

Reviewed and Approved by Executive Director: Wayne K. K. K.

April 5, 2023

## FOR ACTION

### I. REQUEST

Consider Adopting the Findings and Accepting the Recommendations of the Permitted Interaction Group Established Pursuant to Hawaii Revised Statutes §92-2.5(b)(1) at the HCDA Kakaako Board Meeting held on January 4, 2023, to Determine the Requirements and Qualifications for Designating a Non-Governmental Entity as a Buyback Agent for HCDA Reserved Housing Units that are Intended to be Sold during the Reserved Housing Unit's Regulated Term. Presented During the March 1, 2023 HCDA Kakaako Board Meeting.

### II. BACKGROUND

During the HCDA Kakaako Board Meeting held on December 7, 2022, the Kakaako Authority approved the Executive Director's Petition for Waiver or Suspension of Administrative Rules, Pursuant to Hawaii Administrative Rules § 15-219-98, Regarding the Conditions on Transfer of Reserved Housing Units under Hawaii Administrative Rules ("HAR") § 15-22-186(c)(1) for the limited purpose of allowing non-governmental entities (qualified non-profit housing trusts) to buyback those certain HCDA reserved housing units offered for sale during the regulated term.

HCDA is only able to exercise its option to buyback when a reserved housing unit owner chooses to sell their reserved housing unit during the unit's regulated term. In that limited situation, HCDA has retained the right to purchase the unit at a prescribed buyback price.

There are currently 477 HCDA reserved housing units that are still in the regulated term, as shown in the table below, with that number further decreasing as the regulated terms expire. Of those 477 units, we expect only a relatively small number of units to be offered for sale by the owner during the regulated term. This is because the majority of reserved housing unit owners choose to remain in their units for the duration of the regulated term, then sell their unit after the HCDA's option to buyback has expired.

Historically, only 32 units have been offered for sale by the owner during the regulated term, which triggered HCDA's option to buyback.

<b>Project</b>	<b>Buyback Eligible Units (Still in Regulated Term)</b>	<b>Regulated Term</b>
803 WAIMANU	37 units	Expires winter 2026
KE KILOHANA	145 units	Expires summer 2024
RYCROFT TERRACE	145 units	Expires fall 2024
AALII	150 units	79 units expire in fall 2023, 71 units expire in fall 2026
<b>Total</b>	<b>477 units</b>	

At the HCDA Kakaako Board Meeting held on January 4, 2023, a Permitted Interaction Group was established Pursuant to Hawaii Revised Statutes §92-2.5(b)(1) to determine the requirements and qualifications for designating a non-governmental entity as a buyback agent for HCDA reserved housing units that are intended to be sold during the reserved housing unit’s regulated term.

At the HCDA Kakaako Board Meeting held on March 1, 2023, the Permitted Action Group members presented their findings and recommendations to the Kakaako Authority. These findings included requiring qualified non-profit housing trusts to follow the below criteria when buying back HCDA reserved housing units and administering their own affordable housing programs. These requirements are comparable to HCDA’s reserved housing program and include the following minimum requirements:

1. Buyer qualifications
  - a. Buyer must be a U.S. citizen or resident alien;
  - b. Buyer must be a bona fide Hawaii resident;
  - c. Buyer must be at least 18 years old;
  - d. Buyer and/or spouse must not have a majority interest in a principal residence or land trust within the past three years;
2. Income and asset restrictions
  - a. Household income for eligible buyers must be under 140% Area Median Income (“AMI”);
  - b. Household assets for eligible buyers must be under 125% of the above AMI limit;
  - c. No gifts greater than 10% of purchase price (must be used toward down payment);
3. Unit affordability
  - a. Monthly mortgage payments shall not exceed 33% of buyer household’s gross monthly income (inclusive of required maintenance fees and utilities);
4. Regulated term
  - a. The new regulated term for the new buyer shall be a minimum of five (5) years;

5. Owner occupancy required during the regulated term

The qualified non-profit housing trust must also agree to purchase the HCDA reserved housing unit from the original owner at the predetermined buyback price set by formula, according to the applicable HAR governing the project as listed below:

1. Per the 2005 Rules (HAR § 15-22-186), the buyback price is the LOWER of:
  - a. The current fair market value of the unit less the shared equity due to the HCDA; or
  - b. The original sales price of the unit adjusted proportionately to the change in median income computed from the date of purchase to the date of sale.
2. Per the 2011 Rules (HAR § 15-218-36), the buyback price is the LOWER of:
  - a. The current fair market price of the unit less the shared equity due to the HCDA; or
  - b. An adjusted price calculated based on the Area Median Income (AMI) at the time of the original sale of the unit.
3. Per the 2018 Rules (HAR § 15-218-35(c)), the buyback price shall be based on the original fair market value of the unit appreciated annually by a corresponding annual median sales price percent change index for condominiums published by the Honolulu Board of Realtors, plus the allowable cost of improvements made by the owner (if any), less the shared equity due to the HCDA. The buyback price shall be no less than the original sales price of the unit.

**III. DISCUSSION**

Upon adoption of the above program requirements, the next step is to procure qualified non-profit housing trusts to buyback eligible reserved housing units in the Kakaako Community Development District.



As a State agency, the HCDA must follow Hawaii Revised Statutes (“HRS”) Chapter 103D- the Hawaii Public Procurement Code, in selecting the qualified non-profit housing trust or trusts that will buyback HCDA’s reserved housing units. In accordance with HRS Section 103D-303, the HCDA may utilize the Competitive Sealed Proposals procurement method and issue a Request for Proposals (“RFP”).

This method of procurement is used when price is not the most critical factor. The criteria for evaluating the proposals shall be stated in the RFP. Such criteria will require that the non-governmental entity be a qualified non-profit housing trust as defined below:

§ 206E-2 Definitions.

**"Qualified non-profit housing trust"** means a corporation, association, or other duly chartered organization that is registered and in good standing with the State; is recognized by the Internal Revenue Service as a charitable or otherwise tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and has the capacity and resources as determined by the authority to carry out the requirements of the reserved housing and workforce housing programs.

HCDA staff are currently working to draft the RFP to select the qualified non-profit housing trust(s) that will buyback eligible HCDA's reserved housing units and expect to issue the solicitation in May of 2023.

The RFP will be a Multiple Award Contract, and awards will be made to each qualified respondent. In addition to the above criteria, the winning respondent(s) must demonstrate sufficient financial capabilities and the ability to purchase units.

The term of the contract with the winning respondent(s) shall be for a period of 20 years.

Contracted entities may be listed in a random order. The HCDA will assign the first option to purchase according to the list and will establish a rotation between all eligible entities on the list.

It is noted that even if additional buyback agents are procured, it is possible that some units may not be bought back for various reasons. In these cases, the buyback provision may be waived by the HCDA, which would allow the reserved housing unit owner to sell the unit at market upon paying the applicable shared equity payment due to the HCDA.

All HCDA reserved housing units, regardless if buyback is waived or if the regulated term has expired, remain subject to HCDA's shared equity provision. This provision requires the original reserved housing unit owner to pay HCDA shared equity at the first point of sale, regardless of when that sale may occur.

Prepared By: Lindsey Doi, Asset Manager 

Reviewed By: Craig Nakamoto, Executive Director 

Approved By:

Chair Chason Ishii



Secretary Sterling Higa

*Sterling Higa*

Member Craig Hirai

*Craig K. Hirai*