

STATE OF HAWAII  
AFFORDABLE HOUSING FUNDING ROUND

2025  
RHRF TEMPLATE  
DOCUMENTS









































































































































































































































































































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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, personally known to me, who being by me duly sworn, did say that he/she 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 the instrument 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.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

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

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: \_\_\_\_\_

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

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

EXHIBIT A

EXHIBIT B

Rent Schedule

	_____	Units	\$_____ per unit per month
	_____	Units	\$_____ per unit per month
	_____	Unit	Resident Manager's Unit
Total	_____	Units	

LAND COURT SYSTEM

REGULAR SYSTEM

Return by            MAIL (    )            PICK UP (    ) to:

Hawaii Housing Finance and Development Corporation  
Rental Housing Revolving Fund  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

TITLE OF DOCUMENT:

DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
(Rental Housing Revolving Fund)

PARTIES TO DOCUMENT:

OWNER:

CORPORATION:    Hawaii Housing Finance and Development  
                  Corporation

PROPERTY:

TAX MAP KEY:

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS**  
(Rental Housing Revolving Fund)

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (the "Agreement"), dated as of \_\_\_\_\_ by \_\_\_\_\_, and its successors and assigns (the "Owner") is given as a condition precedent to the funding for the construction of the project (defined herein below) by the 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, together with any successor to its rights, duties and obligations (the "Corporation").

WHEREAS, the Owner is or shall be the owner of a \_\_\_\_\_-unit rental housing development located on lands in the \_\_\_\_\_, County of \_\_\_\_\_, State of Hawaii, owned in fee by [governmental entity] and leased to the Owner, more particularly described in Exhibit A attached hereto and incorporated herein, known as or to be known as the \_\_\_\_\_ (the "Project"); and

WHEREAS, the Owner has represented to the Corporation that the Owner shall continue to promote or shall use its best efforts to cause the Owner to continue to provide the rental of units comprising the Project (hereinafter "Units") and exert the Owner's best efforts to rent all of the Units which remain unrented, all on the following terms and rent schedules hereinafter set forth for the term stated herein;

WHEREAS, the Owner intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the term stated herein and binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner.

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

SECTION 1. Definitions.

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

SECTION 2. Affordability and Age requirements

The Project must comply with the following affordability requirements:

a. \_\_\_\_\_ of the available units shall be for persons and families with incomes at or below \_\_\_\_\_% of the area median gross income at the time of admission into the housing project; and

b. \_\_\_\_\_ of the available units shall be for persons and families with incomes at or below \_\_\_\_\_% of the area median gross income at the time of admission into the Project.

c. One (1) unit is designated as a manager's unit.

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

e. Area median gross incomes are derived from estimates provided by HUD.

f. The Project is an elderly project and all units shall be rented to qualified elder or elderly households as defined in Section 201H, Hawaii Revised Statutes. The Owner is responsible for keeping abreast of any legislative amendments that may affect the definition of "elder or elderly households" [If project is an elderly project. If not, delete].

### SECTION 3. Rent

a. Units must be rent-restricted to the area median gross income adjusted for family size for the area in which the Project is located.

b. The rent for each unit designated as a low-income unit must remain restricted throughout the term of this Agreement.

### SECTION 4. Term of Agreement

The term of this Agreement shall commence on the date of the Agreement and expire on the date of the latter of years from the date of this Agreement or \_\_\_\_\_.

### SECTION 5. Annual Certification

The requirements under this Agreement shall be certified annually by Owner through the submission of an Annual Report, as required by the Corporation. The Annual Report will be due annually on February 1. This date shall be known as the Effective Date. The Owner must retain the Annual Report and the supporting documentation verifying the information on the Annual Report for a minimum period of three (3) years after the due date.

### SECTION 6. Tenant Income

Applicants for low-income units shall be advised early in their initial visit to the Project that there are maximum income limits which apply to the Units. Management should explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certificate (TIC) or any form(s) as required by the Corporation prior to occupancy and recertified on an annual basis.

#### SECTION 7. Verification

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

#### SECTION 8. Certification

Upon acceptance of an applicant to the Project, a TIC must be completed for the applicant and certified to by the applicant and the Owner. The form is a legal document which, when fully executed, qualifies the applicant to live in the Unit.

The TIC must be executed along with the lease prior to move-in. No one may live in a unit in the Project unless they are certified and under a lease.

The original TIC form is to be retained by the Owner in the applicant's file. A copy of the form shall be sent to the Corporation or its designated representative within thirty days of the tenant move-in. The Owner must retain the TIC and the supporting documentation verifying the TIC for a minimum of three (3) years.

#### SECTION 9. Recertification

(a) To ensure that each unit is complying with the income restrictions, (1) the Owner shall annually recertify each tenant's income and household composition, and (2) the Owner shall cause each tenant to report certain changes in income and household composition which occur between regularly scheduled recertifications.

(b) If the income of the tenants in a Unit who have previously verified increases above 140 percent of the applicable income limitation, such Unit may continue to be counted as a low income unit as long as the next available unit of comparable or smaller size is occupied by a qualified low income tenant, and the rent continues to be restricted for the

initial unit.

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

(d) Upon recertification of the tenant's income, the Owner shall complete a new TIC, which shall be certified by applicant and the Owner. This new TIC shall be sent to the Corporation or designated representative prior to the tenant's anniversary date.

#### SECTION 10. Past Due Recertification

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

#### SECTION 11. Interim Adjustments

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

#### SECTION 12. Rent Restrictions

The initial maximum rent that tenants may pay are attached and incorporated herein as Exhibit "B" ("Rent Schedule").

Rents may be increased accordingly as the HUD area median gross income increases, provided that the rental rates remain affordable to families earning \_\_\_\_\_% and \_\_\_\_\_% of the area median gross income as stated in Section 2 herein.

#### SECTION 13. Eviction of Tenants

Once an eligible tenant has been certified and admitted to the Project, the tenant may not be displaced solely due to an increase in the tenant's household income beyond the restricted limit.

#### SECTION 14. Audits

(a) The Project shall be subject to a management audit by the Corporation or its designated representative at least annually. Notification of an audit shall be given to the Owner at least thirty (30) days prior to such audit. The results of the management audit and the recommendations for corrective action at the Project shall be transmitted to the Owner within thirty (30) days following the completion of the audit.

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

(c) The Owner shall have a period of sixty (60) days in which to respond to the findings of the management audit. The Corporation or its designated representative shall review the Owner's response to determine the extent to which the issues raised in the management audit letter are addressed.

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

#### SECTION 15. Reporting Requirements

(a) The Tenant Income Certificate must be submitted at the following times during the year:

- \* Thirty (30) days after the initial rent-up to the tenant;
- \* Thirty (30) days after any interim adjustments to tenant incomes and household size have been reported/discovered; and
- \* Thirty (30) days after the tenant's move-in anniversary date.

In lieu of the Tenant Income Certificate submittal, the

Corporation may accept a Status Report submitted annually with the Annual Report listed below.

(b) The Annual Report must be submitted annually upon the Effective Date throughout the compliance period. These forms must be sent to the Corporation or its designated representative.

(c) The Tenant Income Certificate, Status Report and the Annual Report forms are available from Corporation or its designated representative. Additionally, the Corporation or its designated representative has data regarding HUD area median gross incomes, maximum rental rates, income verification information, and third-party verification forms.

#### SECTION 16. Fees

A reasonable annual compliance monitoring fee may be charged for administrative expenses. If fees are charged, payments shall be submitted with the Annual Report on the Effective Date for each year of the compliance period. It will be the responsibility of the Corporation or its designated representative to inform the Owner of any changes in the annual compliance fee prior to the Owner's effective dates and submittal of fees. The fee may be adjusted annually each July 1.

#### SECTION 17. Non-Compliance Penalties

The penalty for non-compliance with these procedures is at the discretion of the Corporation. For projects receiving program funds in form of loans, foreclosure proceedings is one alternative. The Corporation reserves the right to pursue any and all legal remedies to recapture the funds awarded, to seek specific remedies to recapture the funds awarded, to seek specific performance, or other actions that it deems necessary.

Upon determination by the Corporation or its designated representative of non-compliance, the Owner shall be notified and given sixty (60) days to correct the violations. The Corporation or its designated representative may extend the correction period, up to a total of six (6) months, if it is determined by the Corporation that good cause exists for granting such an extension.

#### SECTION 18. Indemnity

The Owner shall indemnify, defend, and hold harmless the Corporation, 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 the Owner or its employees, officers, agents, or subcontractors; (b) the

indebtedness secured by a Rental Housing Revolving Fund mortgage on the Project; (c) the design, construction, repair, renovation, or defects of the Project and the use, occupation or operation of the Project; and/or (d) the enforcement of this Agreement (whether or not suit is brought therefore). This provision shall survive the expiration or earlier termination of this Agreement, notwithstanding any other provision to the contrary.

SECTION 19. Recording and filing; Covenants to Run With the Project

(a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the [Bureau of Conveyances]/[Land Court] of the State of Hawaii, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the Corporation an executed original of the recorded Agreement. The Owner agrees that the Corporation will not release any proceeds under that certain Building Loan Agreement dated concurrently herewith unless and until the Corporation has received the recorded executed original of the Agreement.

(b) The Owner, under this Agreement, covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the term stated herein and binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner.

(c) The Owner will: (i) pay the rent reserved by the lease between the [Insert Lessor Name] as Lessor and the Owner dated \_\_\_\_\_ (the "Lease") as the same becomes due and payable; (ii) promptly perform and observe all of the covenants, conditions, and agreements required to be performed and observed by the Owner under the Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly notify the Corporation in writing of any default by the Owner in the performance or observance of any of the covenants, conditions, and agreements of the part of the Owner to be performed or observed under the Lease or of the occurrence of any event which, regardless of the lapse of time, would constitute a default thereunder; (iv) promptly notify the Corporation in writing of the giving of any notice by the Lessor under the Lease of the default of the Owner thereunder in the performance or observance of any of the covenants, conditions, and agreements on the part of the owner to be performed or observed under the Lease and promptly cause a copy of each such notice given by the Lessor to the Owner to be delivered to the Corporation; and (v) promptly notify the Corporation in writing of the commencement of a proceeding under the federal bankruptcy laws by or against the Owner or

the Lessor under the Lease.

(d) The Owner will not surrender the Lease or the Owner's leasehold estate and interest therein, nor terminate or cancel the Lease, and will not, without the prior written consent of the Corporation, modify, change supplement, alter, or amend the Lease, either orally or in writing.

SECTION 20 - MISCELLANEOUS.

(a) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(b) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered 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.

To the Corporation:

Hawaii Housing Finance and Development  
Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
ATTN: Rental Housing Revolving Fund Program

To the Owner:

ATTN:

The Corporation and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) Amendment. The Owner agrees that it shall take all actions necessary to amend this Agreement as may be necessary to comply with the Corporation's Rental Housing Revolving Fund Program. Any amendment of this Agreement shall be in writing and recorded at the Bureau of Conveyances, State of Hawaii.

(d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project for which, and to the extent in which, the Corporation executes a subordination agreement, except insofar as Section 42 of the Code requires otherwise.

(e) Governing Law. This Agreement shall be governed by

the laws of the State of Hawaii and, where applicable, the laws of the United States of America.

(f) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

[signature page follows]

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

“Corporation”

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

“Owner”

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, personally known to me, who being by me duly sworn, did say that he/she 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 the instrument 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.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

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

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

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

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

EXHIBIT A

EXHIBIT B

Rent Schedule

	_____	Units	\$_____	per unit per month
	_____	Units	\$_____	per unit per month
	_____	Unit	Resident Manager's Unit	
Total	_____	Units		

LAND COURT SYSTEM

REGULAR SYSTEM

Return by            MAIL (    )            PICK UP (    ) to:

Hawaii Housing Finance and Development Corporation  
Rental Housing Revolving Fund  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

TITLE OF DOCUMENT:

DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
(Rental Housing Revolving Fund)

PARTIES TO DOCUMENT:

OWNER:

CORPORATION:    Hawaii Housing Finance and Development  
                         Corporation

GROUND LESSOR:

PROPERTY:

TAX MAP KEY:

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS**  
(Rental Housing Revolving Fund)

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (the "Agreement"), dated as of \_\_\_\_\_ by \_\_\_\_\_, and its successors and assigns (the "Owner") and by \_\_\_\_\_ and its successors and assigns (the "Ground Lessor") is given as a condition precedent to the funding for the construction of the project (defined herein below) through its Rental Housing Revolving Fund Program by the 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, together with any successor to its rights, duties and obligations (the "Corporation").

WHEREAS, the Owner is or shall be the owner of a \_\_\_\_\_-unit rental housing development known or to be known as \_\_\_\_\_ (the "Project") located on lands owned in fee simple by and leased from the Ground Lessor in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Hawaii (the "Land"), both the Project's leasehold interest and the Land is more particularly described in Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Owner has represented, and the Ground Lessor acknowledges and agrees, to the Corporation that the Owner shall use its best efforts to rent all of the individual units comprising the Project (collectively the "Units") all on the following terms and rent schedules hereinafter set forth for the term stated herein;

WHEREAS, the Owner, as acknowledged and agreed to by the Ground Lessor, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project and the Land for the term stated herein and binding upon all subsequent owners of the Project and/or the Land for such term, and are not merely personal covenants of the Owner.

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

SECTION 1. Definitions.

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

SECTION 2. Affordability and Age requirements

The Project must comply with the following affordability requirements:

a. \_\_\_\_\_ of the available units shall be for persons and families with incomes at or below \_\_\_\_\_% of the area median gross income at the time of admission into the housing project; and

b. \_\_\_\_\_ of the available units shall be for persons and families with incomes at or below \_\_\_\_\_% of the area median gross income at the time of admission into the Project.

c. One (1) unit is designated as a manager's unit.

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

e. Area median gross incomes are derived from estimates provided by HUD.

f. The Project is an elderly project and all units shall be rented to qualified elder or elderly households as defined in Section 201H, Hawaii Revised Statutes. The Owner is responsible for keeping abreast of any legislative amendments that may affect the definition of "elder or elderly households" [If project is an elderly project. If not, delete].

SECTION 3. Rent

a. Units must be rent-restricted to the area median gross income adjusted for family size for the area in which the Project is located.

b. The rent for each unit designated as a low-income unit must remain restricted throughout the term of this Agreement.

SECTION 4. Term of Agreement

The term of this Agreement shall commence on the date of the Agreement and expire on the date of the latter of \_\_\_\_\_ years from the date of this Agreement or \_\_\_\_\_.

SECTION 5. Annual Certification

The requirements under this Agreement shall be certified annually by the Owner through the submission of an Annual Report, as required by the Corporation. The Annual Report will be due annually on February 1. This date shall be known as the Effective Date. The Owner must retain the Annual Report and the supporting documentation verifying the information on the Annual Report for a minimum period of three (3) years after the due

date.

#### SECTION 6. Tenant Income

Applicants for low-income units shall be advised early in their initial visit to the Project that there are maximum income limits which apply to the Units. Management shall explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certificate (TIC) or any form(s) as required by the Corporation prior to occupancy and recertified on an annual basis.

#### SECTION 7. Verification

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

#### SECTION 8. Certification

Upon acceptance of an applicant to the Project, a TIC must be completed for the applicant and certified to by the applicant and the Owner. The form is a legal document which, when fully executed, qualifies the applicant to live in the Unit.

The TIC must be executed along with the lease prior to move-in. No one may live in a unit in the Project unless they are certified and under a lease.

The original TIC form is to be retained by the Owner in the applicant's file. A copy of the form shall be sent to the Corporation or its designated representative within thirty days of the tenant move-in. The Owner must retain the TIC and the supporting documentation verifying the TIC for a minimum of three (3) years.

#### SECTION 9. Recertification

(a) To ensure that each unit is complying with the income restrictions, (1) the Owner shall annually recertify each tenant's income and household composition, and (2) the Owner shall cause each tenant to report certain changes in income and household composition which occur between regularly scheduled recertifications.

(b) If the income of the tenants in a Unit who have previously verified increases above 140 percent of the

applicable income limitation, such Unit may continue to be counted as a low income unit as long as the next available unit of comparable or smaller size is occupied by a qualified low income tenant, and the rent continues to be restricted for the initial unit.

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

(d) Upon recertification of the tenant's income, the Owner shall complete a new TIC, which shall be certified by applicant and the Owner. This new TIC shall be sent to the Corporation or designated representative prior to the tenant's anniversary date.

#### SECTION 10. Past Due Recertification

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

#### SECTION 11. Interim Adjustments

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

#### SECTION 12. Rent Restrictions

The initial maximum rent that tenants may pay are attached and incorporated herein as Exhibit "B" ("Rent Schedule").

Rents may be increased accordingly as the HUD area median gross income increases, provided that the rental rates remain

affordable to families earning \_\_\_\_\_% and \_\_\_\_\_% of the area median gross income as stated in Section 2 herein.

SECTION 13. Eviction of Tenants

Once an eligible tenant has been certified and admitted to the Project, the tenant may not be displaced solely due to an increase in the tenant's household income beyond the restricted limit.

SECTION 14. Audits

(a) The Project shall be subject to a management audit by the Corporation or its designated representative at least annually. Notification of an audit shall be given to the Owner at least thirty (30) days prior to such audit. The results of the management audit and the recommendations for corrective action at the Project shall be transmitted to the Owner within thirty (30) days following the completion of the audit.

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

(c) The Owner shall have a period of sixty (60) days in which to respond to the findings of the management audit. The Corporation or its designated representative shall review the Owner's response to determine the extent to which the issues raised in the management audit letter are addressed.

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

SECTION 15. Reporting Requirements

(a) The Tenant Income Certificate must be submitted at the following times during the year:

- \* Thirty (30) days after the initial rent-up to the tenant;
- \* Thirty (30) days after any interim adjustments to tenant incomes and household size have been reported/discovered; and

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

In lieu of the Tenant Income Certificate submittal, the Corporation may accept a Status Report submitted annually with the Annual Report listed below.

(b) The Annual Report must be submitted annually upon the Effective Date throughout the compliance period. These forms must be sent to the Corporation or its designated representative.

(c) The Tenant Income Certificate, Status Report and the Annual Report forms are available from Corporation or its designated representative. Additionally, the Corporation or its designated representative has data regarding HUD area median gross incomes, maximum rental rates, income verification information, and third-party verification forms.

#### SECTION 16. Fees

A reasonable annual compliance monitoring fee may be charged for administrative expenses. If fees are charged, payments shall be submitted with the Annual Report on the Effective Date for each year of the compliance period. It will be the responsibility of the Corporation or its designated representative to inform the Owner of any changes in the annual compliance fee prior to the Owner's effective dates and submittal of fees. The fee may be adjusted annually each July 1.

#### SECTION 17. Non-Compliance Penalties

The penalty for non-compliance with these procedures is at the discretion of the Corporation. For projects receiving program funds in form of loans, foreclosure proceedings is one alternative. The Corporation reserves the right to pursue any and all legal remedies to recapture the funds awarded, to seek specific remedies to recapture the funds awarded, to seek specific performance, or other actions that it deems necessary.

Upon determination by the Corporation or its designated representative of non-compliance, the Owner shall be notified and given sixty (60) days to correct the violations. The Corporation or its designated representative may extend the correction period, up to a total of six (6) months, if it is determined by the Corporation that good cause exists for granting such an extension.

#### SECTION 18. Indemnity

The Owner and the Ground Lessor shall indemnify, defend, and hold harmless the Corporation, 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 the Owner or the Ground Lessor or their employees, officers, agents, or subcontractors; (b) the indebtedness secured by a Rental Housing Revolving Fund mortgage on the Project; (c) the design, construction, repair, renovation or defects of the Project and the use, occupation or operation of the Project; and/or (d) the enforcement of this Agreement (whether or not suit is brought therefore). This provision shall survive the expiration or earlier termination of this Agreement, notwithstanding any other provision to the contrary.

SECTION 19. Recording and filing; Covenants to Run With the Project and the Land

(a) Upon execution and delivery by the Owner and Ground Lessor, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the [Bureau of Conveyances]/[Land Court] of the State of Hawaii and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the Corporation and Ground Lessor an executed original of the recorded Agreement. The Owner agrees that the Corporation will not release any proceeds under that certain Building Loan Agreement dated concurrently herewith unless and until the Corporation has received the recorded executed original of the Agreement.

(b) This Agreement and the covenants and conditions regulating and restricting the use, occupancy, and transfer of the Project contained herein, are not merely personal covenants, and shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner, the Ground Lessor, their respective successors and assigns, and all subsequent owners of the Project and/or the Land or any interest therein, and the Corporation and its successors and assigns, for the term of this Agreement. The Owner and Ground Lessor hereby agrees that any and all requirements of the laws of the State of Hawaii to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the Project and/or the Land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to ensure that these restrictions run with the Project and/or the Land. For the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project and/or the land or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project and/or the Land or portion thereof provides that such conveyance is subject to this Agreement.

(c) Each of the covenants and agreements of the Owner

contained in this Regulatory Agreement shall be deemed to have been made by, and shall apply to the Land and bind the Ground Lessor; provided that the Ground Lessor shall not be in default of its obligations hereunder to the extent of satisfactory performance by the Owner, as determined by the Corporation in its sole discretion.

(d) The Owner will: (i) pay the rent reserved by the lease between the Ground Lessor and the Owner described in Exhibit A, attached hereto (the "Lease") as the same becomes due and payable; (ii) promptly perform and observe all of the covenants, conditions, and agreements required to be performed and observed by the Owner under the Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly notify the Corporation in writing of any default by the Owner in the performance or observance of any of the covenants, conditions, and agreements of the part of the Owner to be performed or observed under the Lease or of the occurrence of any event which, regardless of the lapse of time, would constitute a default thereunder; (iv) promptly notify the Corporation in writing of the giving of any notice by the Ground Lessor under the Lease of the default of the Owner thereunder in the performance or observance of any of the covenants, conditions, and agreements on the part of the owner to be performed or observed under the Lease and promptly cause a copy of each such notice given by the Ground Lessor to the Owner to be delivered to the Corporation; and (v) promptly notify the Corporation in writing of the commencement of a proceeding under the federal bankruptcy laws by or against the Owner or the Ground Lessor under the Lease.

(e) The Owner will not surrender the Lease or the Owner's leasehold estate and interest therein, nor terminate or cancel the Lease, and will not, without the prior written consent of the Corporation, modify, change supplement, alter, or amend the Lease, either orally or in writing.

#### SECTION 20 - MISCELLANEOUS.

(a) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(b) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered 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.

To the Corporation:

Hawaii Housing Finance and Development

Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
ATTN: Rental Housing Revolving Fund Program

To the Owner:

ATTN:

To the Ground Lessor:

ATTN:

The Corporation, the Owner, and the Ground Lessor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) Amendment. The Owner and Ground Lessor agrees that it shall take all actions necessary to amend this Agreement as may be necessary to comply with the Corporation's Rental Housing Revolving Fund Program. Any amendment of this Agreement shall be in writing and recorded at the Bureau of Conveyances, State of Hawaii.

(d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project for which, and to the extent in which, the Corporation executes a subordination agreement, except insofar as Section 42 of the Code requires otherwise.

(e) Governing Law. This Agreement shall be governed by the laws of the State of Hawaii and, where applicable, the laws of the United States of America.

(f) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

[signature page follows]

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_  
"Corporation"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_  
"Owner"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_  
"Ground Lessor"

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, personally known to me, who being by me duly sworn, did say that he/she 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 the instrument 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.

(Notary Stamp or Seal)

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Print Name)*

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

**EXHIBIT A**

EXHIBIT B

Rent Schedule

	_____ Units	\$ _____ per unit per month
	_____ Units	\$ _____ per unit per month
	_____ Unit	Resident Manager's Unit
Total	_____ Units	



# **HAZARDOUS MATERIALS AGREEMENT**

## HAZARDOUS MATERIALS AGREEMENT

(Rental Housing Revolving Fund)

This Agreement, made as of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ whose address is \_\_\_\_\_ (the "Borrower"), in favor and for the benefit of 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, whose address is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 (the "Lender").

### Recitals and Additional Definitions:

(a) To secure certain indebtedness and other obligations of the Borrower to the Lender, the Borrower has executed and delivered to the Lender (among other instruments) a [\_\_\_\_\_] Mortgage, Security Agreement, and Financing Statement dated the date of this Agreement, between the Borrower, as Mortgagor, and the Lender, as Mortgagee (the "Mortgage").

(b) The Mortgage encumbers all of the Borrower's right, title and interest in and to the land described in Exhibit A, attached hereto and incorporated herein, and all of the Borrower's right, title and interest in and to all improvements located or to be located on such land (collectively referred to as the "Property").

(c) As used in this Agreement, the term "Hazardous Materials Laws" means and includes all federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, within, under or about the Property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clear Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar state or local laws or ordinances and the regulations now or hereafter adopted, published and/or promulgated pursuant thereto.

(d) As used in this Agreement, the term "Hazardous Material" means and includes any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and any and all other substances or materials defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under, or for the purposes of, the Hazardous Materials Laws.

(e) As used in this Agreement, the term "Hazardous Discharge" means any event involving the use, deposit, disposal, spill, release or discharge of any Hazardous Material on, within or under the Property.

(f) As used in this Agreement, the term "Hazardous Materials Claims" means and includes (i) any and all enforcement, clean-up, removal, mitigation or other governmental or regulatory actions instituted, or to the best of the Borrower's knowledge contemplated or threatened, in respect of the Property pursuant to any Hazardous Materials Laws, and (ii) any and all claims made or to the best of the Borrower's knowledge contemplated or threatened, by any third party against the Borrower seeking damages, contribution, cost recovery, compensation, injunctive relief or similar relief resulting from any Hazardous Discharge or from the existence of any Hazardous Material on, within or under the Property.

Agreements:

For the purpose of inducing the Lender to make the loan or extend the credit secured by the Mortgage, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Borrower, and intending to be legally bound hereby, the Borrower does hereby represent to and agree with the Lender as follows:

1. The Borrower warrants to the Lender and to any future holder of the Note and to any person or entity that acquires the Property by foreclosure of the Mortgage or by deed or assignment in lieu thereof (individually and collectively, a "Benefited Person") that neither the Borrower nor, to the best of the Borrower's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, within, under or at the Property or any part thereof and neither the Property nor any part thereof has ever been used as a dump site or storage site (whether permanent or temporary) for any Hazardous Material.

2. The Borrower covenants to each Benefited Person that the Borrower will not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, or dispose of, and will use its best efforts (including instituting House Rules or other similar restrictions binding on tenants of the Property) to keep any other person from using, generating, manufacturing, treating, handling, refining, producing, processing, storing, discharging, releasing or disposing of, any Hazardous Materials with the exception of those products customarily produced or distributed and readily available for sale to a consumer for use in or around a residence or for the personal use or consumption of a consumer in or around a residence, on, within, under or about the Property.

3. If the Borrower at any time becomes aware of any Hazardous Discharge or of any Hazardous Material Claim in respect of the Property, the Borrower shall immediately advise each Benefited Person then holding any interest in the Property thereof, in writing, and provide to such Benefited Person detailed reports thereof as may be reasonably requested by such Benefited Person. Such Benefited Person shall have the right to join and participate in, as a party if it so elects, any settlements, remedial actions, legal proceedings or actions initiated in respect of any Hazardous Materials Claims.

4. The Borrower shall indemnify, defend, and hold harmless each Benefited Person

and the State of Hawaii and their respective officers, employees, directors, agents, representatives, officials, successors, or assigns from and against any and all liability, loss, damage (including foreseeable or unforeseeable consequential damages), cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, relating to, arising out of or resulting directly or indirectly from: (a) the Borrower's breach of any warrants or obligations under this Agreement; (b) the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, discharge, disposal or presence of any Hazardous Material on, within, under or about the Property with the exception of those products customarily produced or distributed and readily available for sale to a consumer for use in or around a residence or for the personal use or consumption of a consumer in or around a residence; (c) the Benefited Person's investigation and handling (including the defense) of any Hazardous Materials Claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; and/or (d) the Benefited Person's enforcement of this Agreement, whether or not suit is brought therefore.

5. The provisions of paragraph 4 of this Agreement shall survive (a) the release or termination of the Mortgage; (b) any foreclosure of the Mortgage; and (c) any deed (or assignment) of the Property in lieu of foreclosure, notwithstanding any other provision to the contrary.

6. This Agreement shall be construed and interpreted in accordance with the laws of the State of Hawaii.

7. This Agreement shall inure to the benefit of and may be enforced by each Benefited Person and shall be binding upon and enforceable against the Borrower and the personal representatives, successors and assigns of the Borrower.

8. If any legal action or other proceeding is brought for the enforcement of this Agreement, each party shall pay their own attorneys' fees and costs of litigation.

9. If any term or provision of this Agreement or the application thereof to any person or entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10. This instrument may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Lender"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Borrower"

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, personally known to me, who being by me duly sworn, did say that he/she 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 the instrument 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.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION



# **SUBORDINATION AGREEMENT**

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Return by Mail ( ) Pick up ( ) To:

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Document contains \_\_ pages

TMK:

**SUBORDINATION AND INTERCREDITOR AGREEMENT  
(RENTAL HOUSING REVOLVING FUND)**

Borrower:

HHFDC: **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  
677 Queen Street, Suite 300 Honolulu, Hawaii 96813

Bank:

**SUBORDINATION AND INTERCREDITOR AGREEMENT**  
**(Rental Housing Revolving Fund)**

**NOTICE: THIS SUBORDINATION AND INTERCREDITOR AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN AND RESTRICTIVE COVENANTS AFFECTING THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT (“**Agreement**”) is made as of \_\_\_\_\_, by \_\_\_\_\_, a Hawaii limited partnership (“**Borrower**”), and the **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii (“**HHFDC**”), in favor of \_\_\_\_\_, a Hawaii corporation, **AS AGENT FOR HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii (“**Bank**”).

Commented [pt1]: Insert if private placement for bond.

**RECITALS**

- A. HHFDC has made a construction loan and a term loan to Borrower in the principal amount of \$\_\_\_\_\_ (the “**RHRF Loan**”), evidenced by that certain Building Loan Agreement, dated as of \_\_\_\_\_, (the “**Loan Agreement**”) by and between HHFDC and Borrower, and that certain Note (Rental Housing Revolving Fund), dated as of \_\_\_\_\_, (the “**RHRF Note**”) made by Borrower to the order of HHFDC.
- B. The RHRF Loan is secured by that certain [insert land tenure type] Mortgage, Security Agreement and Financing Statement, executed by Borrower for the benefit of the HHFDC, dated as of \_\_\_\_\_, (the “**RHRF Mortgage**”). In connection with the RHRF Loan, the Borrower and HHFDC have entered into that certain Declaration of Land Use Restrictive Covenants, dated as of \_\_\_\_\_, (the “**RHRF Declaration**”). The RHRF Mortgage and RHRF Declaration are being recorded in the Bureau of Conveyances of the State of Hawaii (the “**Bureau**”) as Document Nos. \_\_\_\_\_ and \_\_\_\_\_ respectively, and will encumber Borrower’s \_\_\_\_\_ interest in the property described on Exhibit “A” hereto and incorporated herein by reference (the “**Property**”). All documents executed by Borrower and/or HHFDC in connection with the RHRF Loan, including, but not limited to, the RHRF Note, RHRF Mortgage and RHRF Declaration, are collectively referred to herein as the “**RHRF Documents**”.
- C. Pursuant to that certain Resolution No. xxx (the “**Resolution**”) dated as of \_\_\_\_\_, and executed by the directors of HHFDC, HHFDC has delivered its \$\_\_\_\_\_ Multifamily Mortgage Revenue Governmental Lender Note (the “**Governmental Lender Note**”) to \_\_\_\_\_, a Hawaii

corporation. Pursuant to that certain Loan Agreement (the “**Senior Loan Agreement**”) dated as of \_\_\_\_\_, and executed by and between Bank and Borrower, the Bank has agreed to make a construction loan and a term loan in the principal amount of \_\_\_\_\_ **DOLLARS (\$\_\_\_\_\_)**, as described in the Senior Loan Agreement defined below (the “**Senior Loan**”) to Borrower for the construction of an affordable multifamily housing project using the proceeds evidenced by the Governmental Lender Note.

- D. The Senior Loan is evidenced by that certain Mortgage Note in the original principal amount of \$\_\_\_\_\_ (the “**Senior Note**”) dated as of even date herewith and executed by Borrower in favor of the Bank. The Senior Note is secured by, among other things, that certain First Mortgage, Security Agreement, Fixture Filing and Financing Statement (the “**Senior Mortgage**”) recorded in the Bureau as Document No. \_\_\_\_\_, executed by Borrower, as Mortgagor, in favor of Bank, as Mortgagee, encumbering Borrower’s \_\_\_\_\_ interest in the Property.
- E. The Senior Loan Agreement, the Senior Mortgage, the Senior Note, the Security Agreements, the Financing Statements and any other loan documents executed in connection with the Senior Loan, shall be referred to herein collectively as the “**Senior Loan Documents**”.
- F. As a condition to making the Senior Loan, Bank requires that the Senior Mortgage be unconditionally and at all times remain a lien or charge upon the Property, prior and superior to all the rights of HHFDC secured by the RHRF Mortgage, the repayment of the RHRF Loan, and any other RHRF Documents, and that HHFDC specifically and unconditionally subordinates the RHRF Mortgage, the RHRF Declaration, the repayment of the RHRF Loan and HHFDC’s rights under the RHRF Documents to the lien or charge of Senior Mortgage, the repayment of the Senior Loan and the other Senior Loan Documents.
- G. HHFDC and Borrower agree to the subordinations set forth herein in favor of Bank.

THEREFORE, for valuable consideration and to induce Bank to make the Senior Loan, Borrower and HHFDC hereby agree for the benefit of Bank as follows:

- 1.1 The Senior Mortgage securing the Senior Note in favor of Bank, and any modifications, renewals or extensions thereof, together with Bank’s right to repayment of the Senior Loan and its rights under any other Senior Loan Documents, shall unconditionally be and at all times remain a lien or charge on the Property prior and superior to the RHRF Mortgage, the RHRF Declaration, the repayment of the RHRF Loan and HHFDC’s rights under any of the other RHRF Documents.
- 1.2 Except with Bank’s prior written consent or until the Senior Loan has been paid in full and Bank has released the Senior Mortgage, HHFDC shall not demand, receive or accept any payment (whether of principal, interest or otherwise) from

Borrower in respect of the RHRF Loan, or exercise any right of or permit any setoff in respect of the RHRF Loan, except that HHFDC may accept scheduled annual payments (but not prepayments) of interest and principal, as the case may be, that are required to be paid under the RHRF Note, so long as no default has occurred and is continuing or will occur as a result of or immediately following any such payment under the Senior Loan Documents.

- 1.3 This Agreement shall be the whole agreement with regard to the subordination of the RHRF Mortgage, the RHRF Declaration, the repayment of the RHRF Loan and HHFDC's rights under any of the other RHRF Documents, to the lien or charge of the Senior Mortgage, together with Bank's right to repayment of the Senior Loan and its rights under any other Senior Loan Documents. This Agreement shall supersede and cancel, but only insofar as would affect the priority of the Senior Mortgage, any prior agreements as to such subordination, including, without limitation those provisions, if any, contained in the RHRF Documents which provide for the subordination of the RHRF Mortgage, the RHRF Declaration or any other RHRF Documents to a mortgage or mortgages.
- 1.4 In the event of any default of Borrower under the Senior Loan Documents, Bank shall deliver to HHFDC a copy of any notice of default delivered to Borrower in connection therewith, concurrently with delivery to Borrower of the same. In such event, HHFDC has the right, but not the obligation, to cure the noticed default within sixty (60) days after the date HHFDC receives a copy of the notice of default (the "**HHFDC Cure Period**") provided that Bank shall have the continuing right to declare and record a notice of default and/or obtain a court-ordered receiver and the HHFDC Cure Period shall not toll or extend the statutory cure period after Bank's recordation of a notice of default.
- 1.5 In the event of any default of Borrower under the RHRF Documents, HHFDC shall deliver to Bank a copy of any notice of default delivered to Borrower in connection therewith, concurrently with delivery to Borrower of the same. In such event, Bank has the right, but not the obligation, to cure the noticed default within sixty (60) days after the date Bank receives a copy of the notice of default (the "**Bank's Cure Period**") provided that HHFDC shall have the continuing right to declare and record a notice of default and/or obtain a court-ordered receiver and the Bank's Cure Period shall not toll or extend the statutory cure period after HHFDC's recordation of a notice of default.

HHFDC further declares, agrees and acknowledges for the benefit of Bank, that:

- 1.6 Bank, in making disbursements of the Senior Loan, pursuant to any such agreement therefor, is under no obligation or duty to, nor has Bank represented that it will, see to the application of such proceeds by the person or persons to whom Bank disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

- 1.7 HHFDC intentionally and unconditionally subordinates all of HHFDC’s right, title and interest in, to and under the RHRF Documents to the lien or charge of the Senior Mortgage upon the Property and the Senior Loan Documents and understands that in reliance upon, and in consideration of, this subordination, specific loans and advances are being and will be made by Bank and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination; and
- 1.8 HHFDC hereby consents to the Senior Loan and the execution and delivery by Borrower to Bank of the Senior Loan Documents.

**Commented [pti2]:** Insert only if senior lender making disbursements for RHRF loan as Agent under a Private Placement.

All notices, approval or other communications hereunder shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties from the changing party), and shall be deemed given when delivered by hand delivery, delivery by reputable private courier such as Federal Express, Airborne, DHL, or similar overnight delivery service, or by depositing the same with the United States Postal Service designated as Registered or Certified Mail, Return Receipt Requested, with adequate postage.

HHFDC: Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

Borrower:

Bank:

- 1.10 HHFDC further agrees that its agreement to subordinate hereunder shall, subject to favorable credit underwriting and the approval of its Board of Directors, extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing), as long as the principal amount of such new mortgage debt is not greater than the principal amount of the Senior Loan, plus the costs and/or expenses of the refinancing; and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Security Instrument, the Senior Loan Documents and Bank shall mean,

respectively, the refinance loan, the refinance note, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this Agreement will remain unaffected.

Exhibit A is attached hereto and incorporated herein by this reference.

[Signature Pages to Follow.]

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

\_\_\_\_\_  
a Hawaii limited partnership

By: \_\_\_\_\_  
a Hawaii nonprofit corporation  
Its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“Borrower”

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

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

“HHFDC”

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

\_\_\_\_\_, AS  
**AGENT FOR HAWAII HOUSING FINANCE  
AND DEVELOPMENT CORPORATION**, a  
public body and a body corporate and politic of  
the State of Hawaii

**Commented [pti3]:** Insert if private placement for a bond

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

Its \_\_\_\_\_

“Bank”





Bank

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

On this \_\_\_\_ day of \_\_\_\_\_, before me appeared \_\_\_\_\_  
\_\_\_\_\_, to me personally known, who, being by me duly sworn, 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.

Signature: \_\_\_\_\_

Type or print name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Subordination and Inter-  
Creditor Agreement (Rental Housing Revolving Fund Loan)

Doc. Date: \_\_\_\_\_ or  Undated at time of  
notarization.

No. of Pages: \_\_\_\_\_ Jurisdiction: First Circuit  
(in which notarial act is performed)

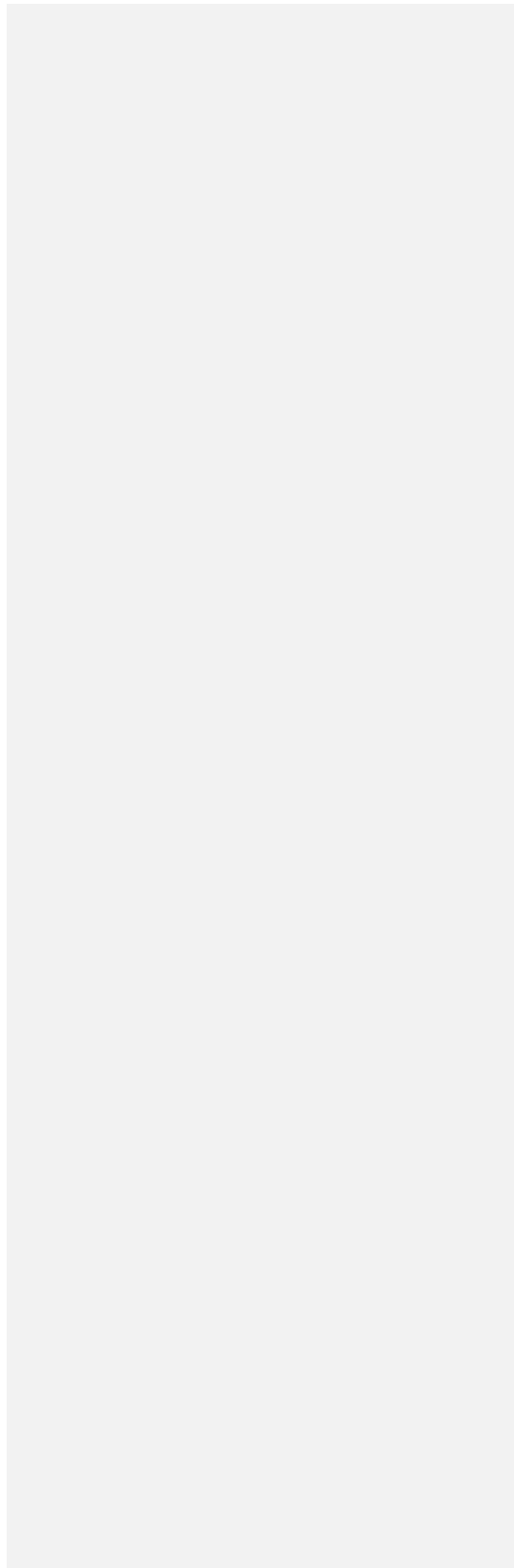
\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT A





# **UCC FINANCING STATEMENT**

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
<div style="display: flex; justify-content: space-between; width: 80%; margin: auto;"> <div style="border-left: 1px solid black; border-top: 1px solid black; width: 40%; height: 40px;"></div> <div style="border-right: 1px solid black; border-top: 1px solid black; width: 40%; height: 40px;"></div> </div> <div style="display: flex; justify-content: space-between; width: 80%; margin: auto; margin-top: 20px;"> <div style="border-left: 1px solid black; border-bottom: 1px solid black; width: 40%; height: 40px;"></div> <div style="border-right: 1px solid black; border-bottom: 1px solid black; width: 40%; height: 40px;"></div> </div>

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME				
OR				
1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR				
3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, item 17 and Instructions)  being administered by a Decedent's Personal Representative

6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
--	--

7. ALTERNATIVE DESIGNATION (if applicable):  Lessee/Lessor     Consignee/Consignor     Seller/Buyer     Bailee/Bailor     Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:

## Exhibit B

Debtor:

Secured Party: HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

All of Debtor's present and future right, title and interest in and to all of the following:

- (1) All fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the improvements on the premises described in Exhibit A (the "Premises"), including all of the easements, rights, privileges and appurtenances belonging or in anywise appertaining to the Premises, and all of the estate, right, title, interest, claim or demand whatsoever of the Debtor in the Premises, either in law or in equity, in possession or expectancy, now or hereafter acquired;
- (2) All buildings and improvements constructed or to be constructed on the Premises and all building materials, furniture, furnishings, decorations, fixtures, equipment and appliances now owned or hereafter acquired by Debtor for the residential rental project (the "Project"), together with all related amenities and improvements to be constructed on the Premises and situated in or upon the Premises or elsewhere, any other items, constituting personal or intangible property, described therein;
- (3) Any and all leases, rental agreements or similar documents of any portion of the Premises, whether now existing or hereafter created (collectively, the "Lease");
- (4) All rents, income and profits arising from the Lease and renewals thereof and all guarantees thereof, and together with all rents, income and profits for the use and occupation of the Premises (or any portion thereof) and from all leases of said premises (or any portion thereof) which may be executed in the future to secure performance by parties of their obligations;
- (5) All architect or other design professional contracts executed or hereafter executed by or on behalf of the Debtor relating to the Premises;
- (6) All engineering contracts executed or hereafter executed by or on behalf of the Debtor relating to the Premises;
- (7) Together with all of the Debtor's rights and remedies thereunder, and the benefits of all covenants therein, and also together with the plans and specifications hereafter obtained by the Debtor involving the Premises prepared by any architect, including any amendments, supplements or revisions thereof and the right to use and enjoy the same;
- (8) All right, title and interest of the Debtor in and to any construction contracts executed or hereafter executed by the Debtor involving the Premises; and any and all


modifications and extensions thereof, together with all of the Debtor's rights and remedies thereunder, and the benefit of all covenants therein;

(9) All right, title and interest of the Debtor in and to any bonds or guarantees obtained or hereafter obtained by the Debtor involving the Premises, together with all of the Debtor's rights and remedies thereunder, and the benefit of all covenants therein;

(10) All right, title and interest of the Debtor in and to any permits relating to the Premises;

(11) All right, title and interest of the Debtor in and to any construction management agreements (collectively, the "Management Agreements"), and in and to any modifications or extensions thereof and in and to any replacements thereof or additional or supplementary agreements concerning renovation work to be performed on the Land, together with all of the Debtor's rights and remedies thereunder, and the benefit of all covenants therein; and

(12) All proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds.



# **ASSIGNMENT OF LEASES & RENTS**

LAND COURT SYSTEM

REGULAR SYSTEM

Return by MAIL ( ) PICK UP ( ) to:

Hawaii Housing Finance and Development Corporation  
Rental Housing Revolving Fund  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

TITLE OF DOCUMENT:

ASSIGNMENT OF LEASES AND RENTS  
(Rental Housing Revolving Fund)

PARTIES TO DOCUMENT:

ASSIGNOR: \_\_\_\_\_

ASSIGNEE: HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

PROPERTY: \_\_\_\_\_

TAX MAP KEY: \_\_\_\_\_

**ASSIGNMENT OF LEASES AND RENTS**  
(Rental Housing Revolving Fund)

THIS ASSIGNMENT, made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ ( the "Assignor"), to HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, pursuant to Chapter 201H of the Hawaii Revised Statutes, whose address is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 (the "Assignee").

Any capitalized terms not defined herein shall have the meaning given them in that certain Building Loan Agreement of even date herewith between Assignor and Assignee.

WITNESSETH:

THAT Assignor for good and valuable consideration, receipt whereof is hereby acknowledged, hereby grants, transfers, and assigns to Assignee the entire lessor's interest in, to and under any and all leases, rental agreements or similar documents of any portion of the premises described in Exhibit A (the "Premises") attached hereto and incorporated herein by reference, whether now existing or hereafter created (collectively, the "Lease").

TOGETHER with all rents, income and profits arising from the Lease and renewals thereof and all guarantees thereof, and together with all rents, income and profits for the use and occupation of the Premises (or any portion thereof) described in the Mortgage hereafter referred to and from all leases of said premises (or any portion thereof) which may be executed in the future during the term of this Assignment.

THIS ASSIGNMENT is made for the purpose of securing:

A. The payment of the principal sum, or so much thereof as may be advanced thereunder from time to time, interest and indebtedness evidenced by a certain promissory Note, and any amendments, extensions or renewals thereof, in the amount of \_\_\_\_\_ AND NO/100 DOLLARS (\$\_\_\_\_\_) made by Assignor to Assignee (the "Note") and secured by (among other things) a Fee Mortgage, Security Agreement and Financing Statement of even date herewith by and between Assignor, as Mortgagor, and Assignee, as Mortgagee (the "Mortgage") to be recorded concurrently herewith in the Bureau of Conveyances of the State of Hawaii.

B. Payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of this Assignment or of the Note and/or the Mortgage.

C. The performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein or in the Note and/or the Mortgage.

ASSIGNOR WARRANTS that Assignor is the sole owner of the entire lessor's interest in the Lease; that the Lease is valid and enforceable and has not been altered, modified or amended in any manner whatsoever save as herein set forth; that the lessee named therein is not in default under any of the terms, covenants or conditions thereof; that no rent reserved in the Lease has been assigned, except to the Senior Lender as defined in the Building Loan Agreement, or anticipated and that no rent for any period subsequent to the date of this Assignment has been collected in advance of the time when the same became due under the terms of the Lease.

ASSIGNOR COVENANTS with Assignee to observe and perform all the obligations imposed upon the lessor under the Lease and not to do or permit to be done anything to impair the security thereof; not to collect any of the rent, income and profits arising or accruing under the Lease or from the premises described in the Mortgage in advance of the time when the same shall become due; not to execute any other assignment of lessor's interest in the Lease or assignment of rents arising or accruing from the Lease or from the premises described in the Mortgage, other than assignments in favor of the Senior Lender; not to subordinate the Lease to any mortgage or other encumbrance or permit, consent or agree to such subordination without Assignee's prior written consent; not to alter, modify or change the terms of the Lease or give any consent or exercise any option required or permitted by such terms without the prior written consent of Assignee, or cancel or terminate the Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises demised thereby or of any interest therein so as to effect directly or indirectly, proximately or remotely a merger of the estates and rights of, or a termination or diminution of the obligations of, lessee thereunder; not to alter, modify or change the terms of any guaranty of the Lease or cancel or terminate such guaranty without the prior written consent of Assignee; at Assignee's request to assign and transfer to Assignee any and all subsequent leases upon all or any part of the premises described in the Mortgage; and, to execute and deliver at the request of Assignee all such further assurances and assignments in the premises as Assignee shall from time to time require.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

A. Notwithstanding that this instrument is a present assignment of the Lease and of said rents, it is understood and agreed that so long as there shall exist no event of default by Assignor in the payment of the principal sum, interest and indebtedness secured hereby and by the Note and Mortgage or in the performance of any obligation, covenant or agreement herein or in the Note and Mortgage or in the Lease contained on the part of Assignor to be performed, Assignor shall have the permission to manage the demised premises and to collect at the time of, but not prior to, the date provided for the payment thereof, all rents, income and profits arising under the Lease or from the premises described therein and to retain, use and enjoy the same, but this permission terminates immediately (a) if Assignor files or has filed against it any petition under the Bankruptcy Code or similar state statute and (b) upon the occurrence and continuance of any other default as described in Paragraph B below and Assignee's election to terminate said

permission. This Assignment is intended not as a pledge nor a security interest requiring the transfer of possession but as an absolute assignment conditioned only on whether Assignor defaults as provided in Paragraph B below or performs as provided in Paragraph D below.

B. Upon or at any time after default in the payment of the principal sum, interest and indebtedness secured hereby and by the Note and Mortgage or in the performance of any obligation, covenant or agreement herein or in the Note, Mortgage or Lease contained on the part of Assignor to be performed, Assignee without in any way waiving such default may at its option without notice and without regard to the adequacy of the security for the said principal sum, interest and indebtedness secured hereby and by the Note and Mortgage, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the premises described in the Lease and/or Mortgage and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of said premises in its own name, demand, sue for or otherwise collect and receive all rents, income and profits of said premises, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee and to apply such rents, income and profits to the payment of: (a) all expenses of managing the premises, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary or desirable and all expenses of operating and maintaining the premises, including, without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the premises; and (b) the principal sum, interest and indebtedness secured hereby and by the Note and Mortgage, together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph as Assignee in its sole discretion may determine, any custom or use to the contrary notwithstanding. The exercise by Assignee of the option granted it in this paragraph and the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under the Note or Mortgage or under the Lease or this Assignment.

C. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the premises after default or from any other act or omission of Assignee in managing the premises after default. Assignee shall not be obligated to perform or discharge and does not hereby undertake to perform or discharge any obligation, duty or liability under the Lease(s) or by reason of this Assignment.

Assignor hereby agrees to indemnify, defend and hold harmless Assignee, the State of Hawaii, their officials, officers, employees, directors, agents, representatives, successors and assigns from and against any and all liability, loss, damage, cost, and expense including all attorneys' fees, and all claims, suits and demands therefore, relating to, arising out of or resulting from the Lease(s) or which may be asserted against Assignee by reason of any alleged

obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Lease(s).

Should Assignee incur any such liability, loss, damage, cost and expense under the Lease(s) or by reason of this Assignment or in defense of any such claims, suits or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and Assignor shall reimburse Assignee therefore immediately upon demand; and upon the failure of Assignor to reimburse Assignee upon demand, Assignee, may, at its option, declare all sums secured hereby and by the Note and Mortgage immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of said premises upon Assignee nor for the carrying out of any of the terms and conditions of the Lease(s); nor shall it operate to make Assignee responsible or liable for any waste committed on the property by the tenants or any other parties, or for any dangerous or defective condition of the premises, or for any negligence in the management, upkeep, repair or control of said premises resulting in loss or injury or death to any tenant, licensee, employee, stranger or other third party.

D. Upon payment in full of the principal sum, interest and indebtedness secured hereby and by the Note and Mortgage this Assignment shall become and be void and of no effect and Assignor shall then have the right to have Assignee indicate such status by the execution and delivery of a cancellation of this Assignment; but the affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee showing any part of said principal, interest or indebtedness to remain unpaid shall be and constitute prima facie evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The Assignor hereby authorizes and directs the Lessee named in the Lease described therein or in the Mortgage upon receipt from Assignee of written notice to the effect that Assignee is then the holder of the Note and Mortgage and that an event of default exists thereunder or under this Assignment to pay over to Assignee all rents, income and profits arising or accruing under the Lease or from the premises described therein or in the Mortgage and to continue so to do until otherwise notified by Assignee.

E. Assignee may take or release other security for the payment of said principal sum, interest and indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to any of its rights under this Assignment.

F. The term "Lease" as used herein means the Lease hereby assigned and any extension or renewal thereof and any Lease subsequently executed during the term of this Assignment covering the premises described in the Lease or the Mortgage or any part thereof.

G. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note and Mortgage, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under

the terms of the Note and Mortgage. The right of Assignee to collect said principal sum, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

H. In case of any conflict between the terms of this instrument and the terms of the Mortgage, the terms of the Mortgage shall prevail but Assignee shall have the right at its sole option to resort to this Assignment or the Mortgage as convenience may dictate and may enter the premises in whole or in part under either the Mortgage or this Assignment as Assignee shall determine.

I. This Assignment shall be governed by and shall be construed in accordance with the laws of the State of Hawaii.

J. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

K. If any provision of this Assignment is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this Assignment will remain unaffected.

THIS ASSIGNMENT, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note and Mortgage and shall be binding upon Assignor, and Assignor's heirs, executors, personal representatives, successors and assigns, and any subsequent owner of the mortgaged premises.

[signature page follows]

IN WITNESS WHEREOF, Assignor and Assignee have caused these presents to be executed on the day and year first above written.

\_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_

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

By \_\_\_\_\_

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

"Assignor"

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By \_\_\_\_\_

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

"Assignee"

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, personally known to me, who being by me duly sworn, did say that he/she 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 the instrument 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.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION



# **ARCHITECT'S LETTER**

\_\_\_\_\_, 20\_\_

Commented [P11]: Print final letter on Architect's Letterhead

Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

Attention: [insert Executive Director's Name], Executive Director

Re: \$\_\_\_\_\_ Rental Housing Revolving Fund Loan to \_\_\_\_\_

Gentlemen:

We have entered into a contract (the "Architect's Contract") dated \_\_\_\_\_, 20\_\_, with \_\_\_\_\_, a Hawaii \_\_\_\_\_ (the "Borrower"), to furnish architectural services in connection with the proposed construction of certain improvements (the "Improvements") on certain land situate at \_\_\_\_\_, TMK \_\_\_\_\_, to be known as the "\_\_\_\_\_ Project," a residential rental project (the "Property"), pursuant to drawings and specifications (the "Plans and Specifications"), on file at Lender's office and incorporated herein by reference thereto.

As an essential inducement to the 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 (the "Lender"), to loan the sum of \$\_\_\_\_\_ to the Borrower pursuant to that certain Building Loan Agreement dated \_\_\_\_\_, 20\_\_ (the "Loan Agreement") executed by the Lender and the Borrower for the purpose of paying for, among other things, a substantial portion of the costs of constructing and equipping the Improvements. In consideration thereof, and for other good and valuable consideration, we hereby certify, warrant, represent, covenant and agree as follows:

1. We hereby certify, warrant and represent that:

(a) The Property is duly and validly classified, zoned and generally planned under applicable land-use and zoning laws, ordinances and regulations for the construction, ownership and operation of the Improvements.

(b) Upon payment of customary fees, there is or there will be available to the Property, all utility services which will be intended to be connected or used in connection with

Hawaii Housing Finance and Development Corporation

[Insert Executive Director's Name]

\_\_\_\_\_, 20\_\_\_\_

Page 2

the Improvements on the Property, including, but not limited to, water, electric, cable television, telephone and sewer. The streets serving the Property meet county requirements for county refuse pickup services.

(c) Except for any waivers and/or exemptions granted by the City Council of the City and County of Honolulu under Chapter 201H, Hawaii Revised Statutes, the Plans and Specifications are in conformity with all zoning ordinances, building codes and environmental and ecological laws and regulations and all permits or governmental authorizations necessary for construction and use of the Improvements in accordance with the Plans and Specifications, except those which cannot be reasonably obtained by the Borrower in view of the progress of the construction of the Improvements, have been issued to the Borrower.

(d) The recommendations set forth in the soils test report and foundation recommendations dated \_\_\_\_\_, 20\_\_, prepared for the Borrower by \_\_\_\_\_, have been reviewed by the structural engineer and taken into consideration in the design of the foundation for the Improvements.

(e) We maintain a policy of professional liability insurance (errors and omissions) issued by an insurer licensed to do business in the State of Hawaii in an amount of not less than \$ \_\_\_\_\_. Such policy is currently in force and fully prepaid with a term (including prepaid renewals) extending coverage through \_\_\_\_\_.

(f) The parking included in the Plans and Specifications is sufficient to satisfy the building code and all applicable zoning ordinances.

2. We hereby further certify that, as of the date hereof, the Architect's Contract is in full force and effect and no event has occurred which itself constitutes a default thereunder. We hereby consent to the assignment of the Architect's Contract by the Borrower to the Lender, as security for the repayment of the construction loan, of all of the Borrower's right, title and interest in and to the Architect's Contract, on condition that the Lender shall exercise the rights of the Borrower thereunder only after the occurrence of an Event of Default as defined in the Loan Agreement. We hereby acknowledge that the Borrower has made a recent draft copy of the Loan Agreement available for our inspection.

3. We hereby covenant and agree that:

(a) We shall not undertake, without your prior written approval, any changes in the Plans and Specifications.

(b) Upon the occurrence of an Event of Default under the Loan Agreement or an event of default under any document or instrument contemplated thereby by any person or

Hawaii Housing Finance and Development Corporation  
[Insert Executive Director's Name]

\_\_\_\_\_, 20\_\_\_\_  
Page 3

entity signing such instruments, we shall, at the Lender's request, continue performance of the services specified in the Architect's Contract on the Lender's behalf in accordance with the terms thereof upon the condition that we are paid in accordance with the provisions of such contract. The Lender shall be entitled to use the Plans and Specifications and all additions, modifications or extensions thereof pertaining to the Improvements, without extra cost beyond that to which we are entitled under the Architect's Contract.

(c) In performing our obligation to inspect pursuant to the Architect's Contract as attached hereto, and report in writing on the construction of the Improvements, (i) we will act to protect the interest of the Lender in making such inspections and the architect's certifications required to be delivered to the Lender in connection with the Borrower's request for advances under the Loan Agreement, and (ii) we will inform the Lender immediately of any default by the Borrower in its payment of any fees due us. Our certifications will reflect that we have made such on-site inspections and other review of the construction and the contracts for such construction, the records of the Borrower or the contractors, and such other matters as we deem necessary in order to make an independent certification as to all reasonable matters which the Lender may from time to time require as conditions precedent to disbursements of loan proceeds. We will furnish the Lender with copies of such records and reports as the Lender may from time to time request. Promptly after we discover that any estimate or allowance in the Construction Contract for the Project will be insufficient, we shall give the Lender notice of such insufficiency. We understand that the Lender may require upon project completion or as a condition to the disbursement of loan proceeds to make the final payment to the construction contractor, our certification that the Improvements have been completed substantially in accordance with the Plans and Specifications and the Construction Contract, that the Improvements as built conform with all applicable zoning, environmental and ecological, building and land use ordinances and regulations, that no municipal authority has issued any notice of violation or nonconformity in connection with the Improvements, that direct connection has been made to all utility services, including but not limited to, water, electric, cable television, telephone and sewer, and that the Improvements are ready for occupancy. We agree to make such certification, with such specific exceptions and qualifications as may then be appropriate, provided that we are paid in accordance with the Architect's Contract.

4. Nothing herein contained shall be deemed to constitute us as the agent of the Lender, and no relationship of principal and agent or employment between us and the Lender is intended, it being expressly understood and that we are acting as an independent contractor to inspect and report on the progress of construction, but without any power or authority to approve any change in the Plans or Specifications or to authorize any deviation therefrom during the course of the construction, unless such change or deviation has been approved in writing by the Lender or is permitted under paragraph 3(a) above. However, upon the Borrower's default under the Loan Agreement and the Lender's request that we continue as the architects of record for the Project, we will act as the Lender's agent pursuant to and in accordance with the terms of the

Hawaii Housing Finance and Development Corporation

[Insert Executive Director's Name]

\_\_\_\_\_, 20\_\_

Page 4

Architect's Contract.

5. We hereby irrevocably and unconditionally subordinate any and all claims and mechanic's liens which we have, or may hereafter have, for services rendered under the Architect's Contract or otherwise to the liens and security interests in favor of the Lender under the \_\_\_\_\_ Mortgage, Security Agreement and Financing Statement described in the Loan Agreement.

6. This letter agreement shall be binding upon us and our successors and assigns and shall inure to the benefit of and be enforceable by us, the Lender, the Borrower, and their respective successors and assigns.

7. If any provision of this letter agreement is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this letter agreement will remain unaffected.

8. This letter may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

[signature page follows]

Hawaii Housing Finance and Development Corporation  
[Insert Executive Director's Name]  
\_\_\_\_\_, 20\_\_\_\_  
Page 5

Very truly yours,

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_

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

Hawaii Registration No. AR-\_\_\_\_\_  
"Architect"

APPROVED AND ACCEPTED:

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
DEPUTY ATTORNEY GENERAL  
STATE OF HAWAII


By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_  
"Lender"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_

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

"Borrower"



# **COLLATERAL ASSIGNMENT OF ARCHITECT**

COLLATERAL ASSIGNMENT  
OF  
OWNER-ARCHITECT CONTRACT  
(Rental Housing Revolving Fund)

1. DATE OF THIS ASSIGNMENT

\_\_\_\_\_, 20\_\_\_\_

2. PARTIES

Lender: 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

Address: 677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
(hereinafter "Lender")

Borrower: \_\_\_\_\_,  
a Hawaii \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
(hereinafter "Borrower")

Architect: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
(hereinafter "Architect")

3. RECITALS

A. Lender and Borrower have entered into a Building Loan Agreement (herein called the "Loan Agreement") of even date herewith to finance the development and construction by Borrower of the following described project ("Project"):

\_\_\_\_\_ [PROJECT]

B. Borrower has entered into the Owner-Architect Contract ("Contract") dated \_\_\_\_\_ and covering the architectural services to be performed for the entire Project.

The Contract is attached hereto as Exhibit "1" and incorporated herein by reference.

C. In order to induce Lender to enter into the Loan Agreement, and as additional security for the

performance of Borrower's obligations thereunder, Borrower has agreed to make this Collateral Assignment of Contract (hereinafter "Collateral Assignment").

- D. In consideration of their mutual undertakings, and intending to be legally bound thereby, Lender and Borrower covenant and agree as follows:

4. ASSIGNMENT

- A. Borrower hereby transfers and assigns to Lender, its successors and assigns, all of Borrower's right, title and interest in and to the Contract subject to the terms and conditions hereinafter set forth.
- B. Anything herein contained to the contrary notwithstanding: (i) Borrower shall remain liable under the Contract to perform all of Borrower's obligations thereunder in accordance with and pursuant to the terms and provisions thereof; (ii) the obligations of Borrower under the Contract may be performed by Lender or its nominee or other assignee without releasing Borrower therefrom and without resulting in any assumption of said obligation by Lender; and (iii) Lender shall have no obligation or liability under the Contract by reason of or arising out of this Collateral Assignment, nor shall Lender be required or obligated in any manner to perform or fulfill any obligations of Borrower under or pursuant to the Contract, including, without limitation Borrower's obligation to pay the Architect named in the Contract.
- C. Borrower shall not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of: (i) the Contract, (ii) this Collateral Assignment, or (iii) any of the rights created by the Contract or this Collateral Assignment. Any default under this Collateral Assignment shall constitute a default under the Loan Agreement and the Note and \_\_\_\_\_ Mortgage, Security Agreement and Financing Statement (the "Mortgage") given pursuant thereto and as security therefore, subject, however, to the notice provisions in the Loan Agreement.
- D. Borrower represents and warrants to Lender, except for any assignment to a Senior Lender as defined in the Loan Agreement: (i) that Borrower has not assigned or pledged, and hereby covenants that Borrower will not assign or pledge, so long as this Collateral Assignment shall remain in effect, any of Borrower's right, title or interest under, in or to the Contract to anyone other than the Senior Lender (as described in the Loan Agreement), its successors or assigns, and

Lender, its successors or assigns, and that Borrower will not, except upon the prior written consent of Lender and upon the terms and conditions, if any, specified in any such consent, enter into any agreement amending or supplementing the Contract, or settle or compromise any claim against the Architect arising under the Contract; (ii) that Borrower's right, title and interest of, in and to the Contract is not now subject to any liens, encumbrances or security interest; (iii) that all fees required to be paid as of the date hereof under the terms of the Contract have been paid; (iv) the Contract is otherwise in all respects in full force and effect and enforceable in accordance with its terms; and (v) no default exists thereunder as of the date of this Collateral Assignment.

- E. This Collateral Assignment shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Lender, its successors and assigns.
- F. Lender shall not exercise any of its rights under this Section 4.F until the occurrence of an Event of Default under the Loan Agreement, Note, Mortgage or any other document pertaining to the Lender's loan, but in that event, Borrower hereby constitutes Lender, its successors and assigns, Borrower's true and lawful attorney, irrevocably with full power in the name of and on behalf of Borrower or otherwise: (i) to make, execute, complete and deliver to the Architect all such documents as Lender shall consider necessary or appropriate to complete construction under the Contract; (ii) to make all payments to the Architect as Lender shall consider necessary or appropriate under the Contract; (iii) to file any claims or take any actions or institute any proceedings which Lender may deem to be necessary or advisable in connection with the Contract; and (iv) generally, to do, execute, and perform any other act, matter, or thing whatsoever that, in the reasonable opinion of Lender, ought to be done, executed, and performed in connection with the Contract, as fully as Borrower could do in such situation.

5. ARCHITECT'S CONSENT

Architect, as its interest appears, consents to the assignment of the Contract from Borrower to Lender, subject to the provisions of this Collateral Assignment.

6. RELEASE

It is agreed and understood that if the Borrower shall pay

all indebtedness hereby secured, of which indebtedness the records of Lender shall be prima facie evidence, and if Borrower otherwise faithfully performs and observes all of the covenants, conditions, and agreements herein contained and contained in all other instruments evidencing or securing any indebtedness hereby secured and pays the cost of the release hereof, then Lender shall execute and deliver such release in favor of Borrower and this Collateral Assignment shall become null and void.

7. COUNTERPARTS

This Collateral Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

8. GOVERNING LAW

The laws of the State of Hawaii shall govern the validity, construction and effect of this Collateral Assignment.

9. SEVERABILITY

If any provision of this Collateral Assignment is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this Collateral Assignment will remain unaffected.

[signature page follows]

**IN WITNESS WHEREOF**, Lender, Borrower and Architect have executed this Collateral Assignment of Owner-Architect Contract on the date first written above.

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

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

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Lender"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Borrower"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Architect"

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me appeared \_\_\_\_\_, personally known to me, who being by me duly sworn, did say that he/she 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 the instrument 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.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit


Doc. Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

**EXHIBIT "1"**



# **ENGINEER'S LETTER**

\_\_\_\_\_, 20\_\_

Commented [P11]: Print final letter on Engineer's letterhead.

Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

Attention: [Insert Executive Director's Name], Executive Director

Re: \$\_\_\_\_\_ Rental Housing Revolving Fund Loan to \_\_\_\_\_

Gentlemen:

We have entered into a contract (the "Engineer's Contract") dated \_\_\_\_\_, 20\_\_, with \_\_\_\_\_, a Hawaii \_\_\_\_\_ (the "Borrower"), to furnish engineering services in connection with the proposed construction of certain improvements (the "Improvements") on certain land situate at \_\_\_\_\_, TMK \_\_\_\_\_, to be known as the "\_\_\_\_\_ Project," a residential rental project (the "Property"), pursuant to drawings and specifications (the "Plans and Specifications"), on file at Lender's office and incorporated herein by reference thereto.

As an essential inducement to the 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 ("HRS") (the "Lender"), to loan the sum of \$\_\_\_\_\_ to the Borrower pursuant to that certain Building Loan Agreement dated \_\_\_\_\_, 20 (the "Loan Agreement") executed by the Lender and the Borrower for the purpose of paying for, among other things, a substantial portion of the costs of constructing and equipping the Improvements. In consideration thereof, and for other good and valuable consideration, we hereby certify, warrant, represent, covenant and agree as follows:

1. We hereby certify, warrant and represent that:

(a) The civil engineering construction plans are in conformity with all zoning, building code and regulations and all permits or governmental authorizations necessary for construction and use of the Improvements in accordance with the civil engineering construction plans.

(b) We maintain a policy of professional liability insurance (errors and omissions) issued by an insurer licensed to do business in the State of Hawaii in an amount of not less than \$\_\_\_\_\_. Such policy is currently in force and fully prepaid with a term (including prepaid renewals) extending coverage through \_\_\_\_\_.

Hawaii Housing Finance and Development Corporation

[Insert Executive Director's Name]

\_\_\_\_\_, 20\_\_\_\_

Page 2

2. We hereby further certify that, as of the date hereof, the Engineer's Contract is in full force and effect and no event has occurred which itself constitutes a default thereunder. We hereby consent to the assignment of the Engineer's Contract by the Borrower to the Lender, as security for the repayment of the construction loan, of all of the Borrower's right, title and interest in and to the Engineer's Contract, on condition that the Lender shall exercise the rights of the Borrower thereunder only after the occurrence of an Event of Default as defined in the Loan Agreement. We hereby acknowledge that the Borrower has made a recent draft copy of the Loan Agreement available for our inspection.

3. We hereby covenant and agree that:

(a) We shall not undertake, without your prior written approval, any changes in the Plans and Specifications.

(b) Upon the occurrence of an Event of Default under the Loan Agreement or an event of default under any document or instrument contemplated thereby by any person or entity signing such instruments, we shall, at the Lender's request, continue performance of the services specified in the Engineer's Contract on the Lender's behalf in accordance with the terms thereof upon the condition that we are paid in accordance with the provisions of such contract. The Lender shall be entitled to use the Plans and Specifications and all additions, modifications or extensions thereof pertaining to the Improvements, without extra cost beyond that to which we are entitled under the Engineer's Contract.

(c) In performing our obligation to inspect and report in writing on the construction of the Improvements, (i) we will act to protect the interest of the Lender in making such inspections and the engineer's reports required to be delivered to the Lender in connection with the Borrower's request for advances under the Loan Agreement, and (ii) we will inform the Lender immediately of any default by the Borrower in its payment of any fees due us. Our reports will reflect that we have made such on-site inspections and other review of the construction and the contracts for such construction, the records of the Borrower or the contractors, and such other matters as we deem necessary in order to make an independent determination as to all reasonable matters which the Lender may from time to time require as conditions precedent to disbursements of loan proceeds. We will furnish the Lender with copies of such records and reports as the Lender may from time to time request. Promptly after we discover that any estimate or allowance in the Construction Contract for the Project will be insufficient, we shall give the Lender notice of such insufficiency. We understand that the Lender may require, as a condition to the disbursement of loan proceeds to make the final payment to the construction contractor, our certification that the Improvements have been completed substantially in accordance with the Plans and Specifications and the Construction Contract. We agree to make such certification, with such specific exceptions and qualifications as may then be appropriate, provided that we are paid in accordance with the Engineer's Contract.

HHFDC June 2024\_Engineer Letter  
(INSERT PROJECT NAME)

Hawaii Housing Finance and Development Corporation

[Insert Executive Director's Name]

\_\_\_\_\_, 20\_\_\_\_

Page 3

4. Nothing herein contained shall be deemed to constitute us as the agent of the Lender, and no relationship of principal and agent or employment between us and the Lender is intended, it being expressly understood and that we are acting as an independent contractor to inspect and report on the progress of construction, but without any power or authority to approve any change in the Plans or Specifications or to authorize any deviation therefrom during the course of the construction, unless such change or deviation has been approved in writing by the Lender or is permitted under paragraph 3(a) above. However, upon the Borrower's Event of Default under the Loan Agreement and the Lender's request that we continue as the engineers of record for the Project, we will act as the Lender's agent pursuant to and in accordance with the terms of the Engineer's Contract.

5. We hereby irrevocably and unconditionally subordinate any and all claims and mechanic's liens which we have, or may hereafter have, for services rendered under the Engineer's Contract or otherwise to the liens and security interests in favor of the Lender under the \_\_\_\_\_ Mortgage, Security Agreement and Financing Statement described in the Loan Agreement.

6. This letter agreement shall be binding upon us and our successors and assigns and shall inure to the benefit of and be enforceable by us, the Lender, the Borrower, and their respective successors and assigns.

7. If any provision of this letter agreement is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this letter agreement will remain unaffected.

8. This letter may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

[signature page follows]

Hawaii Housing Finance and Development Corporation  
[Insert Executive Director's Name]  
\_\_\_\_\_, 20\_\_\_\_  
Page 4

Very truly yours,

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

Hawaii Registration No. PE-\_\_\_\_\_  
"Engineer"

APPROVED AND ACCEPTED:

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


APPROVED AS TO FORM:

By \_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_  
"Lender"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_  
"Borrower"



# **COLLATERAL ASSIGNMENT OF ENGINEER**

COLLATERAL ASSIGNMENT  
OF  
ENGINEERING CONTRACT  
(Rental Housing Revolving Fund)

1. DATE OF THIS ASSIGNMENT

\_\_\_\_\_, 20\_\_\_\_

2. PARTIES

Lender: 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

Address: 677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
(hereinafter "Lender")

Borrower: \_\_\_\_\_,  
a Hawaii \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
(hereinafter "Borrower")

Engineer: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
(hereinafter "Engineer")

3. RECITALS

A. Lender and Borrower have entered into a Building Loan Agreement (herein called the "Loan Agreement") of even date herewith to finance the development and construction by Borrower of the following described project ("Project"):

\_\_\_\_\_ [PROJECT]

B. Borrower has entered into the Engineering Contract ("Contract") dated \_\_\_\_\_ and covering the \_\_\_\_\_ engineering services to be performed for the entire Project.

The Contract is attached hereto as Exhibit "1" and incorporated herein by reference.

C. In order to induce Lender to enter into the Loan Agreement, and as additional security for the performance of Borrower's obligations thereunder, Borrower has agreed to make this Collateral Assignment

of Contract (hereinafter " Collateral Assignment").

- D. In consideration of their mutual undertakings, and intending to be legally bound thereby, Lender and Borrower covenant and agree as follows:

4. ASSIGNMENT

- A. Borrower hereby transfers and assigns to Lender, its successors and assigns, all of Borrower's right, title and interest in and to the Contract subject to the terms and conditions hereinafter set forth.
- B. Anything herein contained to the contrary notwithstanding: (i) Borrower shall remain liable under the Contract to perform all of Borrower's obligations thereunder in accordance with and pursuant to the terms and provisions thereof; (ii) the obligations of Borrower under the Contract may be performed by Lender or its nominee or other assignee without releasing Borrower therefrom and without resulting in any assumption of said obligation by Lender; and (iii) Lender shall have no obligation or liability under the Contract by reason of or arising out of this Collateral Assignment, nor shall Lender be required or obligated in any manner to perform or fulfill any obligations of Borrower under or pursuant to the Contract, including, without limitation Borrower's obligation to pay the Engineer named in the Contract.
- C. Borrower shall not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of: (i) the Contract, (ii) this Collateral Assignment, or (iii) any of the rights created by the Contract or this Collateral Assignment. Any default under this Collateral Assignment shall constitute a default under the Loan Agreement and the Note and Mortgage given pursuant thereto and as security therefore, subject, however, to the notice provisions in the Loan Agreement.
- D. Borrower represents and warrants to Lender, except for any assignment to a Senior Lender as defined in the Loan Agreement: (i) that Borrower has not assigned or pledged, and hereby covenants that Borrower will not assign or pledge, so long as this Collateral Assignment shall remain in effect, any of Borrower's right, title or interest under, in or to the Contract to anyone other than Lender, its successors or assigns, and that Borrower will not, except upon the prior written consent of Lender and upon the terms and conditions, if any, specified in any such consent, enter into any agreement amending or supplementing the

Contract, or settle or compromise any claim against the Engineer arising under the Contract; (ii) that Borrower's right, title and interest of, in and to the Contract is not now subject to any liens, encumbrances or security interest; (iii) that all fees required to be paid as of the date hereof under the terms of the Contract have been paid; (iv) the Contract is otherwise in all respects in full force and effect and enforceable in accordance with its terms; and (v) no default exists thereunder as of the date of this Collateral Assignment.

- E. This Collateral Assignment shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Lender, its successors and assigns.
- F. Lender shall not exercise any of its rights under this Section 4.F until the occurrence of a default or an Event of Default under the Loan Agreement, Note, Mortgage or any other document pertaining to the Lender's loan, but in that event, Borrower hereby constitutes Lender, its successors and assigns, Borrower's true and lawful attorney, irrevocably with full power in the name of and on behalf of Borrower or otherwise: (i) to make, execute, complete and deliver to the Engineer all such documents as Lender shall consider necessary or appropriate to complete construction under the Contract; (ii) to make all payments to the Engineer as Lender shall consider necessary or appropriate under the Contract; (iii) to file any claims or take any actions or institute any proceedings which Lender may deem to be necessary or advisable in connection with the Contract; and (iv) generally, to do, execute, and perform any other act, matter, or thing whatsoever that, in the reasonable opinion of Lender, ought to be done, executed, and performed in connection with the Contract, as fully as Borrower could do in such situation.

5. ENGINEER'S CONSENT

Engineer, as its interest appears, consents to the assignment of the Contract from Borrower to Lender, subject to the provisions of this Collateral Assignment.

6. RELEASE

It is agreed and understood that if the Borrower shall pay all indebtedness hereby secured, of which indebtedness the records of Lender shall be prima facie evidence, and if Borrower otherwise faithfully performs and observes all of the covenants, conditions, and agreements herein contained and contained in all other instruments evidencing or

securing any indebtedness hereby secured and pays the cost of the release hereof, then Lender shall execute and deliver such release in favor of Borrower and this Collateral Assignment shall become null and void.

7. COUNTERPARTS

This Collateral Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

8. GOVERNING LAW

The laws of the State of Hawaii shall govern the validity, construction, and effect of this Collateral Assignment.

9. SEVERABILITY

If any provision of this Collateral Assignment is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this Agreement will remain unaffected.

[signature page follows]

**IN WITNESS WHEREOF**, Lender, Borrower and Engineer have executed this Collateral Assignment of Engineering Contract 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

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Lender"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Borrower"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Engineer"

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me appeared \_\_\_\_\_, personally known to me, who being by me duly sworn, did say that he/she 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 the instrument 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.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION

**EXHIBIT "1"**



# **CONTRACTOR'S LETTER**

\_\_\_\_\_, 20\_\_

**Commented [P11]:** Print final letter on Contractor's letterhead.

Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

Attention: [Insert Executive Director's Name], Executive Director

Re: \$\_\_\_\_\_ Rental Housing Revolving Fund Loan to \_\_\_\_\_

Gentlemen:

We have entered into a contract (the "Contractor's Contract") dated \_\_\_\_\_, 20\_\_, with \_\_\_\_\_, a Hawaii \_\_\_\_\_ (the "Borrower"), for the construction of certain improvements (the "Improvements") on certain land situate at \_\_\_\_\_, TMK \_\_\_\_\_, to be known as the "\_\_\_\_\_ Project," a residential rental project (the "Property"), and described in the Construction Contract.

As an essential inducement to the 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 ("HRS") (the "Lender"), to loan the sum of \$\_\_\_\_\_ to the Borrower pursuant to that certain Building Loan Agreement dated \_\_\_\_\_, 20 (the "Loan Agreement") executed by the Lender and the Borrower for the purpose of paying for, among other things, a substantial portion of the costs of constructing and equipping the Improvements, we hereby certify, warrant, represent, covenant and agree with the Borrower and Lender as follows:

1. We represent and warrant that we have visited the construction site, familiarized ourselves with local conditions under which the construction work is to be performed, correlated our observations with the requirements of the "Contract Documents" as defined in the Construction Contract, and reported to the architect any error, inconsistency or omission we may have discovered to date in the Contract Documents. We further represent and warrant that we have no cause or reason to believe that the work under the Construction Contract cannot be completed on or before the completion thereunder, for an amount not greater than \$\_\_\_\_\_. Promptly after we discover that any estimate or allowance in the Construction Contract for lineal feet of piles or for any other item or category of work will be insufficient, we shall give the Lender notice of such insufficiency.

Hawaii Housing Finance and Development Corporation

[Insert Executive Director's Name]

\_\_\_\_\_, 20\_\_

Page 2

2. We shall furnish certifications, upon request of the Borrower or the Lender from time to time, that the construction of the Improvements, as depicted in the plans and specifications referred to in the Construction Contract, is proceeding satisfactorily in accordance with the Construction Contract and that we have no cause or reason to believe that the remainder of the work under the Construction Contract cannot be completed on or before the completion thereunder for a specified amount no greater than the aggregate amount of undisbursed sums (exclusive of retentions pertaining to prior disbursements) for payments under the Construction Contract pursuant to the Loan Agreement. Such certifications shall contain specific exceptions and qualifications as we deem appropriate. We recognize that any such exceptions or qualifications not satisfactory to the Lender will entitle the Lender to withhold further disbursements under the Loan Agreement.

3. We shall not perform any work pursuant to any change order or revision (of whatever nature or form) in the Construction Contract unless the Lender's prior written approval shall have been obtained.

4. We recognize that the Lender may be prevented from making disbursements of loan proceeds in due course if we shall claim a default under the Construction Contract. Accordingly, we shall give the Lender written notice of any claimed default on the part of the Borrower under the Construction Contract and shall not rescind the Construction Contract without extending to the Lender an opportunity to remedy the default within a period of thirty (30) days after the Lender's receipt of such notice. We further agree to furnish the Lender with a copy of any demand by us for arbitration under the Construction Contract.

5. We hereby acknowledge that the Borrower has made a copy of the Loan Agreement available for our inspection. We hereby acknowledge that the provisions for the timing and conditions of disbursement of loan proceeds to make payments to the Contractor may differ from the provisions contained in the Construction Contract. Upon notification by the Lender to us of a claimed default under the Loan Agreement or any other Loan Document (as defined in the Loan Agreement), we will, at the Lender's request, continue performance of the work under the Construction Contract upon the condition that the Lender shall disburse loan proceeds pursuant to Section E.7 of the Loan Agreement to make the payments required by the Construction Contract for all work, labor, and materials furnished thereunder and shall perform all of the material obligations to be performed on the Borrower's part under the Construction Contract, as it may be amended hereby, from and after the date of the Lender's request. We shall be obligated to continue our performance under the Construction Contract despite delays or defaults claimed to be made by the Lender in exercising the rights and privileges of the owner thereunder so long as (a) we are reimbursed and compensated in accordance with the Construction Contract by the dates and under the conditions contained in Section E.7 of the Loan Agreement, for all work, labor and materials furnished to or for the Lender thereunder, and (b) the Lender, to the extent the Borrower is obligated or authorized to do so pursuant to the

Hawaii Housing Finance and Development Corporation

[Insert Executive Director's Name]

\_\_\_\_\_, 20\_\_

Page 3

Construction Contract, shall process change orders, grant extensions of time, make inspections, accept the work, issue a certificate of substantial completion upon completion of the work and issue appropriate instructions to the architect for performance of services under the architectural contract, PROVIDED, HOWEVER, that our obligation to continue such performance shall be without prejudice to any right we may have under the Construction Contract or applicable law to seek compensation for costs, expenses or damage incurred by us as a result of such claims, delays or default. If there is any conflict between the terms of the Construction Contract and the terms of the Loan Agreement, the terms of the Loan Agreement will control.

6. We shall keep accurate books, records and accounts relating to the construction of the Improvements separate from our books, records and accounts relating to other construction projects. The Lender and its respective designated representative shall have the right, during reasonable business hours and at reasonable intervals, to inspect our books, records and accounts relating to the Construction Contract and to make extracts therefrom. The Lender shall keep confidential all information obtained from any such inspection, in conformance with Chapter 92F, HRS.

7. We hereby consent to the assignment of the Construction Contract by the Borrower to the Lender, as security for the repayment of the construction loan, of all the Borrower's right, title and interest in and to the Construction Contract, subject to the condition that the Lender shall exercise the rights of the Borrower thereunder only after the occurrence of an Event of Default as defined in the Loan Agreement.

8. Our right to assert any mechanic's or other liens to which we may be entitled as a result of the performance of the work under the Construction Contract shall be and remain at all times subject and subordinate in all respects to the liens and security interests in favor of the Lender under the \_\_\_\_\_ Mortgage, Security Agreement and Financing Statement described in the Loan Agreement. If requested by the Lender, we shall obtain and attach to each application for an advance of loan proceeds executed acknowledgments of payment for all sums due and releases of mechanic's and materialmen's lien on account thereof covered by the immediately preceding advance.

9. If any request submitted by us to the Borrower and to the Lender for a payment under the Construction Contract covers, in whole or in part, the cost of hardware, machinery, apparatus, elevators, escalators, appliances, equipment or building materials (hereinafter collectively referred to as "Materials") stored on or off the construction site, such request shall be accompanied by (a) evidence satisfactory to the Lender that the Materials are stored at a suitable location agreed to by the Borrower and the Lender and are properly identified and segregated from materials and equipment not intended to be incorporated into the Improvements, (b) a security agreement in form and substance satisfactory to the Lender, duly executed by us or a subcontractor (whichever shall have title to the Materials), granting to the Borrower or, if a

Hawaii Housing Finance and Development Corporation

[Insert Executive Director's Name]

\_\_\_\_\_, 20\_\_

Page 4

subcontractor shall have title, granting to the Borrower and to us, a security interest in the Materials, and (c) a UCC-1 Financing Statement appropriately completed and executed by the necessary parties to perfect the security interest of the Borrower in the Materials.

10. We hereby represent to the Lender that as of the date hereof, the Construction Contract is in full force and effect and that no event has occurred which itself constitutes, or with the lapse of time would constitute, a default thereunder. We know of no prior assignment of the Construction Contract by the Borrower.

11. We represent and warrant that: (a) we have not undertaken the "visible commencement of operations" (as defined in Section 507-41, HRS, as amended) on the site of the proposed Improvements, and (b) all of the conditions to construction commencement under the Construction Contract have been satisfied by the Borrower or irrevocably waived by us, except for the delivery of a notice-to-proceed to us.

12. If the Property is located on State owned land, we shall maintain Pollution Liability Insurance covering liability for bodily injury, property damage, and environmental damage resulting from sudden, accidental, and gradual pollution and related cleanup costs arising out of or caused by the operations and construction activities. Combined single limit per occurrence shall not be less than \$3,000,000 and aggregate limit of not less than \$5,000,000. The policy shall have tail coverage extending 5 years beyond the date of the Certificate of Occupancy. The policy shall name the State of Hawaii and the Hawaii Housing Finance and Development Corporation as additional insureds.

13. The Construction Contract is hereby amended to incorporate the agreements contained herein. This Agreement shall be binding upon and inure to the benefit of and be enforceable by us, the Lender, the Borrower and their respective successors and assigns.

14. If any provision of this collateral assignment is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this Agreement will remain unaffected.

15. This letter may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

[signature page follows]

Hawaii Housing Finance and Development Corporation  
[Insert Executive Director's Name]  
\_\_\_\_\_, 20\_\_  
Page 5

Very truly yours,

\_\_\_\_\_,  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

Hawaii Registration No. CT-\_\_\_\_\_

"Contractor"

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

APPROVED AS TO FORM:


By \_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_  
"Lender"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Borrower"



# **COLLATERAL ASSIGNMENT OF CONTRACTOR**

COLLATERAL ASSIGNMENT  
OF  
CONSTRUCTION CONTRACT  
(Rental Housing Revolving Fund)

1. DATE OF THIS ASSIGNMENT

\_\_\_\_\_, 20\_\_\_\_

2. PARTIES

Lender: 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

Address: 677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
(hereinafter "Lender")

Borrower: \_\_\_\_\_,  
a Hawaii \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
(hereinafter "Borrower")

Contractor: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
(hereinafter "Contractor")

3. RECITALS

A. Lender and Borrower have entered into a Building Loan Agreement (herein called the "Loan Agreement") of even date herewith to finance the development and construction by Borrower of the following described project ("Project"):

\_\_\_\_\_ [PROJECT]

B. Borrower has entered into the construction contract ("Contract") dated \_\_\_\_\_ and covering the construction of the entire Project, including all site work and improvements thereon with Contractor.

The Contract is attached hereto as Exhibit "1" and incorporated herein by reference.

C. In order to induce Lender to enter into the Loan Agreement, and as additional security for the performance of Borrower's obligations thereunder,

Borrower has agreed to make this Collateral Assignment of Contract (hereinafter " Collateral Assignment").

- D. In consideration of their mutual undertakings, and intending to be legally bound thereby, Lender and Borrower covenant and agree as follows:

4. ASSIGNMENT

- A. Borrower hereby transfers and assigns to Lender, its successors and assigns, all of Borrower's right, title and interest in and to the Contract subject to the terms and conditions hereinafter set forth.
- B. Anything herein contained to the contrary notwithstanding: (i) Borrower shall remain liable under the Contract to perform all of Borrower's obligations thereunder in accordance with and pursuant to the terms and provisions thereof; (ii) the obligations of Borrower under the Contract may be performed by Lender or its nominee or other assignee without releasing Borrower therefrom and without resulting in any assumption of said obligation by Lender; and (iii) Lender shall have no obligation or liability under the Contract by reason of or arising out of this Collateral Assignment, nor shall Lender be required or obligated in any manner to perform or fulfill any obligations of Borrower under or pursuant to the Contract, including, without limitation Borrower's obligation to pay the Contractor named in the Contract.
- C. Borrower shall not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of: (i) the Contract, (ii) this Collateral Assignment, or (iii) any of the rights created by the Contract or this Collateral Assignment. Any default under this Collateral Assignment shall constitute a default under the Loan Agreement and the Note and \_\_\_\_\_ Mortgage given pursuant thereto and as security therefore, subject, however, to the notice provisions in the Loan Agreement.
- D. Borrower represents and warrants to Lender, except for any assignment to a Senior Lender as defined in the Loan Agreement: (i) that Borrower has not assigned or pledged, and hereby covenants that Borrower will not assign or pledge, so long as this Collateral Assignment shall remain in effect, any of Borrower's right, title or interest under, in or to the Contract to anyone other than Lender, its successors or assigns, and that Borrower will not, except upon the prior written consent of Lender and upon the terms and

conditions, if any, specified in any such consent, enter into any agreement amending or supplementing the Contract, or settle or compromise any claim against the Contractor arising under the Contract; (ii) that Borrower's right, title and interest of, in and to the Contract is not now subject to any liens, encumbrances or security interest; (iii) that all fees required to be paid as of the date hereof under the terms of the Contract have been paid; (iv) the Contract is otherwise in all respects in full force and effect and enforceable in accordance with its terms; and (v) no default exists thereunder as of the date of this Collateral Assignment.

- E. This Collateral Assignment shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Lender, its successors and assigns.
- F. Lender shall not exercise any of its rights under this Section 4.F until the occurrence of an Event of Default under the Loan Agreement, Note, Mortgage or any other document pertaining to the Lender's loan, but in that event, Borrower hereby constitutes Lender, its successors and assigns, Borrower's true and lawful attorney, irrevocably with full power in the name of and on behalf of Borrower or otherwise: (i) to make, execute, complete and deliver to the Contractor all such documents as Lender shall consider necessary or appropriate to complete construction under the Contract; (ii) to make all payments to the Contractor as Lender shall consider necessary or appropriate under the Contract; (iii) to file any claims or take any actions or institute any proceedings which Lender may deem to be necessary or advisable in connection with the Contract; and (iv) generally, to do, execute, and perform any other act, matter, or thing whatsoever that, in the reasonable opinion of Lender, ought to be done, executed, and performed in connection with the Contract, as fully as Borrower could do in such situation.

5. CONTRACTOR'S CONSENT

Contractor, as its interest appears, consents to the assignment of the Contract from Borrower to Lender, subject to the provisions of this Collateral Assignment.

6. RELEASE

It is agreed and understood that if the Borrower shall pay all indebtedness hereby secured, of which indebtedness the records of Lender shall be prima facie evidence, and if

Borrower otherwise faithfully performs and observes all of the covenants, conditions, and agreements herein contained and contained in all other instruments evidencing or securing any indebtedness hereby secured and pays the cost of the release hereof, then Lender shall execute and deliver such release in favor of Borrower and this Collateral Assignment shall become null and void.

7. COUNTERPARTS

This Collateral Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

8. GOVERNING LAW

The laws of the State of Hawaii shall govern the validity, construction, and effect of this Collateral Assignment.

9. SEVERABILITY

If any provision of this Collateral Assignment is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this Agreement will remain unaffected.

[signature page follows]

**IN WITNESS WHEREOF**, Lender, Borrower and Contractor have executed this Collateral Assignment of Construction Contract 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

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Lender"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Borrower"

\_\_\_\_\_  
a Hawaii \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

"Contractor"

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me appeared \_\_\_\_\_, personally known to me, who being by me duly sworn, did say that he/she 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 the instrument 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.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

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 the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_


\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

**EXHIBIT "1"**



# **COLLATERAL ASSIGNMENT OF MANAGEMENT AGREEMENT**

**COLLATERAL ASSIGNMENT OF MANAGEMENT AGREEMENT**

THIS ASSIGNMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ (the "Borrower"), to HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, pursuant to Chapter 201H of the Hawaii Revised Statutes, whose address is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 (the "Lender").

WITNESSETH:

Borrower and Lender agree as follows:

1. Assignment and Grant of Security Interest. In consideration of and as an inducement to the making by Lender to Borrower of a loan (the "Loan") in the maximum principal amount of \_\_\_\_\_, AND NO/100 DOLLARS (\$ \_\_\_\_\_), Borrower hereby GRANTS to Lender a security interest in and hereby ASSIGNS, transfers and sets over to Lender as security for repayment of the Loan, all of Borrower's right, title and interest in, to and under the Property Rental Program Agreement dated \_\_\_\_\_, 20\_\_\_\_, between Borrower and \_\_\_\_\_, a \_\_\_\_\_, corporation (the "Manager") relating to the leasing and management of the apartment complex commonly known as \_\_\_\_\_ (the "Management Contract").

2. Borrower's Obligations Under Management Contract. Borrower hereby agrees to perform punctually and comply with all the terms, covenants and agreements on the part of Borrower to be performed under the Management Contract. Borrower agrees to provide Lender with copies of any and all notices received by Borrower which allege, either directly or indirectly, that Borrower is in default under the terms of the Management Contract.

3. Rights Upon Default. Borrower shall be entitled to exercise all rights under the Management Contract and to all benefits of the Management Contract unless and until Borrower shall be in material default under the Loan. Upon the occurrence of any such default and failure to cure within any applicable grace periods, Lender shall automatically succeed to all benefits of the Management Contract and all rights thereunder.

4. Direction to Manager. Borrower hereby irrevocably

directs Manager, upon demand and after written notice from Lender of a material default under the Loan, to recognize Lender as the holder of the Borrower's rights under the Management Contract. Manager shall be under no obligation to inquire into or determine the actual existence of any such default claimed by Lender.

5. No Assumption of Liability by Lender. Nothing contained herein shall operate or be construed to obligate Lender to perform any of the obligations of Borrower with respect to the Management Contract.

6. Indemnification of Lender. Borrower hereby agrees to indemnify, defend, and hold harmless the Lender, the State of Hawaii, and their respective officials, directors, officers, employees, representatives, agents, successors and assigns from and against any and all liability, loss, damage, cost, and expense, including attorneys' fees, which Lender may or shall incur by reason of this Assignment, and against and from any and all claims, suits, and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any obligation with respect to the Management Contract. This provision shall survive the expiration or earlier termination of this Assignment, notwithstanding any other provision to the contrary.

7. Warranty Concerning Prior Assignments. Borrower represents and warrants that, except for any assignment to any senior lender approved by Lender, Borrower has not sold, assigned, transferred, mortgaged or pledged the Management Contract to anyone other than Lender, and will not, without the prior written consent of Lender, sell, assign, transfer, or pledge the Management Contract.

8. Enforcement of Rights Under Management Contract. Borrower shall enforce or cause to be enforced the performance of all obligations, covenants, conditions and agreements to be performed and kept by Manager under the Management Contract and shall notify Lender promptly of any default (of which Borrower has knowledge) on the part of Manager.

9. Amendment of Management Contract and Assignment. Borrower shall not amend or cancel the Management Contract without Lender's written consent. This Assignment shall not be amended except in writing.

10. Termination of Assignment and Security Interest. Upon payment and performance of all obligations under the Loan, this Assignment shall become void and be of no further effect.

11. Counterparts. This Collateral Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

12. Severability. If any provision of this Collateral Assignment is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this Collateral Assignment will remain unaffected.

[signature page follows]

IN WITNESS WHEREOF, Lender and Borrower have executed this Collateral Assignment as of the date first above written.

\_\_\_\_\_ a Hawaii \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

"Borrower"

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By \_\_\_\_\_

Its \_\_\_\_\_

"Lender"



















[Closing Date]  
Page 3

Accepted:

\_\_\_\_\_  
a Hawaii limited partnership

By \_\_\_\_\_  
a Hawaii corporation  
Its General Partner

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

“Borrower”

c: Randy Chu, HHFDC Development Branch Chief