing and workforce housing units. [Eff 11/11/11; am and comp **JUL 09 2018**]
] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-41 Equity sharing requirements.

(a) The authority's share of the equity in the reserved housing or workforce housing unit shall be a percentage of the resale fair market value of the unit. The percentage shall be determined as follows: original fair market value minus the original reserved housing or workforce housing sales price divided by

original fair market value. The percentage shall be rounded to the nearest one percent.

(b) If the authority waives its first option to purchase a reserved housing or workforce housing unit as provided for in section 15-218-35(a), the owner of the reserved housing or workforce housing unit may sell the unit at fair market value. The authority's share of the equity in the reserved housing or workforce housing unit shall become due upon sale of the unit.

(c) If the authority's percentage share of equity is less than one-half of one percent, or if the resale fair market value of the reserved housing or workforce housing unit is less than the original reserved housing or workforce housing unit sales price, subsection (a) shall not be applicable.

(d) The authority shall determine the fair market value of the reserved housing or workforce housing unit at the time of original sale and also at the time of resale.

(e) The resale price and terms shall be approved by the authority.

(f) The authority's interest created by the provisions of this section shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for:

- (1) Any mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of a reserved housing or workforce housing unit;
- (2) Any mortgage insured or held by a federal housing agency; and
- (3) Any mortgage or lien created for any other purpose provided that the authority has previously consented to the mortgage or lien in writing.

[Eff 11/11/11; am and comp JUL 09 2018] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)