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| LAND COURT | REGULAR SYSTEM |

Return by Mail (X) Pickup ( ) To: Land Court ( ) Regular ( ) Double ( )

Hawaii Housing Finance and Development Corporation

677 Queen Street, Suite 300

Honolulu, Hawaii 96813

Attention: Stanley Fujimoto, Project Manager

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| TYPE OF DOCUMENT: **DECLARATION OF LAND USE RESTRICTIVE COVENANTS, AFFORDABLE FOR-SALE PROJECT, NORTHWEST CORNER, VILLAGES OF KAPOLEI** | | |
|  | | |
| PROPERTY DESCRIPTION  See attached **Exhibit A** | DOCUMENT NO.  TRANSFER CERTIFICATE OF  TITLE NO: |

TAX MAP KEY NO.: (1) 9-1-016: 035

Total pages \_\_\_

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

**AFFORDABLE FOR-SALE PROJECT**

**NORTHWEST CORNER, VILLAGES OF KAPOLE**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (this "**Agreement**") dated as of , made by **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii (“**HHFDC**”), as fee owner of the Property (defined below), whose business and mailing address is 677 Queen Street, Suite 300, Honolulu, Hawaii, 96813, its successors and assigns, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, LLC**, a Hawaii limited liability company, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and its successors and assigns ("**Developer**"), is given as a condition to the approval of the Project (defined below) including exemptions from statutes, ordinances and rules pursuant to Chapter 201H-38, Hawaii Revised Statutes ("**HRS**"), by **HHFDC**, together with any successors to its rights, duties and obligations.

RECITALS:

A. HHFDC is the owner of the fee simple property situated at the northwest corner of the Villages of Kapolei, at the southeast corner of the intersection of Fort Barrette Road and Farrington Highway, at Kapolei, Oahu, Hawaii, Tax Map Key No. (1) 9-1-016: 035, and more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**NW Corner Property**"). The NW Corner Property is approximately 27.619 acres of land.

B. HHFDC issued a Request for Proposals (“**RFP**”) for the master plan and development of the remainder portion of the NW Corner Property consisting of approximately 19.5 acres of vacant land, more particularly described in Exhibit A which is attached hereto and incorporated by reference and made an integral part hereof (“**Property**”), after excluding the Hawaii State Veterans Home project of approximately 7.051 acres at the southeastern portion of the NW Corner Property.

C. In response to the RFP, Developer proposes to develop a \_\_\_\_-unit condominium project ("**Project**") on the Property, consisting of \_\_\_ Affordable Units (defined below) priced in the affordable range for households earning up to 140% or below of the area median income for the City and County of Honolulu ("**AMI**") adjusted for family size, as established by HHFDC for exclusive use with its programs using income amounts provided by the U.S Department of Housing and Urban Development ("**HUD**"), \_\_\_ market-rate residential units, \_\_\_ buildings of \_\_\_-stories, \_\_\_\_\_ parking stalls, storage for \_\_\_ bicycles, and on-site recreation and open space occupying approximately \_\_\_\_\_\_ square feet, known as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ project.

D. The Developer and its Project were approved by the HHFDC Board of Directors on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**HHFDC Approval**”).

E. HHFDC and Developer have executed a Development Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_, which governs the development of the Project (“**Development Agreement**”).

F. Developer has created an \_\_\_-unit condominium property regime dated \_\_\_\_\_\_\_\_ and recorded as Document No. \_\_\_\_\_\_\_\_\_\_\_\_ at the Office of the Assistant Registrar, Land Court, State of Hawaii, for the conveyance of the Property.

G. Whereas, Developer is desirous of acquiring the fee simple title to the Property.

H. HHFDC requires that Developer declare and covenant that the regulatory and restrictive covenants set forth herein governing the use, occupancy, sale and transfer of the Project and Property shall be and are covenants running with the Property and shall be binding upon all subsequent owners of the Project and Property until released, and are not merely personal covenants of Developer.

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

1. Affordable Housing Requirement. The Project shall comply with the following affordability requirements, unless otherwise approved by HHFDC. The exact unit count and square footages are subject to adjustment so long as not less than \_\_\_% of the total residential units (\_\_\_\_ units) shall be offered to households earning a maximum of 140% or below the AMI ("**Affordable Units**"), \_\_\_ units may be market-rate residential units ("**Market Units**"), for a total of \_\_\_\_\_ Affordable Units and Market Units as follows:

|  |  |  |
| --- | --- | --- |
| No. of Units | Avg.Size, sq. ft. | Unit Types and Target Market |
|  |  | 1-Bedroom Units[[1]](#footnote-2) at 80% or below the AMI |
|  |  | 1-Bedroom Units at 100% or below the AMI |
|  |  | 1-Bedroom Units at 120% or below the AMI |
|  |  | 2-Bedroom Units[[2]](#footnote-3) at 100% or below the AMI |
|  |  | 2-Bedroom Units at 120% or below the AMI |
|  |  | 2-Bedroom Units at 140% or below the AMI |
|  |  | 3-Bedroom Units[[3]](#footnote-4) at 120% or below the AMI |
|  |  | 3-Bedroom Units at 140% or below the AMI |
|  |  | Total Affordable Units |
|  |  | Market Units |
|  |  | Total Units |

The for-sale Affordable Units shall be sold to Qualified Residents approved solely by HHFDC in accordance with HHFDC's Sales Program made a part of the Development Agreement between Developer and HHFDC. This Declaration shall govern the for-sale Affordable Units.

"**Qualified Residents**" shall mean persons defined under Sections 201H-32, Hawaii Revised Statutes (“**HRS**”), and Sections 201H-47 through -51, HRS, inclusive, and meeting the eligibility and income requirements set forth in the HAR and other State of Hawaii laws applicable to the purchase of the Affordable Units.

Some or all of the Affordable Units may be substituted with rental units between 80% and 140% or below the AMI utilizing HHFDC's Rental Housing Revolving Fund, as approved by HHFDC ("**Affordable Rental Units**"). The Affordable Rental Units shall be excluded from this Declaration and subject to their own affordability restrictions. HHFDC agrees to execute any and all releases and other documents necessary to release the Market Units, Retail Space, and Affordable Rental Units from the terms of this Agreement.

2. HHFDC Affordable Sales Program Restrictions. All of the Affordable Units in the Project shall be subject to the provisions of Sections 201H-47 through -51, HRS, and related provisions of Hawaii Administrative Rules as enacted as of the date of this Declaration, as may be amended from time to time, as further described below.

a. Buyback Program Restrictions. Beginning with the first conveyance of each Affordable Unit in the Project to a Qualified Resident and continuing thereafter until the earlier of:

(i) the date that such restrictions lapse by their own terms;

(ii) the tenth (10th) anniversary of the date of recordation of the deed of the First Conveyance of such Affordable Unit; or

(iii) the date that such restrictions automatically extinguish pursuant to Section 201H-47(f), HRS,

all conveyances of each Affordable Unit in the Project shall be subject to the HHFDC Buyback Program Restrictions. Each subsequent conveyance of the Affordable Unit shall incorporate the HHFDC Buyback Program Restrictions and shall contain the covenant of the grantee thereunder to observe and perform the HHFDC Buyback Program Restrictions until the expiration thereof as set forth herein. A copy of the current HHFDC Buyback Program Restrictions is set forth in **Exhibit B** attached hereto and incorporated herein by this reference.

b. Shared Appreciation Equity (“**SAE**”) Program Restrictions. Beginning with the First Conveyance of each Affordable Unit on the Property, each Affordable Unit shall be and remain subject to the SAE Program Restrictions. Each conveyance of the Affordable Unit shall incorporate the SAE Program Restrictions and shall contain the covenant of the grantee thereunder to observe and perform the terms, covenants and conditions of the SAE Program Restrictions, unless released by HHFDC as evidenced by a Release of SAE filed at the Bureau of Conveyances of the State of Hawaii or the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as applicable. A copy of the current HHFDC SAE Program Restrictions is set forth in **Exhibit C** attached hereto and incorporated herein by this reference.

3. Liability for HHFDC Buyback Program Restrictions and SAE Program Restrictions. Developer shall not be responsible or liable for the administration, representations, observance, performance, or enforcement of the HHFDC Buyback Restrictions and/or the SAE Program Restrictions. Developer also shall not be responsible or liable for failure by any initial purchaser or subsequent grantee to perform his/her or its obligations or to otherwise comply with the provisions of the HHFDC Buyback Program Restrictions and SAE Program Restrictions.

4. Non-Compliance.

1. If Developer shall be in material default for failure to comply with any covenants or agreements to be performed by Developer under this Declaration, HHFDC shall have the right, subject to any cure rights, to pursue against Developer any and all legal remedies, to seek specific performance, or other actions that it deems necessary. Such remedies shall be cumulative. The penalty for non-compliance with these procedures is at the discretion of the HHFDC, subject to applicable laws. For projects receiving HHFDC program funds in the form of loans, foreclosure proceedings are one alternative. Upon determination by HHFDC of non‑compliance, Developer shall be notified in writing and given (i) sixty (60) calendar days to correct the violation, or (ii) to commence such cure and thereafter proceed with reasonable diligence to complete such corrections, prior to HHFDC exercising any of its remedies. HHFDC agrees to extend the correction period, up to a total of six (6) months, if it is determined by HHFDC that good cause exists for granting such an extension.
2. If a subsequent owner of an Affordable Unit shall be in material default for failure to comply with any covenants or agreements to be performed by such owner under this Declaration, HHFDC shall have the right, subject to any cure rights, to pursue against such owner any and all legal remedies, to seek specific performance, or other actions that it deems necessary. The penalty for non-compliance with these procedures is at the discretion of the HHFDC, subject to applicable laws. Upon determination by HHFDC of non‑compliance, the owner of the Affordable Unit shall be notified in writing and given (i) sixty (60) calendar days to correct the violation, or (ii) to commence such cure and thereafter proceed with reasonable diligence to complete such corrections, prior to HHFDC exercising any of its remedies. HHFDC agrees to extend the correction period, up to a total of six (6) months, if it is determined by HHFDC that good cause exists for granting such an extension

5. Indemnity. Developer shall indemnify, defend, and hold harmless HHFDC, the State of Hawaii, and their officials, officers, employees, directors, agents, representatives, successors and assigns from and against any and all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, relating to, arising out of or resulting from: (a) the acts or omissions of Developer or its employees, officers, agents, or subcontractors; (b) the design, construction, repair, renovation, or defects of the Project and the use, occupation or operation of the Project; and/or (c) the enforcement of this Declaration (whether or not suit is brought therefore).  This provision shall survive the expiration or earlier termination of this Declaration, notwithstanding any other provision to the contrary.

6. Recording and Filing; Covenants to Run with the Land

a. Upon execution and delivery by HHFDC, Developer shall cause this Declaration and all amendments hereto to be recorded in the Bureau of Conveyances of the State of Hawaii and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, and shall pay all fees and charges incurred in connection herewith. Upon recording, Developer shall immediately transmit to HHFDC a certified copy of the recorded Declaration.

b. HHFDC and Developer hereby covenant and agree that the regulatory and restrictive covenants set forth herein that govern the use, occupancy, sale and transfer of the Affordable Units shall be and are covenants running with the fee simple title to the Affordable Units for the term stated herein and shall be binding upon all subsequent owners of the Affordable Units for such term until released, and are not merely personal covenants of HHFDC and Developer.

c. Notwithstanding anything in this Agreement to the contrary, HHFDC and Developer agree to execute and record a termination and/or release of this Agreement if Developer determines it is unable to obtain financing acceptable to Developer necessary to complete the Project in a timely manner after exercising reasonable efforts and due diligence to secure such financing

7. Release of this Declaration

a. Prior to the close of sale of the last Affordable Unit in the Project, Developer shall prepare and execute a Release of this Declaration and deliver to HHFDC for review and execution.

b. Upon HHFDC's execution of the release, Developer, or its successors or assigns, shall cause the Release of this Declaration to be recorded at the Bureau of Conveyances of the State of Hawaii and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as applicable. Developer, or its successors or assigns, shall be responsible for all fees associated with preparing and recording the Release of this Declaration.

c. Developer shall provide HHFDC with a certified copy of the recorded Release of this Declaration within ten (10) business days after filing at the State of Hawaii Bureau of Conveyances and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as applicable.

[*signature page follows*]

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

APPROVED AS TO FORM: HAWAII HOUSING FINANCE AND

DEVELOPMENT CORPORATION,

a public body and a body corporate and

politic of the State of Hawaii

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Attorney General Delmond J.H. Won

Its Executive Assistant

"HHFDC"

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

a \_\_\_\_\_\_\_\_\_ limited liability company

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its \_\_\_\_\_\_\_\_

"Developer"

STATE OF HAWAII )

) SS

CITY AND COUNTY OF HONOLULU )

On this day of , 20 , before me appeared

DELMOND J.H. WON, personally known to me, who, being by me duly sworn, did say that he is the EXECUTIVE ASSISTANT 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 DECLARATION OF LAND USE RESTRICTIVE COVENANTS, AFFORDABLE FOR-SALE PROJECT, NORTHWEST CORNER, VILLAGES OF KAPOLEI, 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

Judicial Circuit

My commission expires: \_

|  |  |
| --- | --- |
| STATE OF HAWAII | ) |
|  | ) SS |
| CITY AND COUNTY OF HONOLULU | ) |

On this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me personally appeared ­­­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Printed Name:

Notary Public, State of Hawaii

My commission expires:

(Official Stamp or Seal)

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| --- |
| NOTARY CERTIFICATION STATEMENT  Document Identification or Description:  Declaration of Land Use Restrictive Covenants, Affordable For-Sale Project, Northwest Corner, Villages of Kapolei  Doc. Date: or  🞎 Undated at time of notarization.  No. of Pages: \_\_\_\_\_\_\_ Jurisdiction: First Circuit  (in which notarial act is performed)    Signature of Notary Date of Notarization and  Certification Statement    (Official Stamp or Seal)  Printed Name of Notary |

|  |  |
| --- | --- |
| STATE OF HAWAII | ) |
|  | ) SS |
| CITY AND COUNTY OF HONOLULU | ) |

On this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me personally appeared ­­­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Printed Name:

Notary Public, State of Hawaii

My commission expires:

(Official Stamp or Seal)

|  |
| --- |
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1. The affordable 1-bedroom units have \_\_ bath. [↑](#footnote-ref-2)
2. The affordable 2-bedroom units varies with \_\_, \_\_\_, or \_\_ baths. [↑](#footnote-ref-3)
3. The affordable 3-bedroom units have \_\_ baths. [↑](#footnote-ref-4)