



2026

RHRF
TEMPLATE
DOCUMENTS



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NOTE
(Rental Housing Revolving Fund)

_____, 20__

_____ a Hawaii _____
_____ [address]
_____ [address] ("Borrower")

1. BORROWER'S PROMISE TO PAY

For value received, Borrower promises to pay _____ AND NO/100 U.S. DOLLARS (\$_____) (this amount is called "principal"), with no interest for years A through B, and simple interest each year starting year C at the rate of _____ percent (___%) per annum, to the order of the Lender. The Lender is 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. Interest will be computed based on a 365-day year and shall be payable on those sums actually advanced for the actual number of days in the month for which interest is payable. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

2. PAYMENTS

Payments shall be as follows:

Years A through B:	No principal or interest payments
Starting Year C:	Annual payments equal to 75% of Net Cash Flow

Annual Payments calculated as follows:

Years C through Z:	Annual Payment = 75% X [annual Operating Income - (annual Operating Expenses + annual Special Fund Deposits + annual Senior Debt Service Payments)]
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Net Cash Flow is defined as annual Operating Income less (i) annual Operating Expenses, (ii) required annual Special Fund deposits, and (iii) annual senior debt service payments made.

Operating Income is defined as all revenues of the Project recognized under Generally Accepted Accounting Principles.

Operating Expenses is defined as the operating expenses of

the Project recognized under Generally Accepted Accounting Principles, excluding depreciation and amortization.

Special Fund(s) is defined as capital reserve, escrow, imposition, or special deposits required by a senior lender, or governmental requirement.

Senior Debt Service Payments is defined as the actual payments of interest and principal made on senior debt and consented to by the Lender.

Loan payments shall be in arrears and made annually based on the calendar year. Payments shall commence on the 30th day of June [Year D] and shall cover the period from Closing Month/Day/[Year C] through December 31, [Year C]. For each calendar year thereafter, loan payments are due on June 30th and shall cover the period from January 1st through December 31st of the preceding year, until payment of the Note in full.

Notwithstanding the foregoing, commencing on June 30, _____ and continuing each June 30th until payment of the Note is made in full, the Borrower shall submit to Lender the repayment calculation under this Section 2 of the Note prepared by a certified public accountant or tax counsel.

Each payment will be credited first to interest then due and the remainder to principal.

THE ENTIRE PRINCIPAL SUM AND ALL ACCRUED AND UNPAID INTEREST PURSUANT TO THIS NOTE SHALL BE PAYABLE IN FULL NO LATER THAN _____, _____ ("MATURITY DATE"). AT THAT TIME, BORROWER SHALL REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND ACCRUED AND UNPAID INTEREST THEN DUE. NOTE HOLDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. BORROWER SHALL THEREFORE BE REQUIRED TO MAKE PAYMENT OUT OF BORROWER'S OTHER ASSETS, OR BORROWER SHALL HAVE TO FIND A LENDER WILLING TO LEND BORROWER THE MONEY AT PREVAILING INTEREST RATES, WHICH MAY BE CONSIDERABLY HIGHER THAN THE INTEREST RATE ON THIS LOAN.

Borrower will make the above payments to Note Holder at:

677 Queen Street, Suite 300
Honolulu, Hawaii 96813

or at a different place if required by the Note Holder.

3. BORROWER'S RIGHT TO PREPAY

Borrower has the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When Borrower makes a prepayment, Borrower will notify the Note Holder in writing that Borrower is doing so. Any partial or full prepayment shall not be subject to payment of any penalty or other fee to Lender.

4. BORROWER'S DEFAULT

(A) Default

The Note Holder may require the Borrower to make immediate payment in full of all amounts due under this Note if Borrower is in default. Borrower shall be in default if Borrower is declared to be in default, following the expiration of all notice and cure periods in the payment of any amounts which are required to be paid under this Note, the performance of the Borrower's obligations under the Mortgage, Security Agreement and Financing Statement referred to herein below under Section 6, or the payment or performance of any other obligations, which Borrower owes to the Note Holder, including the performance of those obligations under that certain Building Loan Agreement of even date herewith by and between Note Holder and Borrower. If Borrower is in default and has not cured such default, the interest rate will increase two percent (2%) above the Prime Rate, defined as the WSJ Prime Rate published in the Wall Street Journal effective on the date of written notice of such default and rate increase from Note Holder. If Borrower cures such default, the interest rate will revert to the interest rate set forth in Paragraph 1 herein above from the date such default is cured. Note Holder shall accept cure from Borrower's investor partners pursuant to the terms of the Building Loan Agreement described above.

(B) Notice of Default

If Borrower is in default, the Note Holder will send Borrower written notice providing Borrower that if Borrower does not cure the default by a certain date, which will be no less than thirty (30) days from the date of such written notice, the Note Holder may require Borrower to pay immediately the full amount of principal and accrued interest, which has not been paid.

(C) No Waiver by Note Holder

Even if, at a time when Borrower is in default, the Note Holder does not require Borrower to pay immediately in full as described above, the Note Holder will still have the right to do so if Borrower is in default at a later time.

(D) Payment of Note Holder's Costs and Expenses

If the Note Holder has declared Borrower to be in default of this Note or has required Borrower to pay immediately in full as described herein above, the Note Holder will have the right to be paid back by Borrower for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses shall include, but not be limited to, reasonable attorneys' fees and disbursements which

Note Holder incurs in connection with any such default or action or proceeding brought to enforce the provisions of this Note or the Mortgage, Security Agreement and Financing Statement referred to herein below under Section 6.

5. NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note shall be in writing and sent by certified mail, return receipt requested, by FedEx or similar overnight courier or by hand delivery to Borrower at the address herein above with copies sent to Borrower's investor limited partner(s) at the address(es) set forth in the Loan Agreement, or at a different address if Borrower gives to the Note Holder a written notice of Borrower's different address. A copy of any default notice given to Borrower shall be sent to Borrower's limited partners at the address(es) set forth in the Building Loan Agreement. Failure to deliver notice to Borrower's limited partners shall not negatively impact the Lender's rights and remedies nor the enforceability of the Loan Documents.

Any notice that must be given to the Note Holder under this Note shall be by certified mail return receipt requested to the Note Holder at the address stated in Section 2 herein above or at a different address if Borrower is given written notice of the Note Holder's different address.

The makers, sureties, guarantors and endorsers hereof, jointly and severally, waive demand, protest and notice of demand, protest and nonpayment, and consent to substitution, change or withdrawal of securities without notice, and to extensions of time of payment without notice.

6. THIS NOTE SECURED BY MORTGAGE

In addition to protection given to the Note Holder under this Note, a Mortgage, Security Agreement and Financing Statement ("Mortgage") dated the same day as this Note, protects the Note Holder from possible losses, which might result if Borrower does not keep the promises which Borrower makes in this Note. The Mortgage describes how and under what conditions Borrower may be required to make immediate payment in full of all amounts Borrower owes the Note Holder under this Note.

7. NON-RECOURSE LOAN

Notwithstanding anything in this Note, the Mortgage or any other document relating to the loan evidenced by this Note (collectively, the "Loan Documents") to the contrary, except as specifically provided herein: (a) the payment of any obligations herein shall be enforced solely against the collateral mortgaged, pledged or assigned to the Note Holder (collectively the "Security"); and (b) if the Note Holder shall take action to

enforce collection of the indebtedness evidenced hereby, the Note Holder will not look to or make any claim against the Borrower or any partner, member or officer, or any member or owner of any member/partner of the Borrower for any liability for any deficiency if the proceeds of the Security are insufficient to repay the sums owing under this Note; provided, however, that nothing in this Note shall in any way affect or impair the liens of the Mortgage or other Loan Documents. Notwithstanding the foregoing:

(a) Nothing herein contained shall be construed as relieving Borrower of the obligation to comply with terms, covenants, conditions and agreements of the Loan Documents or as prohibiting the Note Holder from exercising any and all remedies which the Loan Documents permit, including the right to bring actions or proceedings against the Borrower and to enter a judgment against the Borrower, so long as the exercise of any remedy to collect the sums due under this Note does not extend to execution against or recovery out of any property of the Borrower other than the Security;

(b) Borrower shall be fully liable for (i) misapplying any condemnation awards or insurance awards attributable to the Security, to the full extent of such awards so misapplied, (ii) misapplying any deposits attributable to the Security, to the full extent of such deposits so misapplied, (iii) collecting any rents in advance in violation of any covenant on Loan Documents, to the full extent of such rents so collected in advance, (iv) committing fraud, misrepresentation or waste in connection with the operation of the Security or the making or funding of the loan evidenced hereby, or the violation of any terms, condition or covenant contained in any of the Loan Documents, to the full extent of any loss, damage, expense or costs (including reasonable attorneys' fees) incurred by the Note Holder resulting from such fraud, misrepresentation, waste or violation, and (v) any debt service on any indebtedness related to the Security, operating and maintenance expenses, insurance premiums, deposits into a reserve for replacements or other sums required by the Loan Documents, but only to the extent of any gross revenues or proceeds from the Security that were available to pay such sums but were not so used; and

(c) There shall be no limitation on or prejudice to the right of the Note Holder to proceed against any entity or person whatsoever, including the Borrower, with respect to the enforcement of any guarantees of any sums due hereunder or under the Note or any of other Loan Documents or any part thereof, or any similar rights of payment, which guarantees or similar rights are entered into in the future, it being acknowledged that no such guarantees or similar rights exist on the date hereof.

8. SUBORDINATION

This Note is subject and subordinate to the rights of the Senior Lender (as defined in the Building Loan Agreement) as set forth in the Subordination and Intercreditor Agreement (as defined in the Building Loan Agreement).

9. COUNTERPARTS

This Note 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.

10. SEVERABILITY

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

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Note 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 /Note Holder"

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: Note (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Note (Rental Housing Revolving Fund)

(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 appeared _____, to me personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Note (Rental Housing Revolving Fund)

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION

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:

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT
(Rental Housing Revolving Fund)

PARTIES TO DOCUMENT:

MORTGAGOR: _____

MORTGAGEE: HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

PROPERTY: _____

TAX MAP KEY: _____

MORTGAGE, SECURITY
AGREEMENT AND FINANCING STATEMENT
(Rental Housing Revolving Fund)

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (Rental Housing Revolving Fund) (hereinafter this "Mortgage"), dated the _____ day of _____, 20 ____, between _____, a Hawaii _____, whose principal place of business is in _____, and whose address is _____, (hereinafter the "Mortgagor"), and 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 principal place of business and post office address is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813, hereinafter the "Mortgagee",

RECITAL

The Mortgagor is the fee simple owner of that certain parcel of land situate at _____, Island of _____ and State of Hawaii, and being more particularly described in Exhibit "1" attached hereto and incorporated herein by reference. The Mortgagor intends to improve said land by construction of ____ units and appurtenant improvements and fixtures. In order to finance construction of such improvements, the Mortgagor has executed a Building Loan Agreement (the "Building Loan Agreement") dated _____, 20 ____, with the Mortgagee and has executed and delivered to the Mortgagee a promissory note (the "Note") dated _____, in the principal sum of _____ and NO/100 DOLLARS (\$ _____).

CERTAIN DEFINITIONS

The Mortgagor and the Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings specified. The definitions shall be applicable equally to the singular and the plural forms of the terms.

"Chattels" mean 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.

"Event of Default" mean those events and circumstances described as such in Section 2.01 of this Mortgage.

"Improvements" mean the structure or buildings, and

replacements, to be erected on the Premises by the Mortgagor, including all equipment, apparatus, machinery, and fixtures of every kind and nature whatsoever forming part of said structures or buildings or of any structures or buildings hereafter standing on the Premises or on any part thereof.

"Premises" mean the premises described in Exhibit "1," 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 Mortgagor in the Premises, either in law or in equity, in possession or expectancy, now or hereafter acquired.

All terms of this Mortgage, which are not defined above, have the meaning set forth below in this Mortgage.

GRANTING CLAUSE

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of both the principal and the interest and any other sums payable on the Note or this Mortgage and the performance and observance of all the provisions hereof and of the Note and of the Building Loan Agreement, including the payment of any sums advanced by the Mortgagee to complete the Improvements contemplated by the Building Loan Agreement to the extent the aggregate of such sums and any other sums expended pursuant hereto exceed the sum of the Note, the Mortgagor hereby gives, grants, bargains, sells, warrants, alienates, demises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over, and confirms unto the Mortgagee, all its estate, right, title, and interest in, to and under any and all of the following described property (the "Mortgaged Property") whether now owned or held or hereafter acquired:

- (i) the fee simple interest in the Premises;
- (ii) the Improvements;
- (iii) the Chattels; and,
- (iv) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards.

TO HAVE AND TO HOLD unto the Mortgagee, its successors and assigns, forever.

ARTICLE I

PARTICULAR COVENANTS OF THE MORTGAGOR

The Mortgagor covenants and agrees as follows:

SECTION 1.01. The Mortgagor warrants that the Mortgagor has good title to develop the Premises. The Mortgagor represents that the Mortgagor has not subjected the Premises to any liens, charges or encumbrances, since obtaining any right to develop the Premises; that the Mortgagor will own the Chattels free and clear of liens and claims; and, that this Mortgage is and shall remain a valid and enforceable _____ lien on the Mortgaged Property. The Mortgagor has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended hereafter to be done. The Mortgagor shall preserve the title and shall forever warrant and defend the same to the Mortgagee and shall forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

SECTION 1.02. At the sole expense of the Mortgagor, the Mortgagor shall execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as the Mortgagee shall from time to time require for assuring unto the Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage. On demand, the Mortgagor will execute and deliver, and hereby authorizes the Mortgagee to execute in the name of the Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively this lien upon the Chattels.

SECTION 1.03.

(a) Upon the execution and delivery of this Mortgage and thereafter from time to time, the Mortgagor shall cause this Mortgage, the Building Loan Agreement and any security instrument creating a lien or evidencing this lien upon the Chattels and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect this lien upon, and the interest of the Mortgagee in the Mortgaged Property.

(b) The Mortgagor shall pay all filing, registration or recording fees, and all expenses incidental to the preparation, execution, and acknowledgment of this Mortgage, any supplemental mortgage hereto, any security instrument with respect to the Chattels, and any instrument of further assurances, and all federal, state, county, and municipal stamp taxes and other taxes, duties, imposts, assessments and charges,

arising out of or in connection with the execution and delivery of the Note, this Mortgage, any supplemental mortgage hereto, any security instrument with respect to the Chattels or any instruments of further assurance.

SECTION 1.04. The Mortgagor shall punctually pay the principal and interest and all other sums that become due under the Note at the specified time and place and in the manner specified in the Note. The payment shall be in any coin or currency of the United States of America.

SECTION 1.05. The Mortgagor, if a business entity, shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights, and privileges as a business under the laws of the state of its formation. The Mortgagor shall also comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property.

SECTION 1.06. All right, title, and interest of the Mortgagor in and to the Mortgaged Property, hereafter acquired by the Mortgagor and immediately upon any acquisition, release, construction, assembling, placement of the Mortgaged Property, or conversion of the constituted security, shall become subject to the lien of this Mortgage without any further mortgage, conveyance, assignment or other act by the Mortgagor. At any and all times, the Mortgagor shall execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances, or assignments as the Mortgagee may require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

SECTION 1.07

(a) When any tax shall become due, and, during the construction period as soon as any tax become liens, whether or not then due and payable, the Mortgagor shall pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits, and gross receipts taxes), all general and special assessments, levies, permits, inspection, and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against the Mortgagor or the Mortgaged Property or upon the revenues, rents, issues, income, and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. Whenever the appropriate authority permits the payment of general or special assessments in monthly installments, the Mortgagor upon payment of such installments shall have met the requirements of this Mortgage. Upon the request of the Mortgagee, the Mortgagor shall deliver to the Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed

against the Mortgagor or the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

At its option to be exercised by thirty (30) days written notice to the Mortgagor, the Mortgagee may require the deposit by the Mortgagor, at the time of each monthly payment of an installment of interest and principal under the Note, of an additional amount sufficient to discharge the obligations under this subparagraph (a) when they become due. The determination of the amount payable and of the fractional part thereof to be deposited with the Mortgagee shall be made by the Mortgagee in its sole reasonable discretion. The aggregate of the monthly deposits shall be sufficient for this purpose. The amounts shall be held by the Mortgagee without interest and shall be applied to the payment of the respective items. At the option of the Mortgagee, in such order or priority as the Mortgagee shall determine, payment shall be applied on or before the respective dates on which the same or any of them would become delinquent. If one month prior to the due date the amount then on deposit shall be insufficient for the payment of such item in full, the Mortgagor within ten (10) days after demand shall deposit the amount of the deficiency with the Mortgagee. Nothing herein contained shall be deemed to affect any right or remedy of the Mortgagee under any provisions of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid together with interest at the legal rate to the indebtedness hereby secured.

(b) The Mortgagor shall pay when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income, and profits arising therefrom. In general, the Mortgagor will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the sole expense of the Mortgagor.

(c) Nothing in this Section 1.07 shall require the payment or discharge of any obligation imposed upon the Mortgagor by this Section, so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceeding which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Premises or any part thereof to satisfy the same. During such contest, the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, that if at any time payment of any obligation imposed upon the Mortgagor by subparagraph (a) hereof shall become necessary to prevent the delivery of a tax

deed conveying the Mortgaged Property or any portion thereof because of nonpayment, then the Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed.

SECTION 1.08. The Mortgagor shall promptly (i) advise the Mortgagee in writing of the giving of any notice of any default by the Mortgagor in the performance or observance of any of the terms, covenants or conditions to be performed or observed by Mortgagor under any documents relating to mortgages encumbering the Premises or any other document imposing restrictive covenants against the Premises, and (ii) deliver to the Mortgagee a true copy of each such notice.

SECTION 1.09.

(a) The Mortgagor shall keep the Improvements and Chattels insured against loss by fire, casualty, and such other hazards as may be specified by the Mortgagee for the benefit of the Mortgagee. Such insurance shall name the State of Hawaii and the Mortgagee as loss payees and additional insured parties and shall be written in forms and amounts, satisfactory to the Mortgagee, and losses thereunder shall be payable to the Mortgagee. The Mortgagor shall procure such insurance from any insurance company authorized to do business in the State of Hawaii. The policy or policies of such insurance or certificates thereof shall be delivered to the Mortgagee. The Mortgagor shall give the Mortgagee prompt notice of any loss covered by such insurance and the Mortgagee shall have the right to join the Mortgagor in adjusting any loss in excess of \$100,000. Any monies received as payment for any loss under any such insurance shall be paid over to the Mortgagee to be applied at the option of the Mortgagee either to prepayment of the Note, without premium, or to the reimbursement of the Mortgagor for expenses incurred by the Mortgagor in the restoration of the Improvements; provided that so long as no Event of Default has occurred and is continuing. Notwithstanding the foregoing, so long as the value of the Mortgagee's lien is not impaired, any such insurance proceeds shall be used by the Mortgagor for repair and/or restoration of the Improvements.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 1.09, unless the State of Hawaii and the Mortgagee are included as additionally insured with loss payable to the Mortgagee under a standard mortgagee endorsement as above described. The Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance is taken out, specifying the insurer and full particulars as to the separate insurance policies.

(c) The Mortgagor shall give the Mortgagee thirty (30) days written notice of the cancellation of any insurance policy required under this section.

SECTION 1.10. If the Mortgagor shall fail to perform any of the covenants contained in Section 1.01, 1.03, 1.07, 1.08, 1.09 or 1.15, the Mortgagee may make advances to perform the same on its behalf. All sums so advanced shall be a lien upon the Mortgaged Property and shall be secured by and under the Note. The Mortgagor shall repay on demand all sums so advanced on its behalf with interest at a rate per annum which is two percent (2%) above the Prime Rate, defined as that WSJ Prime Rate published in the Wall Street Journal effective on the date of such notice, but not exceeding the maximum rate permitted by law. The provisions of this Section 1.10 shall not prevent any default in the observance of any covenant contained in said Sections 1.01, 1.03, 1.07, 1.08, 1.09 or 1.15 from constituting an Event of Default.

SECTION 1.11.

(a) The Mortgagor shall keep adequate records and books of account in accordance with generally accepted accounting principles. The Mortgagor will permit the Mortgagee, its agents, accountants, and attorneys, to visit and inspect the Premises and examine the Mortgagor's records and books of accounts with the officers of the Mortgagor as may be requested by the Mortgagee.

(b) Upon the Mortgagee's request and with reasonable promptness after the close of the Mortgagor's fiscal year, the Mortgagor shall deliver to the Mortgagee a balance sheet and statement of profit and loss setting forth in each case, in comparative form, the figures for the preceding year. Throughout the term of this Mortgage, the Mortgagor, with reasonable promptness, shall deliver to the Mortgagee such other information as the Mortgagee may request from time to time. All financial statements of the Mortgagor shall be prepared in accordance with generally accepted accounting practice, shall be delivered in triplicate, and, in the case of the Mortgagor, shall be accompanied by the certificate of a principal financial or accounting officer of the Mortgagor dated within fifteen (15) days of the delivery of such statements to the Mortgagee. The certificate shall state that the Mortgagor knows of no Event of Default which has occurred and is continuing, nor of any default which after notice or lapse of time or both would constitute an Event of Default. If any such default or Event of Default has occurred and is continuing, the certificate shall specify the nature and period of existence thereof and what action the Mortgagor has taken or proposes to take. Except as otherwise specified, the certificate shall further state that the Mortgagor has fulfilled all its obligations under this Mortgage, which are required to be fulfilled on or prior to the date of such certificate.

(c) Within seven (7) days upon request in person or within ten (10) days upon request by mail, the Mortgagor shall

furnish a written statement duly acknowledged of the amount due, whether for principal or interest on this Mortgage and whether any offsets or defenses exist against the Mortgage indebtedness.

SECTION 1.12. The Mortgagor shall not commit any waste on the Premises or make any change in the use of the Premises which will in any way increase any ordinary fire or other hazard arising out of construction or operation. The Mortgagor shall, at all times, maintain the Improvements in good operating order and condition and will promptly make all repairs, renewals, replacements, additions, and improvements which are needful or desirable. After completion of the Improvements, they shall not be removed, demolished or substantially altered, nor shall any Chattels be removed without the prior written consent of the Mortgagee, except where appropriate replacements of value at least equal to the value of the Chattels removed, which are free of superior title, liens, and claims, are immediately made.

SECTION 1.13. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, the Mortgagor shall notify the Mortgagee. The Mortgagee may participate in any such proceedings and the Mortgagor from time to time shall deliver to the Mortgagee all instruments requested by it to permit such participation. In the event of condemnation proceedings, the award of compensation payable is hereby assigned to and shall be paid to the Mortgagee. The Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. In any such condemnation proceedings, the Mortgagee may be represented by its counsel. The proceeds of any award or compensation received shall, at the option of the Mortgagee, either be applied, without premium, to the prepayment of the Note in accordance with its terms and at the rate of interest provided therein, regardless of interest payable on the award by the condemning authority or be paid over to the Mortgagor for restoration of the improvements.

SECTION 1.14. The Mortgagor shall not lease or sublease any portion of the Premises without the prior written consent of the Mortgagee, except for the individual tenant leases covering the individual rental units, for which no consent is required.

SECTION 1.15. The Mortgagor shall cause the Improvements to be constructed in accordance with the terms of the Building Loan Agreement, shall commence and progress such construction with due diligence, and shall comply with the covenants made by the Mortgagor in the Building Loan Agreement. The Mortgagor shall not permit any Event of Default to occur.

SECTION 1.16. The Mortgagor shall indemnify, defend, and hold harmless the Mortgagee, the State of Hawaii, and their officers, employees, directors, agents, representatives,

officials, 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 Mortgagor or its employees, officers, agents, or subcontractors; (b) the indebtedness secured by the Mortgage; (c) the design, construction, repair, renovation, or defects of the Mortgaged Property or Premises and/or lease, use, occupation or operation of the Mortgaged Property or Premises; and/or (d) the enforcement of this Mortgage (whether or not suit is brought therefore) This provision shall survive the expiration or earlier termination of this Mortgage, notwithstanding any other provision to the contrary.

ARTICLE II

EVENT OF DEFAULT AND REMEDIES

SECTION 2.01. If one or more of the following events (each an "Event of Default") shall happen:

(a) if (i) default shall be made in the payment of any interest on the Note, or in the payment of any installment of principal, in either such case, when and as the same shall become due and payable, and such default shall have continued for a period of fifteen (15) days after written notice shall have been given to the Mortgagor by the Mortgagee; or, (ii) default shall be made in any other payment of the principal of the Note, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any repayment or otherwise, in each case, as in the Note and this Mortgage provided and such default shall have continued for a period of fifteen (15) days after written notice shall have been given to the Mortgagor by the Mortgagee; or, (iii) default shall be made in the payment of any tax required by Section 1.07 to be paid and said default shall have continued for a period of fifteen (15) days after written notice shall have been given to the Mortgagor by the Mortgagee; or,

(b) if default shall be made in the due observance or performance of any covenant or agreement on the part of the Mortgagor contained in this Mortgage, and unless other provisions are afforded by the Mortgage, such default shall have continued for a period of fifteen (15) days after written notice shall have been given to the Mortgagor by the Mortgagee. No Event of Default shall be deemed to have occurred if, during said 15-day period, the Mortgagor shall have commenced a cure of the alleged default and shall diligently prosecute the same thereafter until completion; or,

(c) if default shall be made in the due observance or

performance of any other covenant or condition on the part of the Mortgagor in the Note, the Building Loan Agreement, or the Declaration of Land Use Restrictive Covenants, and such default shall have continued for a period of fifteen (15) days after written notice specifying such default and demanding that the same be remedied shall have been given to the Mortgagor by the Mortgagee. No Event of Default shall be deemed to have occurred if, during said 15-day period, the Mortgagor shall have commenced a cure of the alleged default and shall diligently prosecute the same thereafter until completion; or,

(d) if Mortgagor shall make an assignment for the benefit of the creditors, or shall admit in writing Mortgagor's inability to pay Mortgagor's debts as they become due; or,

(e) if the Mortgagor shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Federal Bankruptcy Act or any similar law, federal or state, or if, by decree of a court of competent jurisdiction, the Mortgagor shall be adjudicated bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of the Mortgaged Property; or,

(f) if any of the creditors of the Mortgagor shall file a petition in bankruptcy against the Mortgagor or for reorganization of the Mortgagor pursuant to the Federal Bankruptcy Act or any similar law, federal or state, and if such petition shall not be discharged or dismissed within ninety (90) days after the date on which such petition was filed; or,

(g) if by the order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of the Mortgagor shall be appointed and such order shall not be discharged or dismissed within ninety (90) days after such appointment; or,

(h) if any representation made by or on behalf of Mortgagor or otherwise in writing in connection with the Loan shall prove to have been false or incorrect in any material respect; or,

(i) if a final judgment, which alone or with other outstanding final judgments against Mortgagor exceeds in the aggregate of \$100,000, shall be rendered against Mortgagor, and if, within thirty (30) days after entry of the final judgment it shall not have been discharged or stayed pending appeal, or if within thirty (30) days after the expiration of any stay, the judgment shall not have been discharged; or,

(j) if there shall exist and be permitted to continue

(and/or not bonded off) for forty-five (45) days after written notice shall have been received by Mortgagor from Mortgagee, any involuntary lien of any kind or nature upon any of the properties or assets of Mortgagor (other than liens permitted by Section E.5.(c) of the Building Loan Agreement), which alone or together with other such involuntary liens exceeds in the aggregate of \$100,000; or

(k) if, at any time prior to the completion of the construction and equipping of the Project, the Project shall be abandoned or work on the Project shall cease for a period of more than ten (10) days for any reason within the control of the Mortgagor, or if the Project shall not be constructed, completed and equipped strictly in accordance with the Plans and Specifications (except as to changes approved by the Mortgagee), or if changes shall be made in the Plans and Specifications without the Mortgagee's prior written approval; or,

(l) if there is a failure to purchase and maintain the required insurance stated in Section E.8.(b) or;

(m) if it shall be illegal for the Mortgagor to pay any tax referred to in Section 1.07 hereof or if the payment of such tax by the Mortgagor would result in the violation of the usury laws of the State of Hawaii;

if an above described Event of Default shall happen, the Mortgagee shall give the Mortgagor notice in writing of such Event of Default for the purpose of curing such default. The Mortgagor shall have thirty (30) days from the date of receipt of written notice to reasonably cure such default before the Mortgagee may exercise its rights under this Section 2.01.

I. During the continuance of any such Event of Default and by written notice given to the Mortgagor, the Mortgagee may declare the entire principal of the Note then outstanding, and all accrued and unpaid interest thereon, to be due and payable immediately. Upon any such declaration the principal of the Note and said accrued and unpaid interest shall become and be immediately due and payable, anything in the Note or in this Mortgage to the contrary notwithstanding.

II. During the continuance of any Event of Default, the Mortgagee, or its agents or attorneys, may enter upon the Premises, and may exclude the Mortgagor, its agents and servants wholly therefrom. Having and holding the same, the Mortgagee may use, operate, manage, and control the Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers. Upon every such entry, and, at the expense of the Mortgaged Property either by purchase, repairs or constructions, the Mortgagee may maintain and restore the Mortgaged Property. The Mortgagee may complete the construction of the Improvements

and may make such changes in the contemplated Improvements as it may deem desirable and may insure the same. Likewise, at the expense of the Mortgaged Property, the Mortgagee may make all necessary or proper repairs, renewals, and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may seem advisable. In every such case, the Mortgagee shall have the right to manage and operate the Mortgaged Property and exercise the powers of the Mortgagor either in the name of the Mortgagor or otherwise as it shall deem best. The Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits, and income of the Mortgaged Property and every part hereof, all of which shall for all purposes constitute property of the Mortgagor. After the Mortgagee shall deduct the expenses of conducting the business and all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements, and amounts necessary to pay for taxes, assessments, insurance, and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of the Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed by the Mortgagee then shall apply the monies first, to the payment of the interest on the Note and then the principal, when and as the same shall become payable; second, to the payment of any other sums required to be paid by the Mortgagor under this Mortgage; and, third to any other amount which the Mortgagor owes to Mortgagee under the Building Loan Agreement.

III. With or without entry, the Mortgagee insofar as applicable may:

(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as any entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or,

(2) institute proceedings for the complete or partial foreclosure of this Mortgage; or,

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, Building Loan Agreement, in this Mortgage, in aid of the execution of any power herein granted, for any foreclosure hereunder, for the enforcement of any other appropriate legal or equitable remedy, or otherwise as the Mortgagee shall elect.

SECTION 2.02.

(a) The Mortgagee may adjourn any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales. Except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made by the Mortgagee under this Article II, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby appointed the true and lawful attorney irrevocable of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and any rights so sold. For that purpose, the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer and may substitute one or more persons with like power. The Mortgagor hereby ratifies and confirms all that its said attorney or such substitute or substitutes shall lawfully do under this Mortgage. Nevertheless, if so requested by the Mortgagee, the Mortgagor shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable in the judgment of the Mortgagee. Any such sale or sales made under or by virtue of this Article II, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold. The sale shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(c) In the event of any sale made under or by virtue of this Article II, the entire principal of, and interest on, the Note and all other sums required to be paid by the Mortgagor pursuant to this Mortgage, shall immediately become due and payable.

(d) The purchase money, proceeds or avails of any sale made under or by virtue of this Article II, together with other sums which then may be held by the Mortgagee under this Mortgage whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale. This shall include reasonable compensation to the Mortgagee, its agents and counsel; any judicial proceedings; all expenses, liabilities and advances made or

incurred by the Mortgagee under this Mortgage, together with interest at a rate per annum which is two percent (2%) above the prime rate but not exceeding the maximum rate permitted by law, on all advances made by the Mortgagee; and, all taxes or assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal at a rate per annum which is two percent (2%) above the Prime Rate, but not exceeding the maximum rate permitted by law, from and after the happening of any Event of Default described in clause (a) of Section 2.01 from the due date of any such payment of principal until the same is paid.

Third: To the payment of any other sums required to be paid by the Mortgagor, pursuant to any provision of this Mortgage or the Note or the Building Loan Agreement.

Fourth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

(e) Upon any sale made under or by virtue of this Article II, the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof. In lieu of paying cash, the Mortgagee may make settlement of the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price, after deducting the expenses of the sale and the costs of the action and any other sums, which the Mortgagee is authorized to deduct under this Mortgage. Upon so acquiring the Mortgaged Property, or any part thereof, the Mortgagee shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

SECTION 2.03.

(a) In case of an Event of Default described in clause (a) of Section 2.01 shall have happened and be continuing, then, upon written demand of the Mortgagee, the Mortgagor shall pay to the Mortgagee the whole amount which then shall have become due and payable on the Note, for principal or interest or both. After the happening of said Event of Default, the Mortgagor shall also pay to the Mortgagee interest at a rate per annum which is two percent (2%) above the Prime Rate, but not exceeding the maximum rate permitted by law, on the then unpaid principal of the Note, and the sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, and in addition, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Mortgagee, its agents, and counsel and any expenses incurred by the Mortgagee. In the event the Mortgagor

shall fail forthwith to pay such amounts upon such demand, the Mortgagee shall be entitled and empowered to institute action or proceedings at law or in equity for the collection of the sum so due and unpaid. The Mortgagee may prosecute any such action or proceedings to judgment or final decree. It may enforce any such judgment or final decree against the Mortgagor and collect, out of the property of the Mortgagor wherever situated, as well as out of the Mortgaged Property, in any manner provided by law, monies adjudged or decreed to be payable.

(b) The Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage. The right of the Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure hereof. In the event of a sale of the Mortgaged Property, and of the application of the proceeds of sale, as provided in this Mortgage, to the payment of the debt hereby secured, the Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Note, and to enforce payment of all other charges, payments, and costs due under this Mortgage, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. In case of proceedings against the Mortgagor in insolvency or bankruptcy or any proceedings for reorganization or involving the liquidation of its assets, then the Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges and costs due under this Mortgage, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Premises. However, in no case shall the Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of the Mortgagor.

(c) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the mortgagee shall continue unimpaired as before.

(d) Any monies thus collected by the Mortgagee under this Section 2.03 shall be applied by the Mortgagee in accordance with the provisions of paragraph (d) of Section 2.02.

SECTION 2.04. After the happening of any Event of Default and immediately upon the commencement of any action, suit or

other legal proceeding by the Mortgagee to obtain judgment for the principal of, or interest on, the Note and other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, or any other nature in aid of the enforcement of the Note or of this Mortgage, the Mortgagor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding, and (b) if required by the Mortgagee, consent to the appointment of a receiver or receivers of the Premises and of all earnings, revenues, rents, issues, profits, and income thereof. After the happening of any Event of Default and during its continuance or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance or upon the commencement of any other judicial proceeding to enforce any right of the Mortgagee, the Mortgagee shall be entitled to appoint a receiver or receivers, as a matter of right, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the Mortgage indebtedness.

SECTION 2.05. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of this property, or of the Mortgaged Property or any part thereof, the Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage.

SECTION 2.06. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies. Each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Nothing in this Mortgage or in the Note shall affect the obligation of the Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

SECTION 2.07. The Mortgagor shall not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, whenever enacted, now or at any time hereafter in force, which may affect the covenants and terms or performance of this Mortgage. The Mortgagor shall not at any time claim, take, or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to

any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction. The Mortgagor shall not claim or exercise any right under any statute heretofore or hereafter enacted, by any government authority or otherwise, to redeem the property so sold or any part thereof. The Mortgagor expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under the Mortgagor, waives all right to have the Mortgaged Property upon any foreclosure.

SECTION 2.08. The Mortgagee shall have such other and additional remedies as provided for in the Building Loan Agreement.

SECTION 2.09. Notwithstanding any provision to the contrary, the sale or transfer, including foreclosure sale, of the Mortgaged Property shall be subject to the terms, conditions and requirements of the Building Loan Agreement.

SECTION 2.10. Notwithstanding anything to the contrary contained herein, the Mortgagee hereby agrees that any cure of any default made or tendered by one or more of the Mortgagor's limited partners shall be deemed to be a cure by the Mortgagor and shall be accepted or rejected on the same basis as if made or tendered by the Mortgagor.

ARTICLE III

MISCELLANEOUS

SECTION 3.01. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage. This Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

SECTION 3.02. All notices shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by certified mail return receipt requested to any party at its address above stated, or at such other address of which it shall have notified the party giving such notice in writing.

Mortgagee hereby agrees that all copies of all notices which are sent to the Mortgagor under the Loan Documents, as

defined in the Building Loan Agreement, shall also be sent to the Mortgagor's limited partners at the following address:

Failure to deliver notice to Mortgagor's investor limited partner or its counsel shall not negatively impact the Mortgagee's rights and remedies nor the enforceability of the Loan Documents.

SECTION 3.03. Whenever in this Mortgage notice by mail or otherwise is required, such notice may be waived in writing by the person or persons entitled to receive such notice.

SECTION 3.04. All of the grants, covenants, terms, provisions, and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, personal representatives, and assigns of the Mortgagor and the successors and assigns of the Mortgagee.

SECTION 3.05. This Mortgage 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.

SECTION 3.06. All of the money loaned and advanced under and secured by this Mortgage shall be used for the purpose of paying for the improvements made or constructed on the Mortgaged Property and other costs connected with the project. The purpose of this Mortgage is to secure said money loaned and advanced for the purpose of paying for such improvements and costs. The Mortgage secures monies advanced in part to pay for construction of improvements to the Premises to satisfy the requirements of HRS Section 507-46, as amended.

SECTION 3.07. The term "Mortgagor" and "Mortgagee" or any pronouns used in place thereof, whenever used, shall include the masculine, feminine or neuter, the singular or the plural, individuals, partnerships or corporations.

SECTION 3.08. RESERVED

SECTION 3.09. It is agreed and understood that notwithstanding anything provided in this Mortgage to the contrary and without the further consent of the Mortgagee, the Mortgagor shall have the right to mortgage the Property to secure a loan as described in the [Name of Senior Note] dated [date of the Senior Note]. However, said mortgage in favor of _____ shall be subordinate to this Mortgage and, upon the execution and delivery of said mortgage in favor of _____,

the Mortgagor shall deliver a true copy thereof to the Mortgagee.

SECTION 3.10. It is understood and agreed that if the Mortgagor shall pay all indebtedness hereby secured, of which indebtedness the records of the Mortgagee shall be prima facie evidence, if the Mortgagor 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 if the Mortgagor pays the cost of release hereof, then the Mortgagee shall execute and deliver such release, in recordable form sufficient to remove this Mortgage as an encumbrance on title, in favor of the Mortgagor and this Mortgage shall become null and void.

SECTION 3.11. HHFDC agrees to subordinate the refinancing of any debt senior to the loan evidenced by the RHRF Note subject to: HHFDC's review and acknowledgment of the refinancing loan terms and HHFDC's review and acceptance of subordination terms and documentation; provided that the senior debt refinancing: (a) does not increase the outstanding principal balance of any such senior debt existing immediately prior to such refinancing (other than by the addition of reasonable closing costs and other customary fees and charges associated with such refinance) and that no funds are transferred to the Mortgagor or any party, (i.e. no "cash-out" refinance); and (b) does demonstrably improve the Project's financial operations to repay the RHRF Note.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Fee Mortgage, Security Agreement and Financing Statement 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 _____

"Mortgagee"

a Hawaii _____

By _____

Its _____

By _____

Its _____

"Mortgagor"

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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: _____
Mortgage, Security Agreement and
Financing Statement (Rental Housing
Revolving Fund)

(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: _____
Mortgage, Security Agreement and
Financing Statement (Rental Housing
Revolving Fund)

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION

EXHIBIT 1

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:

LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT
(Rental Housing Revolving Fund)

PARTIES TO DOCUMENT:

MORTGAGOR: _____

MORTGAGEE: HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

PROPERTY: _____

TAX MAP KEY: _____

LEASEHOLD MORTGAGE, SECURITY
AGREEMENT AND FINANCING STATEMENT
(Rental Housing Revolving Fund)

THIS Mortgage (hereinafter this "Mortgage"), dated the
_day of _____, 20 __, between _____, a Hawaii
_____, whose principal place of business is in
_____, and whose address is _____,
(hereinafter the "Mortgagor"), and 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 principal place of business and post
office address is 677 Queen Street, Suite 300, Honolulu, Hawaii
96813, hereinafter the "Mortgagee",

RECITAL

The Mortgagor is the leasehold owner of that certain parcel
of land situated at _____, Island of _____ and State
of Hawaii, and being more particularly described in Exhibit "1"
attached hereto and incorporated herein by reference. The
Mortgagor intends to improve said land by construction of
units and appurtenant improvements and fixtures. In order to
finance construction of such improvements, the Mortgagor has
executed a Building Loan Agreement (the "Building Loan
Agreement") dated _____, 20 __, with the Mortgagee and
has executed and delivered to the Mortgagee a promissory note
(the "Note") dated _____, in the principal sum of
_____ and NO/100 DOLLARS (\$_____).

CERTAIN DEFINITIONS

The Mortgagor and the Mortgagee agree that, unless the
context otherwise specifies or requires, the following terms
shall have the meanings specified. The definitions shall be
applicable equally to the singular and the plural forms of the
terms.

"Chattels" mean 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.

"Event of Default" mean those events and circumstances
described as such in Section 2.01 of this Mortgage.

"Improvements" mean the structure or buildings, and
replacements, to be erected on the Premises by the Mortgagor,
including all equipment, apparatus, machinery, and fixtures of
every kind and nature whatsoever forming part of said structures

or buildings or of any structures or buildings hereafter standing on the Premises or on any part thereof.

"Premises" mean the premises described in Exhibit "1," 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 Mortgagor in the Premises, either in law or in equity, in possession or expectancy, now or hereafter acquired.

All terms of this Mortgage, which are not defined above, have the meaning set forth below in this Mortgage.

GRANTING CLAUSE

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of both the principal and the interest and any other sums payable on the Note or this Mortgage and the performance and observance of all the provisions hereof and of the Note and of the Building Loan Agreement, including the payment of any sums advanced by the Mortgagee to complete the Improvements contemplated by the Building Loan Agreement to the extent the aggregate of such sums and any other sums expended pursuant hereto exceed the sum of the Note, the Mortgagor hereby gives, grants, bargains, sells, warrants, alienates, demises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over, and confirms unto the Mortgagee, all its estate, right, title, and interest in, to and under any and all of the following described property (the "Mortgaged Property") whether now owned or held or hereafter acquired:

- (i) the leasehold interest in the Premises;
- (ii) the Improvements;
- (iii) the Chattels; and,
- (iv) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards.

TO HAVE AND TO HOLD unto the Mortgagee, its successors and assigns, forever.

ARTICLE I

PARTICULAR COVENANTS OF THE MORTGAGOR

The Mortgagor covenants and agrees as follows:

SECTION 1.01. The Mortgagor warrants that the Mortgagor

has good title to develop the Premises. The Mortgagor represents that the Mortgagor has not subjected the Premises to any liens, charges or encumbrances, since obtaining any right to develop the Premises; that the Mortgagor will own the Chattels free and clear of liens and claims; and, that this Mortgage is and shall remain a valid and enforceable _____ lien on the Mortgaged Property. The Mortgagor has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended hereafter to be done. The Mortgagor shall preserve the title and shall forever warrant and defend the same to the Mortgagee and shall forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

SECTION 1.02. At the sole expense of the Mortgagor, the Mortgagor shall execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as the Mortgagee shall from time to time require for assuring unto the Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage. On demand, the Mortgagor will execute and deliver, and hereby authorizes the Mortgagee to execute in the name of the Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively this lien upon the Chattels.

SECTION 1.03.

(a) Upon the execution and delivery of this Mortgage and thereafter from time to time, the Mortgagor shall cause this Mortgage, the Building Loan Agreement and any security instrument creating a lien or evidencing this lien upon the Chattels and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect this lien upon, and the interest of the Mortgagee in the Mortgaged Property.

(b) The Mortgagor shall pay all filing, registration or recording fees, and all expenses incidental to the preparation, execution, and acknowledgment of this Mortgage, any supplemental mortgage hereto, any security instrument with respect to the Chattels, and any instrument of further assurances, and all federal, state, county, and municipal stamp taxes and other taxes, duties, imposts, assessments and charges, arising out of or in connection with the execution and delivery of the Note, this Mortgage, any supplemental mortgage hereto, any security instrument with respect to the Chattels or any instruments of further assurance.

SECTION 1.04. The Mortgagor shall punctually pay the principal and interest and all other sums that become due under the Note at the specified time and place and in the manner specified in the Note. The payment shall be in any coin or currency of the United States of America.

SECTION 1.05. The Mortgagor, if a business entity, shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights, and privileges as a business under the laws of the state of its formation. The Mortgagor shall also comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property.

SECTION 1.06. All right, title, and interest of the Mortgagor in and to the Mortgaged Property, hereafter acquired by the Mortgagor and immediately upon any acquisition, release, construction, assembling, placement of the Mortgaged Property, or conversion of the constituted security, shall become subject to the lien of this Mortgage without any further mortgage, conveyance, assignment or other act by the Mortgagor. At any and all times, the Mortgagor shall execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances, or assignments as the Mortgagee may require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

SECTION 1.07

(a) When any tax shall become due, and, during the construction period as soon as any tax become liens, whether or not then due and payable, the Mortgagor shall pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits, and gross receipts taxes), all general and special assessments, levies, permits, inspection, and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against the Mortgagor or the Mortgaged Property or upon the revenues, rents, issues, income, and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. Whenever the appropriate authority permits the payment of general or special assessments in monthly installments, the Mortgagor upon payment of such installments shall have met the requirements of this Mortgage. Upon the request of the Mortgagee, the Mortgagor shall deliver to the Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgagor or the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

At its option to be exercised by thirty (30) days written notice to the Mortgagor, the Mortgagee may require the deposit by the Mortgagor, at the time of each monthly payment of

an installment of interest and principal under the Note, of an additional amount sufficient to discharge the obligations under this subparagraph (a) when they become due. The determination of the amount payable and of the fractional part thereof to be deposited with the Mortgagee shall be made by the Mortgagee in its sole reasonable discretion. The aggregate of the monthly deposits shall be sufficient for this purpose. The amounts shall be held by the Mortgagee without interest and shall be applied to the payment of the respective items. At the option of the Mortgagee, in such order or priority as the Mortgagee shall determine, payment shall be applied on or before the respective dates on which the same or any of them would become delinquent. If one month prior to the due date the amount then on deposit shall be insufficient for the payment of such item in full, the Mortgagor within ten (10) days after demand shall deposit the amount of the deficiency with the Mortgagee. Nothing herein contained shall be deemed to affect any right or remedy of the Mortgagee under any provisions of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid together with interest at the legal rate to the indebtedness hereby secured.

(b) The Mortgagor shall pay when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income, and profits arising therefrom. In general, the Mortgagor will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the sole expense of the Mortgagor.

(c) Nothing in this Section 1.07 shall require the payment or discharge of any obligation imposed upon the Mortgagor by this Section, so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceeding which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Premises or any part thereof to satisfy the same. During such contest, the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, that if at any time payment of any obligation imposed upon the Mortgagor by subparagraph (a) hereof shall become necessary to prevent the delivery of a tax deed conveying the Mortgaged Property or any portion thereof because of nonpayment, then the Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed.

SECTION 1.08. The Mortgagor shall promptly (i) advise the Mortgagee in writing of the giving of any notice of any default by the Mortgagor in the performance or observance of any of the

terms, covenants or conditions to be performed or observed by Mortgagor under any documents relating to mortgages encumbering the Premises or any other document imposing restrictive covenants against the Premises, and (ii) deliver to the Mortgagee a true copy of each such notice.

SECTION 1.09.

(a) The Mortgagor shall keep the Improvements and Chattels insured against loss by fire, casualty, and such other hazards as may be specified by the Mortgagee for the benefit of the Mortgagee. Such insurance shall name the State of Hawaii and the Mortgagee as loss payees and additional insured parties and shall be written in forms and amounts, satisfactory to the Mortgagee, and losses thereunder shall be payable to the Mortgagee. The Mortgagor shall procure such insurance from any insurance company authorized to do business in the State of Hawaii. The policy or policies of such insurance or certificates thereof shall be delivered to the Mortgagee. The Mortgagor shall give the Mortgagee prompt notice of any loss covered by such insurance and the Mortgagee shall have the right to join the Mortgagor in adjusting any loss in excess of \$100,000. Any monies received as payment for any loss under any such insurance shall be paid over to the Mortgagee to be applied at the option of the Mortgagee either to prepayment of the Note, without premium, or to the reimbursement of the Mortgagor for expenses incurred by the Mortgagor in the restoration of the Improvements; provided that so long as no Event of Default has occurred and is continuing, and so long as the value of the Mortgagee's lien is not impaired, any such insurance proceeds shall be used by the Mortgagor for repair and/or restoration of the Improvements; provided that so long as no Event of Default has occurred and is continuing. Notwithstanding the foregoing, so long as the value of the Mortgagee's lien is not impaired, any such insurance proceeds shall be used by the Mortgagor for repair and/or restoration of the Improvements.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 1.09, unless the State of Hawaii and the Mortgagee are included as additionally insured with loss payable to the Mortgagee under a standard mortgagee endorsement as above described. The Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance is taken out, specifying the insurer and full particulars as to the separate insurance policies.

(c) The Mortgagor shall give the Mortgagee thirty (30) days written notice of the cancellation of any insurance policy required under this section.

SECTION 1.10. If the Mortgagor shall fail to perform any of the covenants contained in Section 1.01, 1.03, 1.07, 1.08, 1.09 or 1.15, the Mortgagee may make advances to perform the same on its behalf. All sums so advanced shall be a lien upon

the Mortgaged Property and shall be secured by and under the Note. The Mortgagor shall repay on demand all sums so advanced on its behalf with interest at a rate per annum which is two percent (2%) above the Prime Rate, defined as that WSJ Prime Rate published in the Wall Street Journal effective on the date of such notice, but not exceeding the maximum rate permitted by law. The provisions of this Section 1.10 shall not prevent any default in the observance of any covenant contained in said Sections 1.01, 1.03, 1.07, 1.08, 1.09 or 1.15 from constituting an Event of Default.

SECTION 1.11.

(a) The Mortgagor shall keep adequate records and books of account in accordance with generally accepted accounting principles. The Mortgagor will permit the Mortgagee, its agents, accountants, and attorneys, to visit and inspect the Premises and examine the Mortgagor's records and books of accounts with the officers of the Mortgagor as may be requested by the Mortgagee.

(b) Upon the Mortgagee's request and with reasonable promptness after the close of the Mortgagor's fiscal year, the Mortgagor shall deliver to the Mortgagee a balance sheet and statement of profit and loss setting forth in each case, in comparative form, the figures for the preceding year. Throughout the term of this Mortgage, the Mortgagor, with reasonable promptness, shall deliver to the Mortgagee such other information as the Mortgagee may request from time to time. All financial statements of the Mortgagor shall be prepared in accordance with generally accepted accounting practice, shall be delivered in triplicate, and, in the case of the Mortgagor, shall be accompanied by the certificate of a principal financial or accounting officer of the Mortgagor dated within fifteen (15) days of the delivery of such statements to the Mortgagee. The certificate shall state that the Mortgagor knows of no Event of Default which has occurred and is continuing, nor of any default which after notice or lapse of time or both would constitute an Event of Default. If any such default or Event of Default has occurred and is continuing, the certificate shall specify the nature and period of existence thereof and what action the Mortgagor has taken or proposes to take. Except as otherwise specified, the certificate shall further state that the Mortgagor has fulfilled all its obligations under this Mortgage, which are required to be fulfilled on or prior to the date of such certificate.

(c) Within seven (7) days upon request in person or within ten (10) days upon request by mail, the Mortgagor shall furnish a written statement duly acknowledged of the amount due, whether for principal or interest on this Mortgage and whether any offsets or defenses exist against the Mortgage indebtedness.

SECTION 1.12. The Mortgagor shall not commit any waste on

the Premises or make any change in the use of the Premises which will in any way increase any ordinary fire or other hazard arising out of construction or operation. The Mortgagor shall, at all times, maintain the Improvements in good operating order and condition and will promptly make all repairs, renewals, replacements, additions, and improvements which are needful or desirable. After completion of the Improvements, they shall not be removed, demolished or substantially altered, nor shall any Chattels be removed without the prior written consent of the Mortgagee, except where appropriate replacements of value at least equal to the value of the Chattels removed, which are free of superior title, liens, and claims, are immediately made.

SECTION 1.13. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, the Mortgagor shall notify the Mortgagee. The Mortgagee may participate in any such proceedings and the Mortgagor from time to time shall deliver to the Mortgagee all instruments requested by it to permit such participation. In the event of condemnation proceedings, the award of compensation payable is hereby assigned to and shall be paid to the Mortgagee. The Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. In any such condemnation proceedings, the Mortgagee may be represented by its counsel. The proceeds of any award or compensation received shall, at the option of the Mortgagee, either be applied, without premium, to the prepayment of the Note in accordance with its terms and at the rate of interest provided therein, regardless of interest payable on the award by the condemning authority or be paid over to the Mortgagor for restoration of the improvements.

SECTION 1.14. The Mortgagor shall not lease or sublease any portion of the Premises without the prior written consent of the Mortgagee, except for the individual tenant leases covering the individual rental units, for which no consent is required.

SECTION 1.15. The Mortgagor shall cause the Improvements to be constructed in accordance with the terms of the Building Loan Agreement, shall commence and progress such construction with due diligence, and shall comply with the covenants made by the Mortgagor in the Building Loan Agreement. The Mortgagor shall not permit any Event of Default to occur.

SECTION 1.16. The Mortgagor will: (i) pay the rent reserved by the lease between _____ as Lessor and the Mortgagor, as lessee, 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 Mortgagor under the Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly notify the Mortgagee in writing of any default by the Mortgagor in the

performance or observance of any of the covenants, conditions, and agreements of the part of the Mortgagor 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 Mortgagee in writing of the giving of any notice by the Lessor under the Lease of the default of the Mortgagor, as the lessee thereunder, in the performance or observance of any of the covenants, conditions, and agreements on the part of the Mortgagor, as lessee, to be performed or observed under the Lease and promptly cause a copy of each such notice given by the Lessor to the Mortgagor, as lessee, to be delivered to the Mortgagee; (v) promptly notify the Mortgagee in writing of the commencement of a proceeding under the federal bankruptcy laws by or against the Mortgagor or the Lessor under the Lease; (vi) if any of the indebtedness secured hereby remains unpaid at the time when notice may be given by the Mortgagor, as lessee, under the Lease of the exercise of any right to renew or extend the term of the same, promptly give notice to the Lessor under the Lease of the exercise of such right of extension or renewal; (vii) in case any proceeds of insurance upon the Mortgaged Properties or any part thereof are deposited with any person other than the Mortgagee pursuant to the requirements of the Lease, promptly notify the Mortgagee in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; (viii) promptly after the execution and delivery of this Mortgage, notify the Lessor under the Lease in writing of the execution and delivery hereof and the name and address of the Mortgagee and deliver a copy of this Mortgage to the Lessor; and (ix) promptly notify the Mortgagee in writing of any request made by either party to the Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to the Mortgagee a copy of the determination of the arbitrators or appraisers in each such proceeding.

SECTION 1.17. The Mortgagor will not surrender the Lease or the Mortgagor's leasehold estate and interest therein, nor terminate or cancel the Lease, and will not, without the prior written consent of the Mortgagee, modify, change, supplement, alter, or amend the Lease, either orally or in writing, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, conditions, and agreements contained in this Mortgage and in the Lease, the Mortgagor hereby assigns to the Mortgagee all of its rights, privileges, and prerogatives as lessee under the lease to terminate, cancel, modify, change, supplement, alter, or amend the Lease and any such termination, cancellation, modification, change, supplement, alteration, or amendment of the Lease, without the prior written consent thereto by the Mortgagee, shall be void and of no force and effect. Without limiting the generality of the foregoing, the Mortgagor will not reject the Lease pursuant to 11 U.S.C. section 365(a), as amended, or any

successor law, or allow the Lease to be deemed rejected by inaction and lapse of time, and will not elect to treat the Lease as terminated by the lessor's rejection of the Lease pursuant to 11 U.S.C. Section 365(h)(1), as amended, or any successor law, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, conditions, and agreements contained in this Mortgage and in the Lease, the Mortgagor hereby assigns to the Mortgagee all of the rights, privileges, and prerogatives of the Mortgagor and the Mortgagor's bankruptcy trustee to deal with the Lease, which rights may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against the Mortgagor or the lessor under the Lease, and any exercise of such rights, privileges, or prerogatives by the Mortgagor or the Mortgagor's bankruptcy trustee without the prior written consent there to by the Mortgagee shall be void and of no force and effect. As further security for the Mortgagee, the Mortgagor hereby agrees to deposit with the Mortgagee a duplicate original of the Lease and all supplements thereto and amendments thereof, to be retained by the Mortgagee until the indebtedness secured hereby is fully paid. So long as there is no breach of or default under any of the covenants, conditions, or agreements contained in this Mortgage to be performed by the Mortgagor, or in the performance by the Mortgagor of any of the covenants, conditions, and agreements in the Lease to be performed by the lessee thereunder, the Mortgagee shall have no right to terminate, cancel, modify, change, supplement, alter, or amend the Lease. No release or forbearance of any of the Mortgagor's obligations as lessee under the Lease, whether pursuant to the Lease or otherwise, shall release the Mortgagor from any of its obligations under this Mortgage, including, but not limited to, the Mortgagor's obligations with respect to the payment of rent as provided for in the Lease and the observance and performance of all of the covenants, conditions, and agreements contained in the Lease to be observed and performed by the lessee thereunder. Unless the Mortgagee shall otherwise expressly consent in writing, the fee title to the Premises demised by the Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in the Mortgagor or in a third party purchase or otherwise.

SECTION 1.18. The Mortgagor shall indemnify, defend, and hold harmless the Mortgagee, the State of Hawaii, and their officers, employees, directors, agents, representatives, officials, 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 Mortgagor or its employees, officers, agents, or subcontractors; (b) the indebtedness secured by the Mortgage; (c) the design, construction, repair, renovation, or defects of the Mortgaged Property or Premises and/or lease, use, occupation or

operation of the Mortgaged Property or Premises; and/or (d) the enforcement of this Mortgage (whether or not suit is brought therefore) This provision shall survive the expiration or earlier termination of this Mortgage, notwithstanding any other provision to the contrary.

ARTICLE II

EVENTS OF DEFAULT AND REMEDIES

SECTION 2.01. If one or more of the following events (each an "Event of Default") shall happen:

(a) if (i) default shall be made in the payment of any interest on the Note, or in the payment of any installment of principal, in either such case, when and as the same shall become due and payable, and such default shall have continued for a period of fifteen (15) days after written notice shall have been given to the Mortgagor by the Mortgagee; or, (ii) default shall be made in any other payment of the principal of the Note, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any repayment or otherwise, in each case, as in the Note and this Mortgage provided and such default shall have continued for a period of fifteen (15) days after written notice shall have been given to the Mortgagor by the Mortgagee; or, (iii) default shall be made in the payment of any tax required by Section 1.07 to be paid and said default shall have continued for a period of fifteen (15) days after written notice shall have been given to the Mortgagor by the Mortgagee; or,

(b) if default shall be made in the due observance or performance of any covenant or agreement on the part of the Mortgagor contained in this Mortgage, and unless other provisions are afforded by the Mortgage, such default shall have continued for a period of fifteen (15) days after written notice shall have been given to the Mortgagor by the Mortgagee. No Event of Default shall be deemed to have occurred if, during said 15-day period, the Mortgagor shall have commenced a cure of the alleged default and shall diligently prosecute the same thereafter until completion; or,

(c) if default shall be made in the due observance or performance of any other covenant or condition on the part of the Mortgagor in the Note or the Building Loan Agreement, and such default shall have continued for a period of fifteen (15) days after written notice specifying such default and demanding that the same be remedied shall have been given to the Mortgagor by the Mortgagee. No Event of Default shall be deemed to have occurred if, during said 15-day period, the Mortgagor shall have commenced a cure of the alleged default and shall diligently prosecute the same thereafter until completion; or,

(d) if Mortgagor shall make an assignment for the

benefit of the creditors, or shall admit in writing Mortgagor's inability to pay Mortgagor's debts as they become due; or,

(e) if the Mortgagor shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Federal Bankruptcy Act or any similar law, federal or state, or if, by decree of a court of competent jurisdiction, the Mortgagor shall be adjudicated a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of the Mortgaged Property; or,

(f) if any of the creditors of the Mortgagor shall file a petition in bankruptcy against the Mortgagor or for reorganization of the Mortgagor pursuant to the Federal Bankruptcy Act or any similar law, federal or state, and if such petition shall not be discharged or dismissed within ninety (90) days after the date on which such petition was filed; or,

(g) if by the order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of the Mortgagor shall be appointed and such order shall not be discharged or dismissed within ninety (90) days after such appointment; or,

(h) if any representation made by or on behalf of Mortgagor or otherwise in writing in connection with the Loan shall prove to have been false or incorrect in any material respect; or,

(i) if a final judgment, which alone or with other outstanding final judgments against Mortgagor exceeds in the aggregate of \$100,000, shall be rendered against Mortgagor, and if, within thirty (30) days after entry of the final judgment it shall not have been discharged or stayed pending appeal, or if within thirty (30) days after the expiration of any stay, the judgment shall not have been discharged; or,

(j) if there shall exist and be permitted to continue (and/or not bonded off) for forty-five (45) days after written notice shall have been received by Mortgagor from Mortgagee, any involuntary lien of any kind or nature upon any of the properties or assets of Mortgagor (other than liens permitted by Section E.5.(c) of the Building Loan Agreement), which alone or together with other such involuntary liens exceeds in the aggregate of \$100,000; or

(k) if, at any time prior to the completion of the construction and equipping of the Project, the Project shall be abandoned or work on the Project shall cease for a period of more than ten (10) days for any reason within the control of the Mortgagor, or if the Project shall not be constructed, completed

and equipped strictly in accordance with the Plans and Specifications (except as to changes approved by the Mortgagee), or if changes shall be made in the Plans and Specifications without the Mortgagee's prior written approval; or,

(l) if there is a failure to purchase and maintain the required insurance stated in Section E.8.(b) or;

(m) if it shall be illegal for the Mortgagor to pay any tax referred to in Section 1.07 hereof or if the payment of such tax by the Mortgagor would result in the violation of the usury laws of the State of Hawaii;

If an above described Event of Default shall happen, the Mortgagee shall give the Mortgagor notice in writing of such Event of Default for the purpose of curing such default. The Mortgagor shall have thirty (30) days from the date of receipt of written notice to reasonably cure such default before the Mortgagee may exercise its rights under this Section 2.01.

I. During the continuance of any such Event of Default and by written notice given to the Mortgagor, the Mortgagee may declare the entire principal of the Note then outstanding, and all accrued and unpaid interest thereon, to be due and payable immediately. Upon any such declaration the principal of the Note and said accrued and unpaid interest shall become and be immediately due and payable, anything in the Note or in this Mortgage to the contrary notwithstanding.

II. During the continuance of any Event of Default, the Mortgagee, or its agents or attorneys, may enter upon the Premises, and may exclude the Mortgagor, its agents and servants wholly therefrom. Having and holding the same, the Mortgagee may use, operate, manage, and control the Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers. Upon every such entry, and, at the expense of the Mortgaged Property either by purchase, repairs or constructions, the Mortgagee may maintain and restore the Mortgaged Property. The Mortgagee may complete the construction of the Improvements and may make such changes in the contemplated Improvements as it may deem desirable and may insure the same. Likewise, at the expense of the Mortgaged Property, the Mortgagee may make all necessary or proper repairs, renewals, and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may seem advisable. In every such case, the Mortgagee shall have the right to manage and operate the Mortgaged Property and exercise the powers of the Mortgagor either in the name of the Mortgagor or otherwise as it shall deem best. The Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits, and income of the Mortgaged Property and every part hereof, all of which shall for all purposes constitute property of the Mortgagor. After the Mortgagee shall deduct the expenses of

conducting the business and all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements, and amounts necessary to pay for taxes, assessments, insurance, and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of the Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed by the Mortgagee then shall apply the monies first, to the payment of the interest on the Note and then the principal, when and as the same shall become payable; second, to the payment of any other sums required to be paid by the Mortgagor under this Mortgage; and, third to any other amount which the Mortgagor owes to Mortgagee under the Building Loan Agreement.

III. With or without entry, the Mortgagee insofar as applicable may:

(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as any entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or,

(2) institute proceedings for the complete or partial foreclosure of this Mortgage; or,

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, Building Loan Agreement, in this Mortgage, in aid of the execution of any power herein granted, for any foreclosure hereunder, for the enforcement of any other appropriate legal or equitable remedy, or otherwise as the Mortgagee shall elect.

SECTION 2.02.

(a) The Mortgagee may adjourn any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales. Except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made by the Mortgagee under this Article II, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The

Mortgagee is hereby appointed the true and lawful attorney irrevocable of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and any rights so sold. For that purpose, the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer and may substitute one or more persons with like power. The Mortgagor hereby ratifies and confirms all that its said attorney or such substitute or substitutes shall lawfully do under this Mortgage. Nevertheless, if so requested by the Mortgagee, the Mortgagor shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable in the judgment of the Mortgagee. Any such sale or sales made under or by virtue of this Article II, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold. The sale shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgage.

(c) In the event of any sale made under or by virtue of this Article II, the entire principal of, and interest on, the Note and all other sums required to be paid by the Mortgagor pursuant to this Mortgage, shall immediately become due and payable.

(d) The purchase money, proceeds or avails of any sale made under or by virtue of this Article II, together with other sums which then may be held by the Mortgagee under this Mortgage whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale. This shall include reasonable compensation to the Mortgagee, its agents and counsel; any judicial proceedings; all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest at a rate per annum which is two percent (2%) above the prime rate but not exceeding the maximum rate permitted by law, on all advances made by the Mortgagee; and, all taxes or assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal at a rate per annum which is two percent (2%) above the Prime Rate, but not exceeding the maximum rate permitted by law, from and after the happening of any Event of Default described in clause (a) of Section 2.01 from the due date of any such payment of principal until the same is paid.

Third: To the payment of any other sums required to be paid by the Mortgagor, pursuant to any provision of this Mortgage or the Note or the Building Loan Agreement.

Fourth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

(e) Upon any sale made under or by virtue of this Article II, the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof. In lieu of paying cash, the Mortgagee may make settlement of the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price, after deducting the expenses of the sale and the costs of the action and any other sums, which the Mortgagee is authorized to deduct under this Mortgage. Upon so acquiring the Mortgaged Property, or any part thereof, the Mortgagee shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

SECTION 2.03.

(a) In case of an Event of Default described in clause (a) of Section 2.01 shall have happened and be continuing, then, upon written demand of the Mortgagee, the Mortgagor shall pay to the Mortgagee the whole amount which then shall have become due and payable on the Note, for principal or interest or both. After the happening of said Event of Default, the Mortgagor shall also pay to the Mortgagee interest at a rate per annum which is two percent (2%) above the Prime Rate, but not exceeding the maximum rate permitted by law, on the then unpaid principal of the Note, and the sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, and in addition, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Mortgagee, its agents, and counsel and any expenses incurred by the Mortgagee. In the event the Mortgagor shall fail forthwith to pay such amounts upon such demand, the Mortgagee shall be entitled and empowered to institute action or proceedings at law or in equity for the collection of the sum so due and unpaid. The Mortgagee may prosecute any such action or proceedings to judgment or final decree. It may enforce any such judgment or final decree against the Mortgagor and collect, out of the property of the Mortgagor wherever situated, as well as out of the Mortgaged Property, in any manner provided by law, monies adjudged or decreed to be payable.

(b) The Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage. The right of the Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the

foreclosure hereof. In the event of a sale of the Mortgaged Property, and of the application of the proceeds of sale, as provided in this Mortgage, to the payment of the debt hereby secured, the Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Note, and to enforce payment of all other charges, payments, and costs due under this Mortgage, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. In case of proceedings against the Mortgagor in insolvency or bankruptcy or any proceedings for reorganization or involving the liquidation of its assets, then the Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges and costs due under this Mortgage, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Premises. However, in no case shall the Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of the Mortgagor.

(c) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the mortgagee shall continue unimpaired as before.

(d) Any monies thus collected by the Mortgagee under this Section 2.03 shall be applied by the Mortgagee in accordance with the provisions of paragraph (d) of Section 2.02.

SECTION 2.04. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceeding by the Mortgagee to obtain judgment for the principal of, or interest on, the Note and other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, or any other nature in aid of the enforcement of the Note or of this Mortgage, the Mortgagor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding, and (b) if required by the Mortgagee, consent to the appointment of a receiver or receivers of the Premises and of all earnings, revenues, rents, issues, profits, and income thereof. After the happening of any Event of Default and during its continuance or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance or upon the commencement of any other judicial proceeding to enforce any right of the Mortgagee, the Mortgagee shall be entitled to appoint a receiver or receivers, as a matter of right, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the Mortgage

indebtedness.

SECTION 2.05. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of this property, or of the Mortgaged Property or any part thereof, the Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage.

SECTION 2.06. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies. Each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Nothing in this Mortgage or in the Note shall affect the obligation of the Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

SECTION 2.07. The Mortgagor shall not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, whenever enacted, now or at any time hereafter in force, which may affect the covenants and terms or performance of this Mortgage. The Mortgagor shall not at any time claim, take, or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction. The Mortgagor shall not claim or exercise any right under any statute heretofore or hereafter enacted, by any government authority or otherwise, to redeem the property so sold or any part thereof. The Mortgagor expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under the Mortgagor, waives all right to have the Mortgaged Property upon any foreclosure.

SECTION 2.08. The Mortgagee shall have such other and additional remedies as provided for in the Building Loan Agreement.

SECTION 2.09. Notwithstanding any provision to the

contrary, the sale or transfer, including foreclosure sale, of the Mortgaged Property shall be subject to the terms, conditions and requirements of the Building Loan Agreement.

SECTION 2.10. Notwithstanding anything to the contrary contained herein, the Mortgagee hereby agrees that any cure of any default made or tendered by one or more of the Mortgagor's limited partners shall be deemed to be a cure by the Mortgagor and shall be accepted or rejected on the same basis as if made or tendered by the Mortgagor.

ARTICLE III

MISCELLANEOUS

SECTION 3.01. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage. This Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

SECTION 3.02. All notices shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by certified mail return receipt requested to any party at its address above stated, or at such other address of which it shall have notified the party giving such notice in writing.

Mortgagee hereby agrees that all copies of all notices which are sent to the Mortgagor under the Loan Documents, as defined in the Building Loan Agreement, shall also be sent to the Mortgagor's limited partners at the following address:

Failure to deliver notice to Mortgagor's investor limited partner or its counsel shall not negatively impact the Mortgagee's rights and remedies nor the enforceability of the Loan Documents.

SECTION 3.03. Whenever in this Mortgage notice by mail or otherwise is required, such notice may be waived in writing by the person or persons entitled to receive such notice.

SECTION 3.04. All of the grants, covenants, terms, provisions, and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, personal representatives, and assigns of the Mortgagor and the successors and assigns of the Mortgagee.

SECTION 3.05. This Mortgage 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.

SECTION 3.06. All of the money loaned and advanced under and secured by this Mortgage shall be used for the purpose of paying for the improvements made or constructed on the Mortgaged Property and other costs connected with the project. The purpose of this Mortgage is to secure said money loaned and advanced for the purpose of paying for such improvements and costs. The Mortgage secures monies advanced in part to pay for construction of improvements to the Premises to satisfy the requirements of HRS Section 507-46, as amended.

SECTION 3.07. The term "Mortgagor" and "Mortgagee" or any pronouns used in place thereof, whenever used, shall include the masculine, feminine or neuter, the singular or the plural, individuals, partnerships or corporations.

SECTION 3.08. RESERVED

SECTION 3.09. It is agreed and understood that notwithstanding anything provided in this Mortgage to the contrary and without the further consent of the Mortgagee, the Mortgagor shall have the right to mortgage the Property to secure a loan as described in [Senior Note] dated [insert date of the Senior Note]. . However, said mortgage in favor of ___ shall be subordinate to this Mortgage and, upon the execution and delivery of said mortgage in favor of _____, the Mortgagor shall deliver a true copy thereof to the Mortgagee.

SECTION 3.10. It is understood and agreed that if the Mortgagor shall pay all indebtedness hereby secured, of which indebtedness the records of the Mortgagee shall be prima facie evidence, if the Mortgagor 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 if the Mortgagor pays the cost of release hereof, then the Mortgagee shall execute and deliver such release, in recordable form sufficient to remove this Mortgage as an encumbrance on title, in favor of the Mortgagor and this Mortgage shall become null and void.

SECTION 3.11. HHFDC agrees to subordinate the refinancing of any debt senior to the loan evidenced by the RHRF Note subject to: HHFDC's review and acknowledgment of the refinancing loan terms and HHFDC's review and acceptance of subordination terms and documentation; provided that the senior debt refinancing: (a) does not increase the outstanding principal balance of any such senior debt existing immediately prior to such refinancing (other than by the addition of reasonable closing costs and other customary fees and charges associated with such refinance) and that no funds are

transferred to the Mortgagor or any party, (i.e. no "cash-out" refinance); and (b) does demonstrably improve the Project's financial operations to repay the RHRF Note.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Leasehold Mortgage, Security Agreement and Financing Statement 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 _____

"Mortgagee"

a Hawaii _____

By _____

Its _____

By _____

Its _____

"Mortgagor"

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

Leasehold Mortgage, Security
Agreement and Financing Statement
Doc. Description: (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Leasehold Mortgage, Security
Agreement and Financing Statement
Doc. Description: (Rental Housing Revolving Fund)

(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

Leasehold Mortgage, Security
Agreement and Financing Statement
Doc. Description: (Rental Housing Revolving Fund) _____

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION

EXHIBIT 1

BUILDING LOAN AGREEMENT
(Rental Housing Revolving Fund)

A. DATE OF THIS LOAN AGREEMENT

_____, 20____

B. PARTIES; RECITALS

1. 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

Borrower: _____

Address: _____

2. Recitals

- (a) Borrower is the developer of the Project described below.
- (b) Under Chapter 201H, HRS, Lender is empowered to provide financial and other assistance to a developer to facilitate the processing to completion of the development of housing projects to remedy Hawaii's critical housing shortage. In furtherance of the public purpose of providing affordable housing opportunities, the Lender has taken action to provide financing assistance for the Project from the following affordable housing financing programs:
- (1) Rental Housing Revolving Fund. Lender has agreed to make to Borrower the following Loan from the Rental Housing Revolving Fund program:

Principal	Interest Rate	Origination Fee	Term

pursuant to the following documents, which are incorporated by reference:

Document	Dated
Application	
For Action	
Subsequent For Actions	

The Loan shall be evidenced and secured by the Loan Documents described below in Section E.2., which shall be in form and content satisfactory to Lender. The Loan Documents that are executed by the Borrower shall be dated _____. Payments are due annually in accordance with Section 2 of the Note. The entire principal balance of the Loan and any unpaid interest then due shall be payable on _____.

C. WORDS USED IN THIS LOAN AGREEMENT

1. "Borrower" means the above-named borrower.
2. "Closing Date" means the date when the Mortgage, Security Agreement and Financing Statement has been duly recorded or filed in the appropriate recording office.
3. "HHFDC Laws" means Chapter 201H of the Hawaii Revised Statutes and related chapters of the Hawaii Administrative Rules, as each may be amended from time to time.
4. "HRS" means the Hawaii Revised Statutes, as amended from time to time.
5. "Lender" means the Hawaii Housing Finance and Development Corporation (HHFDC).
6. "Loan" means the interim construction/permanent financing (first or junior?) mortgage loan which Lender will make to Borrower through the Rental Housing Revolving Fund as more particularly described herein above in Section B.2.(b)(1).

7. "Loan Agreement" means this Building Loan Agreement.
8. "Loan Documents" means the loan documents which evidence and secure the Loan including the Loan Documents described below in Section E.2.
9. "Plans and Specifications" means those plans and specifications dated _____, and if applicable those maps prepared by Borrower's design professional for the development and construction of the Project. Such plans and specifications are made in accordance with the Borrower's Rental Housing Revolving Fund application dated _____, and are on file at Lender's office and are incorporated herein by reference thereto.
10. "Project" means the residential rental project, together with all related amenities and improvements as described in the Rental Housing Revolving Fund application dated _____ and "For Action" memoranda set forth in Section B.2.(b)(1) and are on file at Lender's office and are incorporated herein by reference thereto, and which Borrower is developing and constructing on the Property in accordance with the Plans and Specifications.
11. "Property" means the real property described in Exhibit "2" attached hereto and incorporated herein by reference, together with all easements and other rights appurtenant thereto, upon which the Project will be developed.

D. EXHIBITS

The Exhibits to this Agreement are as follows:

- | | |
|------------|---|
| Exhibit 1: | Reserved |
| Exhibit 2: | Property Legal Description, including encumbrances |
| Exhibit 3: | Consolidated Application Exhibit B ("Project Budget") |
| Exhibit 4: | Consolidated Application Exhibit C ("Cash Flow Schedule") |
| Exhibit 5: | Quarterly Report ("Quarterly Report") |

E. TERMS AND CONDITIONS OF THE LOAN

1. Lender agrees to make and Borrower agrees to borrow the Loan pursuant to the terms and conditions in this

Loan Agreement.

2. Loan Documents. To evidence and secure Borrower's full and timely payment and performance of all the obligations which Borrower has promised to pay and perform to or for the benefit of Lender, Borrower agrees to sign and deliver to Lender the following documents, all of which shall be in form and content satisfactory to Lender, duly signed and acknowledged by Borrower:

No.	Document
1.	This Loan Agreement
2.	Note
3.	<p>Mortgage, Security Agreement and Financing Statement ("Mortgage")</p> <p>The Mortgage shall constitute a valid and subsisting (First or Junior?) lien upon all of Borrower's right, title, and interest in and to the Property, all buildings and improvements constructed or to be constructed on the Property and all building materials, furniture, furnishings, decorations, fixtures, equipment, and appliances now owned or hereafter acquired by Borrower for the Project and situated in or upon the Property or elsewhere, any other items, constituting personal or intangible property, described therein.</p> <p>The Mortgage shall be superior to any other security interest and/or lien on the Property and the Project.</p>

In addition to the foregoing loan documents, the Loan shall also be evidenced and secured by the following collateral assignments and other documents in favor of Lender and covering the Loan, as applicable.

No.	Document
4.	Collateral Assignments of all architect or other design professional contracts (collectively referred to as "Architect's Contract" for the Project)
5.	Collateral Assignments of all engineering contracts (collectively referred to as

	"Engineer's Contract")
6.	Collateral Assignment of General Construction Contract ("General Contract")
7.	Collateral Assignment of Site Work Construction Contract ("Site Work Contract")
8.	Collateral Assignment of all separate construction or improvement contracts ("Separate Contracts") to provide any labor, material or improvements in connection with or for the Project
9.	<p>Architect's, Engineer's and Contractor's Letters to Lender.</p> <p>Borrower shall require each architect, design professional, engineer and contractor to sign and deliver a letter to Lender providing, among other things, representations about the scope and quality of the work to be performed, certifications pertaining to the quantity and quality of work in place, change orders, notices of Borrower's default and giving Borrower and/or Lender no less than 30 calendar days to cure such default, consenting to the assignment of such person's or entity's contract to Lender, conditionally releasing claims for mechanics' and materialmen's liens, retentions, insurance, including general liability and errors and omissions insurance, Loan disbursements, and other items requested by Lender.</p>
10.	<p>Assignment of Leases and Rents.</p> <p>Borrower shall assign to Lender all leases, rents, and other income from the Property and Project.</p>
11.	Collateral Assignment of Management Agreement
12.	Declaration of Land Use Restrictive Covenants
13.	Hazardous Materials Agreement
14.	Rental Housing Revolving Fund Monitoring Agreement
15.	Subordination and Intercreditor Agreement

3. Application of Proceeds. Borrower agrees that the proceeds of the Loan shall be applied solely to the payment of the cost of purchasing, developing,

constructing and equipping the Project, together with appurtenant facilities and fixtures (the "Improvements"), in accordance with:

- (a) Plans and Specifications. Borrower shall submit to Lender for approval as to form and substance of the subdivision map, site plans, construction and building Plans and Specifications and other subdivision and construction documents covering all Improvements in the Project. This shall include, but not be limited to, housing units and Improvements, streets, water supply levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and cost projections for the entire Project, including both construction and non-construction costs, as applicable.
- (b) Project Budget. Borrower shall submit any amendments to the Project Budget, attached hereto as Exhibit 3, upon approval by Lender. Borrower shall update the Project Budget periodically or upon Lender's request.
- (c) Project Schedule. Borrower shall submit a detailed updated development and construction schedule in a form approved by Lender for Lender's prior review and approval.
- (d) Cash Flow Schedule. Borrower shall amend the Cash Flow Schedule, attached hereto as Exhibit 4, upon approval of Lender. Borrower shall also submit for Lender's approval a projected draw schedule, prepared and updated by the 20th day of each month by Borrower or Borrower's architect and/or engineer, which sets forth a schedule of estimated monthly draws from the proceeds of the Loan.

Notwithstanding the foregoing, Lender shall have the absolute right to apply the proceeds of the Loan toward the payment of any obligation which Borrower shall owe to Lender with respect to the Project.

- (e) Cost Overruns. Borrower shall be responsible to pay and shall pay for all costs and expenses of developing and constructing the Project over and above the Loan amount. Cost overruns shall be paid from the following sources in the following order:

- (1) The item shown as "Contingency" in the

Project Budget, subject to Lender's approval;

(2) Borrower.

The Project Budget shall only be revised with Lender's prior written approval. Any revision to the Project Budget, which Lender approves will be incorporated herein by reference.

(f) Cost Savings. Borrower and Lender agree as follows:

(1) Any cost savings achieved in any line items in the Project Budget shall be reallocated for the line item reserved for contingency funds, provided Borrower may reallocate such cost savings for any other line item(s), except for Borrower's profit, fee, or overhead with the written approval of the Lender.

(2) The amount of Loan proceeds reserved for the contingency line item on the Project Budget shall not exceed ten percent (10%) of direct costs of the Project, which costs generally include the cost of on-site Improvements, building construction costs and other construction costs.

4. Closing Date. The closing of the Loan shall take place as follows:

Place: 677 Queen Street, Suite 300, Honolulu, Hawaii
Date: _____, 20____.

or at such other time and place as shall be mutually agreed upon by Lender and Borrower, but not later than _____, 20____ ("Closing Date").

If the Loan is not closed and the appropriate documents filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and/or recorded in the Bureau of Conveyances of the State of Hawaii by the Closing Date, then, unless the Closing Date shall be extended by mutual agreement, this Loan Agreement will expire, and neither party shall have any obligation under this Loan Agreement. In all events, Borrower shall have complied with all requirements for the Loan and start construction no later than 30 calendar days after the "Closing Date." If Borrower fails to do so, Lender shall have the right to terminate this Loan Agreement. If Lender

terminates this Loan Agreement, Borrower agrees to immediately repay or reimburse Lender for all funds which Lender has advanced to or for the benefit of Borrower or the Project.

5. Representations and Warranties by Borrower. Borrower represents and warrants that:

- (a) Authority of Borrower to Act as Developer; Information About the Borrower. Borrower has all requisite power and authority to act as developer for the Project.

Upon request, Borrower shall obtain and submit to Lender, the following:

- (1) Corporate or Partnership Documents. The required documents shall consist of copies of Borrower's organizational documents including Articles, By-Laws and Corporate Resolutions, or copies of Borrower's Partnership Agreement and authorizing resolutions and/or consents.
 - (2) Certificate of Good Standing and Tax Clearance. The required documents shall be issued by the Department of Commerce and Consumer Affairs and with respect to the tax clearance certificates by the State of Hawaii, Department of Taxation and the Internal Revenue Service.
 - (3) Borrower's Financial Statements. The required documents shall be submitted to and approved by Lender.
 - (4) Financial Condition of Borrower. The Borrower shall submit to Lender current periodic financial statements in a form approved by Lender. The financial condition of Borrower is of material significance to Lender and must be complete and fairly stated. If there shall be any material adverse change therein, Lender may:
 - a. Require that Borrower provide additional sources of financing or security.
 - b. Stop disbursement of the Loan.
- (b) Authority to Enter into Loan Agreement and Borrow. Borrower has all requisite power and authority to enter into this Loan Agreement, to

borrow money as contemplated hereby, to secure such borrowing as contemplated hereby and to carry out the provisions of the Loan Documents. No consents or approvals are required to be obtained from any governmental body or agency for the execution and delivery of the Loan Documents, or, if required, the same have been obtained.

- (c) Title to Project. Borrower now has and at all times will have good fee simple/leasehold title to the Property and the Project, subject to no mortgage, pledge, lien, encumbrance or charge, excepting only liens for taxes, assessments or governmental charges or levies not yet delinquent or payable without penalty or interest and Lender's rights under the Mortgage.

- (1) No Condemnation or Damage. No part of the Project (or the Improvements thereon, if any) shall have been damaged and/or not repaired to Lender's satisfaction. No part of the Project shall be taken in condemnation or other title proceeding, nor shall any such proceeding be pending.

- (2) No Bankruptcy or Insolvency. The Borrower shall not be involved in any bankruptcy, reorganization, arrangement, or insolvency proceeding, nor shall any such proceeding be pending.

- (d) Tax Returns and Payments. All tax returns and reports of Borrower required by law to be filed have been duly filed and all taxes, assessments, contributions, fees and other governmental charges upon Borrower's properties or assets or income which are due and payable have been paid. Borrower agrees to provide tax returns in a timely manner as Lender may request from time to time.

- (e) Litigation. There is no action, suit, proceeding or investigation pending, or to the best of Borrower's knowledge, threatened against or affecting Borrower, the development rights, or the Project in any court at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality, whether federal, state or municipal. There is no adverse decision which might materially affect Borrower's ability to observe and perform Borrower's obligations under the Loan Documents or under any and all other

agreements and instruments herein mentioned to which Borrower is a party or by which Borrower or the Project is affected.

- (f) Compliance with Other Instruments. Borrower is not in violation of or in default with respect to any term or provision of any mortgage, indenture, contract, agreement or instrument applicable to Borrower, or by which Borrower is bound. The execution, delivery, performance of and compliance with the Loan Documents will not result in any such violation or be in conflict with or constitute a default under any such term or provision or result in the creation of any mortgage, lien or charge on any of the properties or assets of Borrower. There is no term or provision of a mortgage, indenture, contract, agreement or instrument applicable to Borrower or by which Borrower is bound which materially adversely affects or in the future (so far as Borrower can now foresee) will materially adversely affect the business or prospects or condition (financial or other) of Borrower or Borrower's properties or assets.
- (g) Financial Statements. The Financial Statements of Borrower delivered to Lender are true and correct in all respects, have been prepared in accordance with generally accepted accounting practice, and fairly represent the financial condition of Borrower as of the date of the financial statements. No materially adverse change has occurred in the financial condition reflected since the date of the financial statements. The financial condition of Borrower will not be materially altered during the life of the Loan, and no additional borrowings have been made by Borrower since the date of the financial statements other than the borrowing contemplated hereby or approved by Lender. Borrower agrees to provide updated financial statements in a timely manner as Lender may request from time to time.
- (h) No Other Contracts. Borrower has made no contract or arrangement of any kind which would give rise to a lien on the Project, except for arrangements with Borrower's contractors and consultants who have performed, are performing, or will perform work or services for the Project or for Borrower in connection with the Project, including, without limitation, Borrower's architect and general contractor, whose claims, liens or rights to a claim, if any, shall be

subordinated to the Loan.

- (i) Loan Proceeds. The proceeds of the Loan will be used solely for the purposes specified herein and in the Loan Documents, which purposes shall at all times and from time to time be approved by Lender as changes may occur or may become necessary.

6. Conditions of Lender's Obligations. Lender's obligation to make the Loan is subject to the fulfillment to Lender's satisfaction of the following conditions precedent prior to or at the Closing Date:

- (a) Representations and Warranties True at Closing. The representations and warranties of Borrower contained in this Loan Agreement and otherwise made by or on behalf of Borrower in writing, in connection with the Loan shall exist and be true at the time of the Closing Date.
 - (1) Misstatement of Facts. In the event Borrower or anyone on its behalf makes any misstatement of material fact or fails or neglects to furnish Lender with any material facts or information that would be material to Lender in evaluating the Loan, Lender shall not be required to close the Loan. If the Loan has already closed, such omission or misstatement, whether occurring prior to or subsequent to the closing of the Loan shall constitute a default under the Loan.
 - (2) Satisfaction of Conditions. Each and every one of the conditions of this Loan Agreement shall be fulfilled at or prior to the Closing Date, unless an earlier date shall be specified elsewhere in this Loan Agreement.
- (b) No Event of Default. There shall exist at the time of the Closing Date no condition or event which would constitute an Event of Default as defined in Section E.9. of the Loan Agreement or which after notice or lapse of time, or both, would constitute an Event of Default.
- (c) Performance. Borrower shall have performed and complied with all agreements and conditions contained in the Loan Agreement and required to be performed and complied with by Borrower prior to or at the Closing Date.

- (d) Compliance Certification. Borrower certifies to Lender that the conditions specified in paragraphs 6(a), 6(b) and 6(c) in this section have been met.
- (e) Title Insurance. If required by Lender, Borrower shall deliver to Lender a policy or policies of title insurance (or ALTA form) issued by a company or companies and in amounts approved by Lender, insuring the mortgage securing the Loan to be a valid (first or junior?) lien in favor of Lender, free and clear of all defects, liens, encumbrances and exceptions to both whatsoever, except such as Lender shall approve.
- (f) Compliance With Zoning Codes, etc. Borrower shall submit to Lender evidence reasonably satisfactory to Lender of compliance with (or exemption from) all applicable zoning codes, regulations, and all other governmental requirements covering the construction of the Project. Such evidence may be in the form of a certification by Borrower's architect for the Project that (a) all buildings and similar permits incorporate approval of the use of the Project for the planned Improvements under applicable zoning laws, ordinances, codes and regulations, whether federal, state, or local; (b) the Project is so zoned as to permit the lawful use thereof for the planned Improvements under applicable zoning codes and regulations; and (c) the Plans and Specifications for the construction of such Improvements are in conformity with such codes and regulations (or that the same are exempt from applicable laws, codes, ordinances and regulations).
- (g) Plans and Specifications. Borrower shall furnish to Lender one (1) complete approved set of Plans and Specifications.
- (h) Construction Contract. Borrower shall have entered into a construction contract (the "Construction Contract") covering the entire development and construction of the Project. The Construction Contract must be in form and content satisfactory to Lender, with a general contractor for the construction of the Project at a total aggregate contract price of not more than \$_____. Borrower shall furnish Lender with an executed copy of the Construction Contract.
- (i) Performance and Payment Bond. Borrower shall

furnish to Lender evidence satisfactory to Lender that the contractor named in the Construction Contract has delivered to Borrower a performance and payment bond, in a form satisfactory to Lender, in an amount equal to 100% of the Construction Contract price with the contractor, as principal, and, as surety, a corporate surety authorized to do business in the State of Hawaii satisfactory to Lender. The performance and payment bond shall be conditioned upon the full and proper completion of the Project in accordance with the Plans and Specifications and payment of all materials and labor in connection with the Project. The performance and payment bond shall include Lender and the State of Hawaii as an additional obligee.

Upon request by Lender, a current credit report and bank reference for the surety shall be submitted to Lender.

(j) Survey, Soils and Title Documents.

- (1) ALTA Survey. Borrower shall furnish to Lender an ALTA survey of recent date prepared and certified as correct by a registered surveyor satisfactory to Lender showing the site, the dimensions and area of the Project, dimensions and locations of any existing Improvements, utilities, or parking areas, and easements. The proposed Project shall lie wholly within the boundaries of the Property without encroachment or violation of any setback or violation of any zoning ordinances, the location of any adjoining streets, and the distance to and name of the nearest intersecting street. The certificate shall be in such form as reasonably required by Lender. The survey shall be at the expense and responsibility of Borrower.
- (2) Soils and Engineering Report. If required by Lender, Borrower at its own expense shall obtain a soils and engineering report for the Project and shall be solely responsible for all soils and engineering matters involving the Project site.
- (3) Title Report. Borrower at its own expense shall submit a title report for Lender's prior approval of any and all liens and encumbrances that affect the Project as

shown on the title report. The title report shall be updated to the Closing Date.

- (k) Administrative Fee. Borrower shall pay to Lender as an administrative fee the sum of \$--0-- per unit in the Project, together with the expenses specified in Section E.11. of the Loan Agreement.
- (l) Opinion of Counsel. A written opinion of Borrower's counsel, acceptable to Lender, shall be furnished stating that (a) Borrower has the power and has been duly authorized to enter into this Loan Agreement and to execute the Loan Documents, Hazardous Materials Agreement, Declaration of Land Use Restrictive Covenants, and Monitoring Agreement; (b) when executed and delivered, the Loan Documents, Hazardous Materials Agreement, Declaration of Land Use Restrictive Covenants, and Monitoring Agreement, will be valid and legally binding obligations of Borrower; (c) Borrower's compliance with the Loan Documents, Hazardous Materials Agreement, Declaration of Land Use Restrictive Covenants, and Monitoring Agreement, and other instruments and documents contemplated by this Loan Agreement will not violate any instruments or agreements binding upon Borrower; (d) no action of any governmental commission or agency is required for the Borrower's execution and delivery of the Loan Documents, Hazardous Materials Agreement, Declaration of Land Use Restrictive Covenants, and Monitoring Agreement to the Lender, or, if required, that the same has been obtained; and e) such other matters as Lender may request.
- (m) Appraisal and Updates. Lender shall receive the appraisal ordered by the Senior Lender, which appraisal shall be dated no more than 90 days prior to the Closing Date of the Project and prepared in accordance with "Uniform Standards of Professional Appraisal Practices" ("USPAP"). The appraisal shall contain an "as is" value and a value "per Plans and Specifications." The appraisal shall be subject to Lender's review and approval. Borrower shall pay for the appraisal and all required updates.

Lender shall have the right to obtain an updated appraisal from any certified appraiser designated by Lender, from time to time, whenever such updated appraisal may be required by law, rule or proceeding or when deemed appropriate by Lender.

(n) Development Documents. Borrower shall obtain and submit to Lender the following:

- (1) Architectural Contract. Borrower shall submit to Lender a copy of the contract between the Borrower and an architect or architectural firm, which is licensed to engage in the architectural business in Hawaii. Borrower shall submit a collateral assignment of the architectural contract to Lender.
- (2) Engineering Contracts. Borrower shall submit to Lender a copy of all contracts for engineering services. Borrower shall submit a collateral assignment of any engineering contracts to Lender.
- (3) Architect's and Engineer's Insurance. All architects, engineers and other design professionals providing any architectural, engineering or other design services in connection with the development and/or construction of the Project must be required to have in full force and effect errors and omissions insurance and other liability insurance that will protect them from claims of negligence, breach of warranty or other claims arising out of the design and construction of the Project. Borrower shall deliver to Lender evidence that architectural, engineering, and design professionals have purchased and have in full force and effect the insurance required. The insurance must provide for limitations of liability that are acceptable to Lender.
- (4) Permits and Approvals. The Borrower shall deliver to Lender a copy of all (i) approvals of the construction Plans and Specifications by the necessary governmental agencies and departments; (ii) building permits or similar permits; (iii) subdivision approval; (iv) subdivision bond, if required; (v) grading permit; and, (vi) utility company letters. Borrower shall also submit appropriate evidence that no proceedings are pending or threatened with respect to the revocation or suspension of said permits or other approvals.

(5) Other Contracts. The Borrower shall submit to Lender copies of major contracts and subcontracts with a contract sum in excess of \$250,000, and the amounts for construction of all improvements in the Project and all fixtures and personal property secured by the contracts and subcontracts. Borrower shall obtain from the general contractor a current certificate of vendor compliance (CVC) issued by Hawaii Compliance Express and submit such CVC to Lender. No material changes resulting in an increase or decrease in the aggregate of \$250,000 in the cost of construction shall be made on the project without the prior written approval of Lender.

(6) Agreements. Borrower shall obtain agreements from the general contractor, architect, and engineer who have contracted to work on the Improvements to be constructed in the Project to the effect that each of them shall continue to perform for Lender the services which they have contracted to perform for Borrower, at any time at the request of Lender, notwithstanding any foreclosure of the Mortgage, provided Lender pays such general contractor, architects, and engineer for the services rendered to Lender.

(o) Availability of Funds. Funding of the Loan shall be subject to the availability of funds, and the approval of the Governor of the State of Hawaii. Borrower agrees to abide by all the terms and conditions that may arise due to the use of public funds.

7. Advances on Account of Construction Contract and Loan. Advances on account of the payment of the costs of constructing and equipping the Project shall be made upon and subject to the following terms and conditions:

(a) Disbursement of Loan Funds.

(1) Upon the recordation of the Mortgage and delivery to Lender of all requirements specified by Lender, Lender shall disburse the Loan funds to Borrower at such times and in such amounts as set forth in the Cash Flow Schedule approved by Lender. Lender requires Borrower to provide monthly

updates of the Cash Flow Schedule. As a condition precedent to being entitled to disbursement hereunder, Borrower shall provide Lender, or its designee, with certifications of progress, proofs as to the payment of construction bills and subcontracts, lien waivers, inspection reports, architects' and/or engineers' certificates, and such other proofs as Lender may require to establish the development and the current status of accounts of contractors, subcontractors, materialmen, and laborers furnishing labor, materials or services in the Project, Borrower's compliance with the provisions of Section 507-41 et. seq. of the Hawaii Revised Statutes ("Mechanics' Lien Law"), and other applicable laws, and the basis for requested draws. Lender shall not be obligated to make disbursements until Borrower delivers to Lender the required proofs. At its election, at any time and from time to time, Lender may disburse the funds directly through Department of Accounting & General Services (DAGS) to Borrower, or directly to the subcontractors, materialmen and laborers.

- (2) Notwithstanding any provision to the contrary contained in this Loan Agreement or any other document relating to the Loan or the development and construction of the Project, including the Construction Contract, all disbursements will be made subject to the payment and disbursement procedures of Lender.
- (3) Borrower, its contractors and subcontractors shall pay all mechanics and laborers employed on the Project, minimum prevailing wages for the corresponding work classifications as determined by the Director of Labor and Industrial Relations pursuant to Chapter 104, Hawaii Revised Statutes. A certified copy of each weekly payroll shall be submitted to Lender by the general contractor within twenty-one (21) calendar days after the end of each payroll period. The Borrower shall be responsible for the timely submission of certified copies of payrolls of all contractors and subcontractors employed on the Project. The certification shall affirm that payrolls are

correct and complete, that the wage rates contained therein are not less than the applicable rates, that hours reported are for both covered and non-covered projects, and that the classifications set forth for each laborer and mechanic conform with the work that they performed. If certified payrolls are not submitted on a timely basis, or if Lender finds that any laborer or mechanic employed on the Project has been or is being paid less than the applicable prevailing wages, Lender shall have the sole and absolute right and discretion, without being in default hereunder, to withhold further payments from the Loan until such time that Lender has been satisfied that such failures have been corrected or will be corrected. In addition, at Lender's option, Lender may treat the failures described herein as an Event of Default pursuant to Section E.9 of this Loan Agreement.

- (b) Development and Construction Work Criteria. The Project shall be erected substantially in accordance with the Plans and Specifications as approved by Lender and shall comply with all restrictions, conditions, ordinances, codes, regulations, and laws of governmental departments and agencies having direction or jurisdiction over or an interest in said Project; provided, however, that Borrower shall furnish in writing with sufficient detail to Lender, all extra work or materials or changes incurred. Borrower shall provide Lender with as many copies as required by Lender. No extra work or materials or change in Plans and Specifications shall be ordered or authorized by Borrower without the written consent of Lender.

Borrower shall comply with every condition, requirement, regulation, or other restriction that may be imposed upon the Project by Lender or any permanent lender.

- (c) Commencement and Continuity of Work. There shall be no "visible commencement of operations" (as defined in Section 507-41, HRS) prior to the Closing Date, without the written authorization of Lender.

Development of the Project shall commence no earlier than the Closing Date, and shall be

carried on continuously, diligently and with dispatch and completed by _____, 20____. Borrower will devote full effort and energy to the development of the Project. Should construction commence prior to the Closing Date, Borrower shall provide satisfactory endorsements to Lenders' ALTA policy insuring its lien position is free from any mechanics or materialmen liens or any other lien that may result from starting construction prior to the Closing Date.

- (d) Application for Advances/Retainage. Applications for advances of Loan proceeds must be filed at least thirty (30) full business days before the date upon which an advance is desired. Each such application shall bear the written certification of the architect. The certification shall state that the aggregate of all advances made out of the proceeds of the Loan to date, plus the advance applied for, does not exceed 100% of the value. The value of work is calculated on a completed value basis - of all work completed and materials actually incorporated into the Project during the preceding month (or, in the case of the first application, prior to the date of such application) and the advances to which Borrower shall be entitled. The value of the work shall be certified and deemed acceptable by Borrower and the architect of the portions of the work acceptably completed, including the materials suitably stored at the Project site, less [insert percentage no less than 5%] and less prior advances. Lender shall administer all requests for advances during the construction stage with Borrower's general contractor and Lender's inspector verifying each stage of completion during construction.

Borrower hereby constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact to pay all such advances directly (i) to the general contractor and to any subcontractors or other parties in payment of the sums due under the construction contract, or to the surety of the general contractor, (ii) to any other creditor furnishing labor or materials in connection with the construction of the Project, and (iii) to any person or entity having a claim upon, or who shall be a creditor of, the Premises. This power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable.

- (e) Optional Conditions to Advance. As a condition to the making of any advance out of the Loan Proceeds up to the applicable date (for payment to the general contractor, subcontractors, and materialmen from whom releases are required), Lender has the option to require Borrower, at Borrower's expense, to: (i) obtain and attach to each application for advance subsequent to the first application acknowledgements of payment of all sums due from the date covered by the last advance; (ii) furnish Lender a lien letter issued by a licensed searcher of titles approved by Lender, showing no liens, encumbrances, exceptions to title or encroachments on the Project or Premises, except those waived by Lender; (iii) furnish Lender an original print of the survey redated to the date of the advance, showing all construction to be within the property lines and disclosing no variations, encroachments or violations of setback or other restrictions; and (iv) concurrently with the final advance, deliver to Lender duly executed acknowledgements of advances and releases of liens, in form satisfactory to Lender from the general contractor and all subcontractors and materialmen dealing directly with the general contractor. The releases of liens shall cover all work, labor, and materials, including equipment and fixtures of all kinds done, performed or furnished for the construction and equipping of the Project.
- (f) Lender's Loan Draw and Disbursement Procedures. Loan draws and disbursements of Loan proceeds shall be subject to Lender's practices and procedures. To process and fund a Loan draw request, which may take more than 30 days after a Loan draw request has been submitted, Borrower shall become familiar with Lender's practices and procedures, including the time and manner for submission of Loan draw requests, information which must accompany Loan draw requests, and the time necessary for Lender and the State of Hawaii Department of Accounting and General Services to process and fund a Loan draw request.
- (g) Final Advance. Disbursement of the final advance amount of no less than \$100,000 shall not occur until the Project achieves and evidences the following:
- (1) Certificate of Occupancy (new construction);
 - (2) Notice of Substantial Completion

- (rehabilitation);
- (3) Affidavit of Publication - Notice of Completion;
- (4) Expiration of the mechanics' and materialmen's liens filing period with no such filings (evidenced by a title search dated 46 days after the Notice of Completion publication date);
- (5) Final cost Certification Audit (in a form acceptable to the Lender); and
- (6) A certification by an architect or engineer duly licensed under the laws of the State of Hawaii that the improvements have been substantially completed in accordance with the Project Plans and Specifications, with a summary description of the Project, as-built, to include the following information:
 - a. Area of Project Site;
 - b. Gross building area of Project (excluding parking);
 - c. Gross building area of any non-residential uses;
 - d. Total number of residential units and number of each residential unit type and average size of each unit type;
 - e. Number of buildings, stories, and elevators in each building;
 - f. Number of parking stalls, as allocated between residential and non-residential uses;
 - g. Number of handicapped parking stalls, as allocated between residential and non-residential uses; and
 - h. Number of loading stalls.

8. Covenants of Borrower. So long as the Note is outstanding and any part of the principal or interest remains unpaid:

(a) Compliance with Applicable Ordinances Etc.

- (1) Borrower agrees that the Project shall be constructed and equipped strictly in accordance with all applicable ordinances and statutes and in accordance and compliance with the requirements of all regulatory authorities having jurisdiction. Borrower further agrees that the Project shall be constructed entirely on the subject Property and will not encroach upon or overhang any easement or right of way nor upon the land of others, and that the Project, when erected shall be wholly within

any building restriction lines, however established, and will not violate any applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations. Upon Lender's request and at Borrower's expense, Borrower will furnish from time to time satisfactory evidence of its compliance with applicable ordinances, together with a survey identified by a registered land surveyor that shows the Project to be entirely on the Property and free from violations.

- (2) Compliance with Laws. Borrower shall submit to Lender evidence that the development of the Project is in substantial compliance with all applicable laws, regulations, ordinances, and all other governmental requirements.
- (3) Compliance with Zoning Codes, etc. Borrower shall submit to Lender evidence of compliance with (or exemption from) all applicable zoning codes, regulations, and all other governmental requirements covering the construction of the Project. The evidence may be in the form of a certification by Borrower's architect for the Project that (a) all buildings and similar permits incorporate approval of the use of the Project for the planned Improvements under applicable zoning laws, ordinances, codes, and regulations whether federal, state, or local, (b) the Project is zoned to permit the lawful use for the planned Improvements under applicable zoning codes and regulations; and, (c) the Plans and Specifications for the construction of improvements are in conformity with applicable codes and regulations (or that the improvements are exempt from applicable laws, codes, ordinances, and regulations).
- (4) Environmental, Ecological Laws, etc. Borrower shall submit to Lender evidence that the construction of the Improvements does not violate any environmental, ecological or safety laws, regulations, or ordinances of any municipal, state, or federal agency or board (the evidence shall include, but not be limited to evidence that Chapter 343, HRS, has been complied with and the necessary environmental documents have

been filed and approved and that Borrower has complied with the requirements of Chapter 205A, HRS, and that the Shoreline Management Area Permit ("SMA") has been obtained (if required), and the evidence shall further include plans approved by all local, state, and federal authorities having jurisdiction over the Project for sewage, water, utilities, and excavation and that the Plans and Specifications for the Improvements provide adequate sewage capacity and utilities (electricity, gas, and water) to serve the Project and the planned Improvements.

(b) Insurance.

- (1) Borrower's Requirements:
Borrower shall maintain insurance acceptable to the Lender in full force and effect throughout the term of this Loan. The policy or policies of insurance maintained by the Borrower shall provide the following limits and coverages:

Borrower will be responsible for having in force at all times the following policies of insurance:

INSURANCE COVERAGE

MINIMUM POLICY LIMITS

General Liability	Borrower's commercial general liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate (the maximum amount paid for claims during the policy period) arising out of or in connection with operations performed under this Loan. Automobile insurance, including automobile contractual liability, uninsured and underinsured motorist coverage, and basic no-fault and personal injury
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protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the Borrower does not own any automobiles, it shall maintain Hired & Non-Owned Automobile Liability coverage.

Umbrella/Excess Borrower shall maintain umbrella/excess liability insurance with limits not less than \$4,000,000 for each occurrence and \$4,000,000 in the aggregate.

Property Including Windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by Borrower, located on the Property. Borrower shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. The State of Hawaii and HHFDC shall be a loss payee under the Property Insurance Coverage, shall be evidenced on form Accord 27 - Evidence of Property Insurance.

Rental Loss Full coverage

Workers' compensation As required by Hawaii laws

Fire & extended 100% replacement value coverage

Builder's risk 100% replacement value

Malicious mischief 100% replacement value

Crime Insurance Borrower shall maintain a fidelity bond or crime insurance with minimum limits of \$1,000,000 covering all

officers, employees, and agents of Borrower against loss by reason of any fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction or misappropriation or any other dishonest criminal or fraudulent act, whatever committed and whether committed directly or with others.

Flood insurance
(if required)

Maximum coverage
available

Pollution
Liability (if
the Project is
located on State
owned land)

Borrower shall obtain at Borrower's expense and shall keep in effect during the term of this Loan Agreement, Pollution Liability Insurance covering Borrower's liability for bodily injury, property damage, and environmental damage resulting from sudden, accidental, and gradual pollution and related cleanup costs incurred by Borrower all arising out of this Loan Agreement. Combined single limit per occurrence may not be less than \$2,000,000. Annual aggregate limit may not be less than \$5,000,000. The policy shall name the State of Hawaii and HHFDC as additional insureds. Such requirement shall commence upon the Commencement of Construction for the Project, and terminate no less than three (3) years after the Completion of the Project.

Insurance shall be in force the first day of the term of this Loan.

Each Insurance policy required by this Loan shall contain the following Provisions:

- (1) It is agreed that any insurance maintained by the State of Hawaii shall apply in excess

of and not contribute with insurance provided by this policy.

- (2) The State of Hawaii and Hawaii Housing Finance and Development Corporation is added as an insured with respect to operations and work performed for the State of Hawaii.
- (3) If a general aggregate limit is used, the general aggregate limit shall apply separately to this Loan.
- (4) This insurance shall include a cross liability or severability of interest provision.
- (5) The Borrower will immediately provide written notice to the Lender should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Loan Agreement and on the Property, all operations performed incidentally, directly or indirectly connected with the operations to be performed outside the work area and all change order work.

Borrower agrees to a waiver of any right to subrogation against the State of Hawaii and HHFDC and their respective employees and agents by each insurer under each required policy described herein. When required by the insurer or should a policy condition not permit the Borrower to enter into a pre-loss agreement to waive subrogation without an endorsement, Borrower shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Borrower enter into such an agreement on a pre-loss basis.

Borrower agrees to deposit with the Lender, on or before the effective date of this Loan, certificates of insurance necessary to satisfy the Lender that the insurance provisions of this

Loan have been complied with and to keep such insurance in effect and the certificates therefor on deposit with the Lender during the entire term of this Loan.

The Lender shall retain the right at any time to review and approve coverage, form, and amount of the insurance required hereby. If, in the opinion of the Lender, the insurance provisions in this Loan do not provide adequate protection for the Lender, the Lender may require Borrower to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lender's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.

The Lender shall notify the Borrower in writing of changes in the insurance requirements; and if the Borrower does not deposit copies of acceptable insurance policies with the Lender incorporating such changes within 30 days of receipt of such notice, this Loan shall be in default without further notice to the Borrower and the Lender shall be entitled to all legal remedies.

Failure of the Lender and/or State to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Lender and/or State to identify a deficiency from evidence that is provided shall not be construed as a waiver of Borrower's obligations to maintain such insurance.

The acceptance of delivery by the Lender and/or State of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by the Lender and/or State that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements of this Agreement.

The procuring of such required policy or policies of insurance shall not be construed to limit the Borrower's liability hereunder nor to fulfill the indemnification provisions and requirements of this Loan. Notwithstanding said policy or policies of insurance, the Borrower shall be obligated for the full and total amount of any

damage, injury, or loss caused by negligence or neglect connected with this Loan.

- (2) Contractor's Requirements - Contractor's Pollution Liability Insurance (if the Project is located on State owned land):

Borrower shall require any general contractor contracted to build a building on the Property to obtain and maintain Pollution Liability insurance covering its 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 of said general contractor. Combined single limit per occurrence shall not be less than \$2,000,000 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 HHFDC as additional insured.

- (c) Lender's Right of Entry and Inspection. Upon 24 hours prior written notice to Borrower, Lender and its agents, including any appraiser, inspector, architect or engineer who may be retained by Lender, shall at all times have the right of entry upon and free access to the Property and the right to inspect all work done, labor performed, and materials furnished in and about the construction and to inspect all books, contracts, records, and papers of Borrower relating to the Project.
- (d) Compliance with Section 104-2, HRS. Borrower covenants and agrees that it will comply with the requirements of Section 104-2, HRS, for laborers and mechanics hired to work on the Project.
- (e) Information. Borrower shall furnish to Lender with reasonable promptness data and information, financial or otherwise, concerning Borrower as from time to time may be requested by Lender.
- (f) Payment of Taxes. Borrower shall, at its own expense, pay or cause to be paid all taxes, assessments or other governmental charges levied upon any of Borrower's properties or in respect of Borrower's franchise or income before the same become delinquent.
- (g) Litigation. Within forty-five (45) days of receipt of any litigation or claim, Borrower shall give Lender written notice when served of any litigation or claims of any kind which might subject Borrower to any liability in an amount in

excess of \$5,000.00 whether or not covered by insurance.

9. Default, Remedies on Default. If any of the following events (each an "Event of Default") shall occur:

- (a) if (i) default shall be made in the payment of any interest on the Note, or in the payment of any installment of principal, in either such case, when and as the same shall become due and payable, and such default shall have continued for a period of fifteen (15) days following written notice to Borrower; or, (ii) default shall be made in any other payment of the principal of the Note, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any repayment or otherwise, in each case, as in the Note and this Mortgage provided and such default shall have continued for a period of fifteen (15) days following written notice to Borrower; or
- (b) if Borrower shall default in the performance of or compliance with any term or provision contained in this Loan Agreement, and, unless other provisions are afforded by the Mortgage, such default shall have continued for a period of fifteen (15) days after written notice shall have been given to the Borrower. No Event of Default shall be deemed to have occurred if during said 15-day period, the Borrower shall have commenced a cure of the alleged default and shall diligently prosecute the same thereafter to completion; or,
- (c) if default shall be made in the due observance or performance of any other covenant or condition on the part of the Borrower in the Note, the Mortgage, or the Declaration of Land Use Restrictive Covenants, and such default shall have continued for a period of fifteen (15) days after written notice specifying such default and demanding that the same be remedied shall have been given to the Borrower by the Lender. No Event of Default shall be deemed to have occurred if, during said 15-day period, the Borrower shall have commenced a cure of the alleged default and shall diligently prosecute the same thereafter to completion; or,
- (d) if Borrower shall make an assignment for the benefit of the creditors, or shall admit in writing Borrower's inability to pay Borrower's

debts as they become due; or,

- (e) if the Borrower shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Federal Bankruptcy Act or any similar law, federal or state, or if, by decree of a court of competent jurisdiction, the Borrower shall be adjudicated bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of the Mortgaged Property; or,
- (f) if any of the creditors of the Borrower shall file a petition in bankruptcy against the Borrower or for reorganization of the Borrower pursuant to the Federal Bankruptcy Act or any similar law, federal or state, and if such petition shall not be discharged or dismissed within ninety (90) days after the date on which such petition was filed; or,
- (g) if by the order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of the Borrower shall be appointed and such order shall not be discharged or dismissed within ninety (90) days after such appointment; or,
- (h) if any representation made by or on behalf of Borrower or otherwise in writing in connection with the Loan shall prove to have been false or incorrect in any material respect; or,
- (i) if a final judgment, which alone or with other outstanding final judgments against Borrower exceeds in the aggregate \$100,000, shall be rendered against Borrower, and if, within thirty (30) days after entry of the final judgment it shall not have been discharged or stayed pending appeal, or if, within thirty (30) days after the expiration of any stay, the judgment shall not have been discharged; or,
- (j) if there shall exist and be permitted to continue (and/or not bonded off) for forty-five (45) days after written notice shall have been received by Borrower from Lender, any involuntary lien of any kind or nature upon any of the properties or assets of Borrower (other than liens permitted by Section E.5.(c) in this Loan Agreement), which

alone or together with other such involuntary liens exceeds in the aggregate of \$100,000; or

- (k) if, at any time prior to the completion of the construction and equipping of the Project, the Project shall be abandoned or work on the Project shall cease for a period of more than ten (10) days for any reason within the control of Borrower, or if the Project shall not be constructed, completed, and equipped strictly in accordance with the Plans and Specifications (except as to changes approved by Lender), or if changes shall be made in the Plans and Specifications without Lender's prior written approval;
- (l) if there is a failure to purchase and maintain the required insurance stated in Section (E) (8) (b); or
- (m) if it shall be illegal for the Borrower to pay any tax referred to in Section E.8.(f) hereof or if the payment of such tax by the Borrower would result in the violation of the usury laws of the State of Hawaii;

then and in any such event, Lender shall have the option without notice to declare the Note to be due and payable, whereupon the entire unpaid principal balance of the Note shall mature and become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Borrower.

If any of the above described events occur and Borrower has not commenced a cure of the alleged default, then Lender shall have the right, upon the happening and during the continuance of any such Event of Default, in addition to any rights or remedies available to it under the Mortgage, to enter into possession of the Property and perform any and all work and labor necessary to complete the Project substantially in accordance with the Plans and Specifications, perform any work necessary to secure the Property and protect the existing Improvements from the elements, and employ watchmen to protect the Project. All sums so expended by Lender shall be deemed to have been paid to Borrower and secured by the Mortgage. For this purpose, Borrower hereby constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact with full power of substitution to complete the Project in the name of Borrower, and empowers said attorney or attorneys as

follows: i) To use any funds of Borrower, including any funds which may remain unadvanced under this Loan Agreement, for the purpose of completing the Project in the manner called for by the Plans and Specifications; ii) to make additions and changes and corrections in the Plans and Specifications which shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Plans and Specifications; iii) to employ contractors, subcontractors, agents, architects and inspectors as shall be required for these purposes; iv) to pay, settle or compromise all existing bills and claims which are or may be liens against said Property, or may be necessary or desirable for the completion of the work or the clearance of title; v) to execute all applications and certificates in the name of Borrower which may be required by any construction contract; and, vi) to do any and every act with respect to the construction of the Project which Borrower may do in Borrower's own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which shall be irrevocable. The attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with the construction of the Project and to take such action and require such performance as is deemed necessary. Borrower hereby assigns and quitclaims to Lender all sums advanced under this Loan Agreement for the completion of the Project. This assignment shall become effective only in case of an Event of Default.

If an Event of Default shall occur, Lender shall have the following rights in addition to all other rights under this Loan Agreement and at law and in equity:

- (i) To retain all deposits and other monies paid to Lender;
- (ii) To keep all plans, drawings, specifications and Project documents whether prepared by Borrower or Borrower's consultants and, in Lender's sole discretion, to negotiate with Borrower's consultants to complete the Project; and,
- (iii) To sue for damages. Borrower understands and agrees that Borrower shall not be released from any damages which Lender has sustained as a result of Borrower's default.

Borrower further constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact to, upon an Event of Default, pay all such advances directly

(i) to the general contractor and to any subcontractors or other parties in payment of the sums due under the construction contract, or to the surety of the general contractor, (ii) to any other creditor furnishing labor or materials in connection with the construction of the Project, and (iii) to any person or entity having a claim upon, or who shall be a creditor of, the Premises. This power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable.

Notwithstanding anything to the contrary contained in the Loan Documents, Lender hereby agrees that any cure of any default under any Loan Document made or tendered by Borrower's limited partner or any other third party shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

10. No Waiver. No failure or delay on the part of Lender in exercising any power or right under the Loan Documents, shall operate as a waiver of the same or any other power or right. No single or partial exercise of any such power or right shall preclude any other or further exercise thereof or the exercise of any other such power or right by Lender.

Additionally, if the principal of the Note shall not be paid in full when it shall become due and payable (whether at the stated maturity or upon any acceleration of the maturity), Lender shall not be precluded from claiming from Borrower all costs and expenses of collection and attorney's fees.

11. Expenses. Whether or not the contemplated transactions shall be consummated, Borrower shall pay:

- (a) All out-of-pocket expenses incurred by Lender in connection with the preparation of this Loan Agreement and other documents, including reviewing of documents and the making of the Loan hereunder, the fees and expenses and disbursements of counsel for Lender;
- (b) All premiums for title insurance, filing and recording fees and other expenses and charges in connection with the Loan;
- (c) All inspection fees, consultant fees, approval fees and other fees charged by private firms or persons and incurred by Lender;

- (d) If the Note shall not be paid in full, principal and interest, when it shall become due and payable (whether at the stated maturity or upon any acceleration of the maturity), all costs and expenses of collection and attorney's fees; and,
- (e) Project cost certification audit performed at completion of the Project when all of the units have been completely constructed. All fees and/or expenses incurred for these services shall be borne by Borrower and, if applicable, be paid out of Project cost.
- (f) Lender's Costs of Monitoring the Project. Borrower agrees to budget for and pay all costs and expenses, which Lender incurs to monitor the Project. The costs and expenses shall include the cost of performing a cost certification of the cost of developing the Project and fees, the cost of an architect's or engineer's certification that the Project has been substantially completed, costs and expenses of persons such as architects, engineers, auditors, accountants or attorneys whom Lender hires in connection with the Project.

Whether or not this Loan Agreement is terminated for any reason, and whether or not the Loan closes or any portion thereof is disbursed, Borrower agrees to pay all expenses, fees, and charges incurred in connection with the initiation, processing, and/or consummation of the Loan. These expenses, fees and costs will include Lender's administrative fees and legal fees for services rendered by Lender's counsel in connection with the review of this Loan Agreement and preparation for and closing of the Loan, architect's and engineer's fees, and other customary fees and expenses (whether incurred prior to or after the Closing Date). Lender reserves the right to retain a private engineering or architectural firm to inspect the Project during its development and construction and such firm's fees shall be paid by Borrower. Lender shall provide Borrower with an itemized estimate for the expenses, fees and costs so that they can be included in the Project Budget. If Lender will incur any expenses, fees and costs, which exceed the amount in the Project Budget, including any additional fees to retain an architect or engineer to inspect the Project during construction, Lender will give Borrower notice that Lender will be incurring additional expenses, fees and costs. Lender need not obtain Borrower's approval to incur such additional expenses,

fees and costs.

12. Continuance of Loan Agreement, Survival of Representations and Warranties. This Loan Agreement shall continue in full force and effect until the Note including principal and interest shall have been paid in full. The Note and Mortgage provided for herein shall specifically incorporate this Loan Agreement by reference. In the event the Note and Mortgage are duly assigned, this Loan Agreement shall be considered assigned in like manner. All representations and warranties contained herein or made in writing by or on behalf of Borrower in connection with the Loan shall survive the execution and delivery of this Loan Agreement, the Note and Mortgage, and any investigation at any time made by, through or on behalf of Lender. All statements contained in any certificate or other instrument delivered to Lender on behalf of Borrower in connection with the Loan shall constitute representations and warranties under the Loan Agreement.
13. Parties in Interest. All of the terms and provisions of this Loan Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns, and in particular, shall inure to the benefit of and be enforceable by the holder or holders from time to time of the Note or any part of the Note or interest in the Note.
14. Notice to Parties. All notices provided for in this Loan Agreement shall be personally delivered, delivered by FedEx or similar overnight courier, or sent by certified mail (return receipt requested), addressed to the parties at their respective addresses as set forth on page 1 or such other address as the parties shall designate in writing. Notice shall be completed by depositing the same in a letter box or other means provided by the United States Post Office for the posting of mail addressed to the party with the proper amount of postage affixed. Actual receipt of notice shall not be required to effect notice under this Loan Agreement.

Lender hereby agrees that all copies of all notices which are sent to Borrower under the Loan Documents shall also be sent to Borrower's investor members at:

[List contact information of relevant parties]

Failure to deliver notice to Borrower's Limited

Partner(s) and holder/prior mortgagees under the Senior Loan Documents shall not negatively impact the Lender's rights and remedies nor the enforceability of the Loan Documents. [*Please add if FHA loan is part of capital stack*]

15. Progress Reports. Borrower shall deliver to Lender a report of the progress of the Project, the cost of each item listed on the Project Budget and compared to estimates and/or contracts and such other data and information concerning the Project as may be required by Lender. Borrower shall provide these reports on a monthly basis, unless notified otherwise by Lender.

Borrower shall obtain and submit to Lender the following:

- (a) Quarterly Reports. At least quarterly or more frequently if requested by Lender, Borrower shall deliver to Lender written Quarterly Reports, in the form attached hereto as Exhibit 5, informing Lender of the status of the development and construction of the Project, including without limitation, the status of construction of the Improvements, marketing and rental of units in the Project, and other information as Lender may require.
 - (b) Completion and Survey Certification. The buildings and all other Improvements shall be completed on or before the date specified in this Loan Agreement substantially in accordance with the Plans and Specifications as approved by Lender.
 - (c) Notice(s) of Completion. A certified copy of the Affidavit(s) of Notice(s) of Completion duly filed in the appropriate Circuit Court of the State of Hawaii will be furnished to Lender. This notice shall be filed as soon as possible after the architect or engineer has certified that the housing units and Improvements for each building permit issued have been completed.
16. Loan Funds. Lender shall not be required to segregate the Loan funds or to earmark these funds in any manner. The sole obligation of Lender shall be to disburse the funds as set forth herein, provided there exists no Event of Default of this Loan Agreement, the Note, and Mortgage at the time of request for disbursement under this Loan Agreement.

17. Non-Assignable by Borrower. Borrower shall not assign this Loan Agreement or any part of any advance to be made hereunder, nor convey, nor encumber the Project Mortgage or other liens without the written consent of Lender, which Lender shall determine at its sole discretion. Any assignment, conveyance or encumbrance without such consent of Lender shall constitute an immediate default under this Loan Agreement, the Note and Mortgage.

The identity of the Borrower is of material importance to Lender. This Loan Agreement cannot be assigned by Borrower nor can there be any sale or transfer of any interest in the Borrower. Borrower shall have the right to assign Borrower's interest in Project and Project Land by way of a [first] mortgage ("_____ Mortgage") in favor of _____ for the purpose of obtaining a construction loan in the principal amount of _____ AND NO/100 UNITED STATES DOLLARS (\$_____), which _____ Mortgage shall be subordinate to the first lien and mortgage in favor of Lender contemplated under this Loan Agreement. Lender shall have no obligations whatsoever hereunder to any third parties.

18. No Agency, Partnership or Joint Venture Relationship. Borrower understands and agrees that Lender is not the agent, partner, joint venturer or representative of Borrower. This Loan Agreement shall not be construed to make Lender liable to materialmen, contractors, craftsmen, laborers or others for goods or services delivered by them upon the Property, or for debts or claims accruing to said parties against Borrower. It is distinctly understood and agreed that there is no contractual relation, either express or implied, between Lender and any materialmen, subcontractors, craftsmen, laborers, or any other person supplying any work, labor or materials in the Project.

There is no partnership, joint venture, employer and employee, master and servant or other agency relationship between Lender and Borrower. Lender is not a developer of the Project or a landlord of the units in the Project. Borrower, inclusive of any person acting by, through, under or for the benefit of Borrower, shall not represent or hold itself out as being a partner, joint venturer, employee, servant or agent of Lender. Borrower, inclusive of any person acting by, through, under or for the benefit of Borrower, does not have any authority to bind, act for or represent Lender in any respect.

19. Warranty; Warranty Program. Borrower's general

contractor shall give Borrower a one (1) year warranty covering construction defects (relating to materials and workmanship) and shall establish a warranty program pursuant to which Borrower and the general contractor agree to promptly respond to claims of construction defects and to correct and repair construction defects.

Notwithstanding any provision in any rental agreement, this Loan Agreement or other agreement, whether or not Lender is a party thereto or has approved such rental agreement, this Loan Agreement or other agreement, in which Borrower, the general contractor and materialman or other person disclaims or limits any warranty, liability or responsibility to respond to claims of design, construction or other defects and to correct and repair design, construction or other defects. It is clearly understood and agreed that Lender has no responsibility or duty nor will Lender assume any responsibility or liability for responding to claims of design, construction or other defects or to correct and repair design, construction or other defects.

Lender may require Borrower to post bonds, warranty insurance or other security, including cash, letter(s) of credit, or equivalent, and may withhold disbursement of any funds, including profit, which is allocated for payment to Borrower, to secure Borrower's responsibility or liability to respond to claims of design, construction or other defects and to correct and repair design and construction defects at any time and even though the Project has been completed.

20. Publicity. Borrower will have sole responsibility for funding the advertising and promotional program for the Project. The advertising and promotional program shall publicize the fact that the Project is being developed by Borrower with financial and other assistance from Lender. The Project Budget will include the cost of such publicity as an item of cost certifiable expense. Lender, in its sole discretion, may participate with Borrower in the advertising and promotional program.

21. Indemnity. The Borrower shall indemnify, defend, and hold harmless the Lender, the State of Hawaii, and their officers, employees, directors, agents, representatives, officials, 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 Borrower or its employees, officers, agents, or subcontractors; (b) the Loan; (c) the design, construction, repair, renovation, or defects of the Project or Property and/or lease, use, occupation or operation of the Project or Property; and/or (d) the enforcement of this Loan Agreement (whether or not suit is brought therefore). This provision shall survive the expiration or earlier termination of this Loan Agreement, notwithstanding any other provision to the contrary.

22. Miscellaneous Provisions.

- (a) All reviews and approvals, inspections and other services rendered and relied on or performed by Lender or its agents, whether or not paid for by Borrower or Borrower's successors in title shall be rendered or relied upon by Lender solely for the protection and the benefit of Lender. Neither Borrower nor Borrower's successors in title shall be entitled to claim any loss, cost, expense or damage against Lender, or against Lender's agents or employees for failure to properly discharge their duties to Lender. Lender shall have the right to make inspections during construction. If Lender retains a private engineering or architectural firm to inspect the Project, the fees and costs of such firm shall be paid by Borrower. If Lender will incur any additional fees to retain an architect or engineer to inspect the Project during construction, Lender will give Borrower notice that Lender will be incurring additional fees. However, Lender need not obtain Borrower's approval to incur such additional fees. Borrower shall be responsible for the payment of such additional fees. It will be the responsibility of the Borrower to prove to the inspector that the requisite work has been completed satisfactorily according to the Plans and Specifications. Borrower, occupants of the Project units or anyone else, including any class or association of occupants of the Project units, shall not nor shall any of them have any right to rely upon such reviews, approvals, inspections and services in any manner in case of any loss or damage to such persons.
- (b) Borrower hereby waives presentment, demand or payment, protest and notice of nonpayment and of protest and any and all other notices and demands whatsoever.

- (c) Nothing contained in this Loan Agreement, the Note and Mortgage shall impose upon Lender any obligation to assure or confirm the proper application of advances under this Loan.
- (d) No provision of this Loan Agreement shall be amended, waived or modified except by an instrument in writing signed by Lender and Borrower.
- (e) All covenants, agreements, representations and warranties made in the Loan Documents and in all other documents delivered in support of the Loan shall be deemed to have been material and relied upon by Lender and shall survive the execution and delivery to Lender of the Note and the disbursements hereunder.
- (f) All sections and descriptive headings are inserted for convenience only and shall not affect any construction or interpretation hereof.
- (g) Unenforceability for any reason of any provision of this Loan Agreement shall not limit or impair the operation or validity of any other provision of this Loan Agreement.
- (h) In the event that either Lender or Borrower shall be delayed or hindered in or prevented from the performance of any act required under this Loan Agreement by reason of acts of god, hurricanes, volcanic eruptions, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, civil or criminal proceedings, injunctions, writs, appeals, stays or other reason of a like nature, or any other matter which is not the fault of or capable of being prevented by the party delayed in performing work or doing acts required under the terms of this Loan Agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Under no circumstances, however, shall this Section operate to excuse either party from the payment of any sum required to be paid to the other party. Lender or Borrower shall notify the other in writing of the date of commencement of any force majeure event upon which Lender or

Borrower intends to rely for an extension of the period for the performance of any such act (which notice shall be given within thirty (30) days of the commencement date of any such force majeure event), and shall also notify the other in writing of the date on which any such event ended.

23. Other Provisions.

- (a) Consent. Except as otherwise provided in this Loan Agreement, where the consent or approval of Lender or Borrower is required by any provision of this Loan Agreement, such approval or consent shall not be unreasonably withheld or delayed and shall not be conditioned upon the payment of any compensation other than a reasonable review fee for the consultant involved, including reasonable attorneys' fees.
- (b) Attorney Fees and Costs. Should any litigation be commenced between the parties hereto concerning this Loan Agreement, the subject matter of this transaction or the rights and duties of either in relation thereto, each party shall pay their own attorneys' fees and costs of litigation.
- (c) Cooperation. The parties shall cooperate with one another in effecting this Loan Agreement and agree to execute such further and additional mutually approved documentation required to facilitate and complete the transactions contemplated in this Loan Agreement.
- (d) Governing Law and Interpretation. The laws of the State of Hawaii shall govern the validity, construction and effect of this Loan Agreement. This Loan Agreement shall be interpreted in a manner which is consistent with Chapter 201H, HRS, and Lender's administrative rules.
- (e) Binding Effect of this Loan Agreement. This Loan Agreement shall be binding upon and inure to the benefit of Lender, its successors and assigns, and upon and to Borrower, its successors and permitted assigns.
- (f) Gender and Number. The use of any pronoun in reference to Lender or Borrower shall be construed to mean the singular or plural, the masculine, feminine, or neuter, as the instrument and context may require.

- (g) No Party Deemed Drafter. The parties agree that neither party shall be deemed to be the drafter of this Loan Agreement. In the event this Loan Agreement is ever construed by a court of law, such court shall not construe this Loan Agreement or any provision hereof against either party as the drafter of this Loan Agreement.
- (h) Time of the Essence. Time is of the essence for this Loan Agreement.
- (i) Computation of Periods. All periods of time referred to in this Loan Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days. If the date or last date to perform any act or give any notice with respect to this Loan Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice shall be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.
- (j) Continuing Obligations. All of Borrower's unfulfilled or continuing undertakings and obligations contained herein or in any exhibit attached hereto or in any of the Loan Documents shall survive the closing of the Loan until all such obligations are fulfilled. Any breach of any such undertaking or obligation shall constitute an Event of Default under the Loan or this Loan Agreement.
- (k) Termination. Anything herein to the contrary notwithstanding, Lender may terminate this Loan Agreement at any time if:
 - (1) Borrower shall become insolvent or bankrupt, or file a petition for voluntary bankruptcy or reorganization; or
 - (2) Borrower shall default in the performance of its obligations hereunder and shall fail either to cure the default or to commence and diligently prosecute the curing of the default within thirty (30) days after receiving written notice of the default.

24. Counterparts. This Loan 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 executed this Building Loan Agreement 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"

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: Building Loan Agreement
(Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Building Loan Agreement

(Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Building Loan Agreement

(Rental Housing Revolving Fund)

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION

EXHIBIT 1

RENTAL HOUSING REVOLVING FUND
MONITORING AGREEMENT

PROJECT: _____

1. DATE OF THIS AGREEMENT

_____, 20____

2. PARTIES

A. 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
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

B. Borrower: _____
a Hawaii _____

3. RECITALS

- A. Under Chapter 201H of the Hawaii Revised Statutes, Lender is empowered to provide financial and other assistance to a developer to facilitate the expeditious and economical means for the processing to completion of the development of housing projects to remedy Hawaii's critical housing shortage.
- B. Borrower submitted a proposal for the development of the Project described herein below. The Project is intended to provide housing opportunities for persons and families in the income levels described in the Loan Documents.
- C. Lender, on _____, 20____, approved the project proposal submitted by Borrower as evidenced by the approved "For Action," a copy of which is included as part of the Loan Documents.
- D. The purpose of this Agreement is to establish the specific forms and procedures to be used during the development of the Project relating to financial reporting, change orders, budget modifications, draw requests, and completion reports. This Agreement is meant to be a supplement to, and not a substitute for any of the Loan Documents.

4. DEFINITIONS

The terms below, whenever used in this Agreement, shall have the following meanings:

- A. "Borrower" means the above-named borrower.
- B. "Closing Date" means the date when the _____ Mortgage, Security Agreement and Financing Statement have been duly recorded or filed in the appropriate bureau or office.
- C. "Loan" means the interim construction loan and permanent loan described in the Loan Documents, made by Lender to Borrower for the development of the Project.
- D. "Loan Documents" means the Note, [Second/Junior/Fee/Leasehold]Mortgage, Security Agreement and Financing Statement, and the Building Loan Agreement executed by Borrower in connection with obtaining the Loan for the development of the Project, and other loan documents in connection therewith.
- E. "Project" means the residential rental project, together with all related amenities and improvements as specifically described in the Loan Documents, and which is generally described as follows:

No. of Units: _____

Location: _____

Area: _____
Island of _____

Tax Map Key: _____

Land Tenure: _____

5. TERMS AND CONDITIONS

Provided that the Loan is funded pursuant to the Loan Documents, Borrower agrees to complete the development of the Project lien free subject to the following additional terms and conditions:

- A. Additional Submittal Requirements Prior to the Closing Date. In addition to the requirements described in the Loan Documents, Borrower shall submit the following items for Lender's approval prior to the Closing Date:

1. Project Budget. Borrower shall submit a budget showing all projected expenses for development of the Project.

If this Project utilizes multiple funds, a budget schedule shall be submitted for each different fund with a total budget reflecting the sum of all funds for all expenses.

The Loan shall only be used for Project expenses within budget line items approved by Lender. All modifications to the Project budget shall be approved by Lender. No expenditures shall exceed an approved budget line item. Aggregate expenditures within budget line items shall not exceed its approved amount.

The Project budget and source of funds schedules shall be in the form attached hereto as Exhibit A. The Project budget and sources of funds schedules shall be updated and submitted to Lender in conjunction with the Draw Requests (see Section 5(C) below) or whenever there is a material change to the Project budget.

2. Plans and Specifications. One half-sized set and one CD-ROM of complete contract drawings and specifications as referenced in the contract between the Borrower and its general contractor shall be stamped or marked as "Contract Set" and submitted to Lender (Contract Set).

If different, one half-sized set and one CD-ROM of complete drawings and specifications as referenced in the building permit obtained for the Project shall be stamped or marked as "Permit Set" and submitted to Lender (Permit Set).

If the Permit Set is different from the Contract Set, Borrower shall make the Permit Set the Contract Set by an appropriate change order with its general contractor in accordance with this Agreement.

3. Consultant and Construction Contracts. Borrower shall submit to Lender copies of all consultant and construction contracts and amendments thereto executed by Borrower for the Project. Prior to the Closing Date, Borrower shall submit copies of all consultant contracts and amendments thereto immediately after execution by Borrower.

4. Previous Loan Draws from Other Funds. Borrower shall submit to Lender copies of all loan draws submitted by Borrower to other funding sources for this Project prior to the Closing Date.

- B. Change Orders. All contracts and change orders between Borrower and its consultants and/or contractors shall be submitted to Lender for approval before any work thereunder is performed.
1. Lender's Approval. When a change order is desired, Borrower shall first obtain Lender's approval by submitting a request on the attached Change Order form (Exhibit B) to Lender, with the pertinent backup material signed by Borrower and the consultant supervising the change order work, e.g., Borrower's architect shall approve a construction change order request. Supporting materials shall also include a description of the work, proposed itemized price, and the source of funds.
 2. Budget Modification. Modifications to the Project budget require a request for a Budget modification to the Lender. The budget modification request must contain the following information for the entire project budget and for each funding source as shown on the attached sample form (Part of Exhibit A):
 - a. Original/approved budget;
 - b. Approved budget modification history;
 - c. Current budget modification; and
 - d. Proposed revised budget.

A written explanation for each line-item change in the budget shall be included (Exhibit C).

If the total Project budget increases as a result of the budget modification, an explanation of how the increase will be funded, with appropriate verification of the source of funds, shall also be provided. Borrower acknowledges that approval of a budget modification to increase the total Project budget may require Lender board action even if additional funding is not provided by Lender.
 3. Executed Contracts and Revised Plans. If Lender approves of the change order (and budget modification), Borrower may execute a change order with its contractor and/or consultant in accordance with the change order approved by Lender and proceed with the work. A copy of the executed change order between Borrower and its consultants and/or contractors shall be submitted to Lender for its files. Formal amendments to the drawings and specifications based upon the approved change order shall be submitted to Lender with revisions clouded and identified with revision number.

C. Draw Requests. In addition to the requirements described in the Loan Documents, Borrower shall submit the following items:

1. Draw Request Form. Draw requests shall be made using the Payment Request and Certification Form (Exhibit D).
2. Supporting Schedules. In requesting for a draw out of Loan funds, Borrower's application shall include a schedule showing the current Project and payment status of each of the funding sources at the time of the draw request. The payment schedules for the total Project and each funding source shall contain the following information:
 - a. Original budget;
 - b. Current budget;
 - c. Disbursement history and detail;
 - d. Current disbursement request and detail;
 - e. Disbursements to date;
 - f. Disbursement Percentage; and
 - g. Remaining Balance.

The payment schedule format follows Exhibit A.

3. Budgets Used For Loan Draw. A draw request to Lender for payment from Loan funds shall not be based upon budgets which have not been previously approved by Lender.
4. Draw for Construction Work. A draw request to Lender for payment from Loan funds for any construction work shall include lien releases by the Borrower's contractor and subcontractors in the form attached hereto as Exhibit E. Such lien releases shall include an indemnification of Lender and the Project against all claims for work done by the contractor and subcontractors for which the contractor and subcontractors have been paid.
5. Draw from other Funding Sources. Whenever Borrower submits a draw request for payment from any funding source other than Lender, a copy of such draw request shall be submitted to Lender for information.
6. Reconciliations. Borrower shall provide appropriate reconciliations satisfactory to Lender explaining any discrepancies between documents submitted to Lender and documents submitted to other funding sources.

Borrower acknowledges that a draw request to Lender for payment from Loan funds will not be processed until all discrepancies and questions relating to such draw request have been clarified to Lender's satisfaction.

7. Quarterly Reports. Whenever Borrower submits a draw request for payment, Borrower shall be current on the quarterly reporting circulated by the Lender to monitor the project's construction (Exhibit F).

- D. Project Completion. In addition to requirements described in the Loan Documents, Borrower shall submit the following items as soon as possible after completion of construction of the Project:

1. Project cost certification acceptable to Lender; and
2. One full-sized set of "as-built" drawings for the Project certified by Borrower's architect and/or engineer.

If Borrower's final draw from Lender's Loan coincides with the Project completion, Lender may withhold Borrower's final draw until the above items have been satisfied.

- E. Lender Reservation. Lender reserves the right to alter or amend the forms and procedures described herein, and/or impose additional requirements as Lender may deem necessary.

- F. Conflict. If there is any conflict between the terms of this Agreement and the Loan Documents, the terms of this Agreement shall control.

- G. Default. Violation of this Agreement shall be deemed to be an Event of Default as defined in the Loan Documents, and Lender and Borrower shall be entitled to all rights and remedies available to them in such event as described in the Loan Documents.

- H. Termination. This Agreement shall terminate upon the earlier of the following events:

1. Fulfillment of the terms, conditions and obligations contained in this Agreement; and
2. Termination of the Loan Documents.

- I. 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.
- J. Severability. 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.

List of Exhibits.

- | | | |
|----|-----------|--|
| 1. | Exhibit A | Total Project Budget, Source of Funds Budgets, and Payment Forms and Schedules |
| 2. | Exhibit B | Lender's Change Order Form |
| 3. | Exhibit C | Form for Modification of Project and Source of Funds Budget |
| 4. | Exhibit D | Payment Request and Certification Form |
| 5. | Exhibit E | Contractor's Lien Release Forms |
| 6. | Exhibit F | Quarterly Reporting Form |

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement 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"

EXHIBIT A

TOTAL PROJECT BUDGET,
SOURCE OF FUNDS, BUDGET AND PAYMENT
SCHEDULES
ATTACHED

EXHIBIT B

LENDER'S CHANGE ORDER FORM
ATTACHED

EXHIBIT C

FORM FOR MODIFICATION OF PROJECT AND SOURCE OF FUNDS BUDGETS ATTACHED

EXHIBIT D

PAYMENT REQUEST AND
CERTIFICATION FORM
ATTACHED

EXHIBIT E

CONTRACTOR'S LIEN RELEASE FORM
ATTACHED

EXHIBIT F

QUARTERLY REPORTING FORM
ATTACHED

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, 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 income ("AMI") 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 AMI 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 income is the midpoint of a specific area's income distribution and is calculated on an annual basis by HUD.

f. The Project is an elderly project and all units shall be rented to qualified elderly households as defined in Section 201H-1, 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 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 been 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. Electronic submission may be required via the Corporation's compliance portal or designated system.

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 from the anniversary date of the tenant's move-in date, 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 ___% AMI 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) TICs are due 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 TIC 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 TIC, Status Report, and the Annual Report forms are available from the Corporation or its designated representative. Additionally, the Corporation or its designated representative has information regarding HUD area median income, 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. General Excise Tax Exemption.

Certain gross income associated with the project might be eligible for an exemption from General Excise Tax (“GET”) as described in Section 201H-36 and Section 237-29 of the Hawaii Revised Statutes and Chapter 15-306 of the Hawaii Administrative Rules, as the same may be amended from time to time. Certification by the Corporation does not guarantee approval or exemption by the State Department of Taxation, which retains sole authority to determine eligibility for exemption under Chapter 237, HRS.

The Owner may request that the Corporation certify that gross income associated with the Project construction/renovation cost is eligible for said GET exemption and the exemption might result in savings to the Owner in the cost of the construction/renovation.

The Owner may also request that the Corporation certify the gross rental affordable income in newly constructed or rehabilitated rental housing projects provided the Owner complies with the annual requirements. Rents received from residential units in rental housing projects may be exempt from GET, in which case the exemptions shall apply only to that portion targeted for low-income households; market rentals are not eligible for exemption from GET.

The Corporation does not represent or warrant that any gross income associated with the Project will qualify for exemption from GET.

As of the date of this Agreement, the application fee for review and certification of exemption from GET of construction income for an eligible housing project is [\$\$\$] and the annual certification fee of rental income is [\$\$\$], these fees are to be adjusted annually on July 1 of each year. The Corporation shall post any fee changes on its website.

SECTION 18. Non-Compliance Penalties

The penalty for non-compliance with these procedures is at the discretion of the Corporation. For projects receiving program funds in the 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.

For Projects completed with exemptions from GET approved by the Corporation, if the Affordable Units do not remain restricted for income-qualified tenants in accordance with this Agreement for the full Term of this Agreement, the Corporation reserves the right to recapture from the Owner and the Project a proportionate share of the Project construction cost savings resulting from the Corporation’s approval of an affordable housing exemption from GET, based on the portion of the Term that the Affordable Units are not restricted for income-qualified tenants. The recapture may be based on the number of non-compliant Affordable Units relative to the total number of Affordable Units and the portion of the Term that such Affordable Units are not restricted for income-qualified tenants. **This provision shall survive the expiration or earlier termination of this Agreement, notwithstanding any other provision to the contrary.**

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 19. 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.

Provided that nothing herein shall be construed as a waiver of the State's sovereign immunity except as otherwise permitted by law.

SECTION 20. 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]/[with the Assistant Registrar for the 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 electronic version of the certified 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 this 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.

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.

Failure to deliver notice to Borrower's limited partners or their counsel shall not negatively impact the Lender's rights and remedies nor the enforceability of this Agreement.

(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.

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 _____

“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: Declaration of Land Use Restrictive

Covenants (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Declaration of Land Use Restrictive

Covenants (Rental Housing Revolving Fund)

(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: Declaration of Land Use Restrictive

Covenants (Rental Housing Revolving Fund)

(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 income ("AMI") 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 AMI 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 incomes is the midpoint of a specific area's income distribution and is calculated on an annual basis by HUD.

f. The Project is an elderly project and all units shall be rented to qualified elderly households as defined in Section 201H-1, 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 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 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 been 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. Electronic submission may be required via the Corporation's compliance portal or designated system.

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 from the anniversary date of the tenant's move-in date, 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 ___% AMI 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) TICs are due 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 TIC 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 TIC, Status Report, and the Annual Report forms are available from the Corporation or its designated representative. Additionally, the Corporation or its designated representative has information regarding HUD area median income, 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. General Excise Tax Exemption.

Certain gross income associated with the project might be eligible for an exemption from

General Excise Tax (“GET”) as described in Section 201H-36 and Section 237-29 of the Hawaii Revised Statutes and Chapter 15-306 of the Hawaii Administrative Rules, as the same may be amended from time to time. Certification by the Corporation does not guarantee approval or exemption by the State Department of Taxation, which retains sole authority to determine eligibility for exemption under Chapter 237, HRS.

The Owner may request that the Corporation certify that gross income associated with the Project construction/renovation cost is eligible for said GET exemption, and the exemption might result in savings to the Owner in the cost of the construction/renovation.

The Owner may also request that the Corporation certify the gross rental affordable income in newly constructed or rehabilitated rental housing projects provided the Owner complies with the annual requirements. Rents received from residential units in rental housing projects may be exempt from GET, in which case the exemptions shall apply only to that portion targeted for low-income households; market rentals are not eligible for exemption from GET.

The Corporation does not represent or warrant that any gross income associated with the Project will qualify for exemption from GET.

As of the date of this Agreement, the application fee for review and certification of exemption from GET of construction income for an eligible housing project is [\$\$\$] and the annual certification fee of rental income is [\$\$\$], these fees are to be adjusted annually on July 1 of each year. The Corporation shall post any fee changes on its website.

SECTION 18. Non-Compliance Penalties

The penalty for non-compliance with these procedures is at the discretion of the Corporation. For projects receiving program funds in the 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.

For Projects completed with exemptions from GET approved by the Corporation, if the Affordable Units do not remain restricted for income-qualified tenants in accordance with this Agreement for the full Term of this Agreement, the Corporation reserves the right to recapture from the Owner and the Project a proportionate share of the Project construction cost savings resulting from the Corporation’s approval of an affordable housing exemption from GET, based on the portion of the Term that the Affordable Units are not restricted for income-qualified tenants. The recapture may be based on the number of non-compliant Affordable Units relative to the total number of Affordable Units and the portion of the Term that such Affordable Units are not restricted for income-qualified tenants. **This provision shall survive the expiration or earlier termination of this Agreement, notwithstanding any other provision to the contrary.**

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 19. 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.

Provided that nothing herein shall be construed as a waiver of the State's sovereign immunity except as otherwise permitted by law.

SECTION 20. 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]/[with the Assistant Registrar for the 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 electronic version of the certified 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 this 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 on 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 21 - 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.

Failure to deliver notice to Borrower's limited partners or their counsel shall not negatively impact the Lender's rights and remedies nor the enforceability of this Agreement.

(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.

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 _____

“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: Declaration of Land Use Restrictive

Covenants (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

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Covenants (Rental Housing Revolving Fund)

(Notary Stamp or Seal)

Notary Signature

Date

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) SS
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Covenants (Rental Housing Revolving Fund)

(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 agree 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 income ("AMI") 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 AMI 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 income is the midpoint of a specific area's income distribution and is calculated on an annual basis by HUD.

f. The Project is an elderly project and all units shall be rented to qualified elderly households as defined in Section 201H-1, 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].

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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.

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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.

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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.

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Upon acceptance of an applicant to the Project, a TIC must be completed for the applicant and certified 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.

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(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.

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(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.

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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. General Excise Tax Exemption.

Certain gross income associated with the project might be eligible for an exemption from General Excise Tax ("GET") as described in Section 201H-36 and Section 237-29 of the Hawaii Revised Statutes and Chapter 15-306 of the Hawaii Administrative Rules, as the same may be amended from time to time. Certification by the Corporation does not guarantee approval or exemption by the State Department of Taxation, which retains sole authority to determine eligibility for exemption under Chapter 237, HRS.

The Owner may request that the Corporation certify that gross income associated with the Project construction/renovation cost is eligible for said GET exemption, and the exemption might result in savings to the Owner in the cost of the construction/renovation.

The Owner may also request that the Corporation certify the gross rental affordable income in newly constructed or rehabilitated rental housing projects provided the Owner complies with the annual requirements. Rents received from residential units in rental housing projects may be exempt from GET, in which case the exemptions shall apply only to that portion targeted for low-income households; market rentals are not eligible for exemption from GET.

The Corporation does not represent or warrant that any gross income associated with the Project will qualify for exemption from GET.

As of the date of this Agreement, the application fee for review and certification of exemption from GET of construction income for an eligible housing project is [XXXX] and the annual certification fee of rental income is [XXXX], these fees are to be adjusted annually on July 1 of each year. The Corporation shall post any fee changes on its website.

SECTION 18. Non-Compliance Penalties

The penalty for non-compliance with these procedures is at the discretion of the Corporation. For projects receiving program funds in the 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.

For Projects completed with exemptions from GET approved by the Corporation, if the Affordable Units do not remain restricted for income-qualified tenants in accordance with this Agreement for the full Term of this Agreement, the Corporation reserves the right to recapture from the Owner and the Project a proportionate share of the Project construction cost savings resulting from the Corporation's approval of an affordable housing exemption from GET, based on the portion of the Term that the Affordable Units are not restricted for income-qualified tenants. The recapture may be based on the number of non-compliant Affordable Units relative to the total number of Affordable Units and the portion of the Term that such Affordable Units are not restricted for income-qualified tenants. **This provision shall survive the expiration or earlier termination of this Agreement, notwithstanding any other provision to the contrary.**

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 19. 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.

Provided that nothing herein shall be construed as a waiver of the State's sovereign immunity except as otherwise permitted by law.

SECTION 20. Recording and filing; Covenants to Run With the Project and the Land

(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]/[with the Assistant Registrar for the 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 electronic version of the certified 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 this 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 21 - 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.

Failure to deliver notice to Borrower's limited partners or their counsel shall not negatively impact the Lender's rights and remedies nor the enforceability of this Agreement.

(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.

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 _____

“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: Declaration of Land Use Restrictive

Covenants (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Declaration of Land Use Restrictive

Covenants (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

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Doc. Description: Declaration of Land Use Restrictive

Covenants (Rental Housing Revolving Fund)

(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
(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 Clean 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.

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION,
a public body and a body corporate
and a politic of the 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: Hazardous Material Agreement (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Hazardous Material Agreement (Rental
Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

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Doc. Description: Hazardous Material Agreement (Rental
Housing Revolving Fund)

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION

Return by Mail () Pick up () To:

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, a public body and a body corporate and politic of the State of Hawaii (“**Bank**”).

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 the 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 it 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.

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:

- 1.9 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 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

By: _____

Its _____

“Bank”

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

Type or print name: _____
Notary Public, State of Hawaii

(Official Stamp or Seal)

(Official Stamp or Seal)

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

Signature: _____

Type or print name: _____

Notary Public, State of Hawaii

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

☐ 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)

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

Signature: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT A

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)

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 only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

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

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.

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 Rental Housing Revolving Fund 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; except with respect to tenant leases, rental agreements, or other occupancy agreements in the ordinary course of Assignor's business, 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 Assignment 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:

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 _____

"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: Assignment of Lease and Rents (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Assignment of Lease and Rents (Rental
Housing Revolving Fund)

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION

_____, 20__

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

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

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
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: (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: Collateral Assignment of
Owner-Architect Contract

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of Hawaii

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Collateral Assignment of

Owner-Architect Contract

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of Hawaii

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Collateral Assignment of

Owner-Architect Contract

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION

EXHIBIT "1"

_____, 20__

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 _____.

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.

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
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:

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 _____

"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: Collateral Assignment of Engineering

Contract (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Collateral Assignment of Engineering
Contract (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Collateral Assignment of Engineering
Contract (Rental Housing Revolving Fund)

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION

EXHIBIT "1"

_____, 20__

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 dated 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.

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 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 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 AS TO FORM:

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

By _____

Deputy Attorney General
State of Hawaii

By _____

Its _____

"Lender"

a Hawaii _____

By _____

Its _____

"Borrower"

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, the Note, and the _____ 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 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:

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 _____

"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: Collateral Assignment of Construction

Contract (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Collateral Assignment of Construction

Contract (Rental Housing Revolving Fund)

(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 personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity .

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Collateral Assignment of Construction

Contract (Rental Housing Revolving Fund)

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION

EXHIBIT "1"

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 a Senior Lender and subordinate lenders (as described in the Loan Agreement) 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:

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"

CONSENT AND AGREEMENT OF MANAGER

For good and valuable consideration, and to induce Lender to make the Loan, the Manager hereby acknowledges and consents to the foregoing assignment and further covenants and agrees with Borrower and Lender as follows:

1. If Lender notifies Manager that Borrower has defaulted under the Loan, the Manager will, at Lender's written request, recognize Lender as the successor to the rights of Borrower under the Management Contract and continue performance on behalf of Lender under the Management Contract in accordance with the provisions thereof, provided that the Manager is reimbursed and compensated in accordance with the Management Contract for all work performed thereunder.

2. If the property which is the subject of the Management Contract is sold or transferred by way of foreclosure or deed in lieu of foreclosure, the Management Contract may be terminated upon ten (10) days notice to Manager.

3. The Manager hereby represents and warrants to Lender that (a) the Management Contract is a valid and enforceable agreement and will not be amended without the prior written consent of Lender, (b) Manager has not assigned its rights or obligations under the Management Contract and will not assign its obligations thereunder without the prior written consent of Lender, (c) neither Manager nor, to the best knowledge of Manager, Borrower is in default under the Management Contract, and (d) Manager is duly licensed to conduct Manager's business in the jurisdiction where such construction is to be performed and will maintain said license in full force and effect throughout the life of the Management Contract.

a Hawaii _____

By _____

Its _____

By _____

Its _____

"Manager"

IDENTITY OF INTEREST AND DISCLOSURE CERTIFICATION

TO: Hawaii Housing Finance and Development Corporation

SUBJECT: _____ (name of project)

MORTGAGOR/OWNER: _____ Partnership

DEVELOPMENT TEAM

MEMBERS:

Mortgagee: _____

General Contractor: _____

Consultant: _____

Attorney: _____

Management Agent: _____

Seller: _____

Other: _____

The Mortgagor/Owner hereby certifies, to the best of its knowledge, as of the date that this Certification is made and except as fully described in a signed statement attached as Exhibit A hereto, if any, that:

1. For the purposes of this Certification, “development team member” means an individual, firm or corporation that is under contract with or otherwise providing a service to the Mortgagor/Owner as a consultant, architect, general contractor, attorney, management agent or seller in connection with this project.
2. Neither the development team member nor any officer, board member, partner, or authorized agent of the development team member has any financial interest in the Mortgagor/Owner other than any fee for services being rendered to this project.
3. Neither the development team member nor any officer, board member, partner or authorized agent of the development team member has advanced any funds or thing of value to the Mortgagor/Owner or accepted any stock or any interest in the Mortgagor/Owner corporation as part of the consideration for any payment. This does not preclude the donation of services or development team members working on a contingency basis.
4. Neither the development team member nor any officer, board member, partner or authorized agent of the development team member is also an officer, board member, partner or authorized agent or has any financial interest in another development team member.
5. Neither the Mortgagor/Owner nor any officer, board member, partner or authorized agent of the Mortgagor/Owner is also an officer, board member,

- partner or authorized agent or has any financial interest in any development team member.
6. No officer, board member, partner or authorized agent of the development team member has a family relationship by virtue of blood (i.e., grandparents, parents, brothers, sisters, and children), marriage (including common law marriage, if recognized by the State), or adoption with any officer, board member, partner or authorized agent of another development team member.
 7. No officer, board member, partner or authorized agent of the Mortgagor/Owner has a family relationship by virtue of blood (i.e., grandparents, parents, brothers, sisters, and children), marriage (including common law marriage, if recognized by the State), or adoption with the Mortgagor/Owner or with any officer, board member, partner or authorized agent of any development team member.
 8. If the development team member is serving as the Consultant, that:
 - a. Except for the fee specified in the contract with the Mortgagor/Owner, neither the development team member nor any officer, director, board member or partner of the development team member has accepted or shared and will neither accept nor share any compensation or remuneration, directly or indirectly, in any form whatsoever, from or with any party interested in the development or operation of this project.
 - b. Neither the development team member nor any officer, director, board member, partner or any person employed by the development team member has accepted compensation or remuneration contrary to the intent of the aforesaid contract. It is understood that the intent of the contract is to prohibit the Consultant and its employees from any transaction which would create an identity of interest with other persons or entities participating in the development and operation of the project.
 - c. Neither the development team member nor any officer, director, board member or general partner of the development team member is involved as an officer, director, board member or general partner in any other business venture with an officer, director, board member or general partner of another development team member.
 9. With respect to the Mortgagor/Owner, that:
 - a. Except for the fee specified in the contract between the Mortgagor/Owner and development team member, neither the Mortgagor/Owner nor any officer, director, board member or partner of the Mortgagor/Owner has accepted or shared and will neither accept nor share any compensation or remuneration, directly or indirectly, in any form whatsoever, from or with any party interested in the development or operation of this project.

- b. Neither the Mortgagor/Owner nor any officer, director, board member, partner or any person employed by the Mortgagor/Owner member has accepted compensation or remuneration contrary to the intent of the aforesaid contract. It is understood that the intent of the contract is to prohibit the Consultant and its employees from any transaction which would create an identity of interest with other persons or entities participating in the development and operation of the project.
 - c. Neither the Mortgagor/Owner nor any officer, director, board member or general partner of the Mortgagor/Owner is involved as an officer, director, board member or general partner in any other business venture with an officer, director, board member or general partner of another development team member.
10. If a development team member is serving as the attorney for the Mortgagor/Owner with respect to this project, it is not also serving as the attorney for any development team member.
11. Should Mortgagor/Owner become aware of any relationships described in paragraphs 2 through 10 of this Certification or should any such relationships come into being subsequent to the submission of this Certification and prior to the final closing of this project, Mortgagor/Owner will provide notification to the Hawaii Housing Finance and Development Corporation within 10 working days.

_____ Limited Partnership
a Hawaii limited partnership

Date _____

By: _____
a Hawaii _____
Its: General Partner

Name: _____
Its: _____

EXHIBIT A

(Closing Date)

Borrower
Street Address
City, State Zip

Dear Mr. _____:

Subject: AUTHORIZATION TO ISSUE NOTICE TO PROCEED
_____ Project
_____ Street
_____, Hawaii
TMK: _____

In connection with the closing of the interim loan from the Rental Housing Revolving Fund (RHRF) in the amount of _____ AND 00/100 DOLLARS (\$_____.00) by _____ (Borrower) for the above subject project as described in the For Action approved by the Hawaii Housing Finance and Development Corporation on _____, authorization is hereby given for you to issue a NOTICE TO PROCEED to your general contractor to commence construction at the above subject site, subject to the following conditions:

1. Notice to Proceed shall not be issued prior to the closing of the above mentioned RHRF interim loan;
2. Prior to start of construction, the Borrower shall submit a certificate of insurance to HHFDC in amounts and terms described in the RHRF Building Loan Agreement;
3. Concurrent with the issuance of your Notice to Proceed to your contractor, a copy of such Notice shall be submitted to HHFDC;
4. The General Contractor shall submit construction payroll affidavits verifying compliance with Chapter 104, Hawaii Revised Statutes, to Jonathan Rapoza, HHFDC Project Specialist, at 808-587-3455.
5. The Borrower shall coordinate any groundbreaking ceremonies with HHFDC Housing Information Office at 808-587-0597.

[Closing Date]

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Please acknowledge this authorization by signing, dating, and returning the original of this letter for our files.

Should there be any questions or comments regarding this matter, please contact Lei Ikeda at 808-587-0797, Jimmy Nguyen at 808-587-0569, Haley Jiao at 808-587-0576, or David Oi at 808-587-0574.

Sincerely,

Executive Director

Accepted:

a Hawaii limited partnership

By _____
a Hawaii corporation
Its General Partner

By _____
Name: _____
Title: _____

Date: _____

“Borrower”

c: Randy Chu, HHFDC Development Branch Chief