



## Hale Kama‘āina Mortgage Program Participating Lender - Onboarding Checklist

Lenders desiring to participate in the Hale Kama‘āina Program must be approved by HHFDC and the Master Servicer, The Money Source, Inc. (TMS). Lenders must also complete required training through eHousingPlus. Use this checklist to complete the onboarding process.

### 1. HHFDC Approval

- Execute HHFDC Mortgage Origination Agreement
  - Include Corporate Resolution authorizing execution by signer
  - Include a “Compliant” [Hawaii Compliance Express Certificate](#)
  - Complete the Participating Lender Information Sheet
- Email the HHFDC documents to [dbedt.hhfdc.mortgage@hawaii.gov](mailto:dbedt.hhfdc.mortgage@hawaii.gov) or mail them to the check address below.
- \$250 check payable to:  
Hawaii Housing Finance and Development Corporation  
Finance Branch - Hale Kama‘āina Team  
677 Queen Street, Suite 300 Honolulu, HI 96813

Note: Payment may be made in the form of a money order, cashier’s check, or business check. Electronic payments are not accepted. HHFDC approval will not be finalized until payment is received.

### 2. TMS Approval

- Execute and submit the TMS Correspondent Loan Purchase Agreement following TMS’ instructions. Contact TMS for the Correspondent Loan Purchase Agreement and instructions at [hfaprograms@themoneysource.com](mailto:hfaprograms@themoneysource.com).

Note: There is no TMS HCE requirement or annual participation fee.

**Important:** Steps 1-2 can be completed at the same time but must be completed before Step 3 can begin.

### 3. eHousingPlus Approval

- Upon notification from HHFDC that Lenders are approved by HHFDC and TMS, eHousingPlus will coordinate directly with your corporate team to

complete the onboarding process.

- Once onboarding is finalized, all individuals who will originate loans under the program will be required to complete lender training. This training can be conveniently accessed through eHP University allowing participants to complete it at their own pace. Upon successful completion of the training, eHousingPlus will issue user credentials, granting access to both the eHPortal and eHP FrontPorch—platforms designed to support lenders with program participation, compliance submission, and ongoing communication. If you have any questions concerning the onboarding process please contact [onboarding@eHousingPlus.com](mailto:onboarding@eHousingPlus.com). Anyone who will work with the Hale Kama'āina Programs to attend training. This will include all loan officers, processors, closers and underwriters. Participating Lenders must complete training to obtain credentials for the eHPortal

Note: No HCE requirement, agreement, or fee required.

**Important:** Loan reservations cannot be made until required training is completed.

**Questions? Contact Us!**

Email: [dbedt.hhfdc.mortgage@hawaii.gov](mailto:dbedt.hhfdc.mortgage@hawaii.gov)

Phone: (808) 587-0578



**HALE KAMA'ĀINA**  
**MORTGAGE RATE PROGRAM / DOWN PAYMENT ASSISTANCE PROGRAM**  
**PARTICIPATING LENDER INFORMATION SHEET**

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
677 QUEEN STREET, SUITE 300  
HONOLULU, HI 96813  
PHONE: (808)587-0578

---

To ensure that you receive updates to our programs, complete and return this form. Designate a primary and secondary contact. The designated contacts are responsible for annual renewals, compliance documentation, and all other request.

<b>Date:</b>		
<b>Business Name as stated in the Lender Agreement:</b>		
<b>Business URL (Loan Officers page):</b>		
<b>NMLS:</b>		
<b>Primary Contact:</b>	Name & Title:	
	Phone	
	Email:	
	Mailing Address:	
<b>Secondary Contact</b> ( <i>will only be contacted if the Primary is unavailable</i> )	Name & Title:	
	Phone	
	Email:	

Return this form to: Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, HI 96813

Or via email: [dbedt.hhfdc.mortgage@hawaii.gov](mailto:dbedt.hhfdc.mortgage@hawaii.gov)

**HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**

**and**

**THE LENDER EXECUTING THIS AGREEMENT**

**MORTGAGE**

**ORIGINATION AGREEMENT**

**Dated as of October 31, 2025**

## TABLE OF CONTENTS

	<b>Page</b>
<b>ARTICLE I DEFINITIONS .....</b>	<b>5</b>
Section 1.01. Definitions.....	5
Section 1.02. Interpretations.....	16
Section 1.03. Forms Attached as Exhibits .....	17
<b>ARTICLE II REPRESENTATIONS .....</b>	<b>17</b>
Section 2.01. Representations, Warranties and Covenants of HHFDC.....	17
Section 2.02. Representations, Warranties and Covenants of Lender.....	17
Section 2.03. HHFDC Oversight .....	21
<b>ARTICLE III ISSUANCE OF BONDS; APPLICATION OF BOND PROCEEDS .....</b>	<b>22</b>
Section 3.01. Issuance of Bonds; Application of Bond Proceeds.....	22
Section 3.02. No Legal or Equitable Interest of Lender in Funds or Accounts Under an Indenture .....	22
<b>ARTICLE IV COMMITMENTS TO BUY AND SELL MORTGAGE LOANS .....</b>	<b>22</b>
Section 4.01. Commitments To Buy and Sell Mortgage Loans; Program Allocations; Builder Reservations; Targeted Area Allocations .....	22
Section 4.02. Mortgage Loan Terms.....	25
Section 4.03. Processing, Origination Fees and Closing Costs .....	26
Section 4.04. Verification Concerning Mortgagor's Federal Income Tax Returns.....	27
Section 4.05. Acquisition Price of a Residence.....	27
Section 4.06. First Time Homebuyer.....	29
Section 4.07. Program Administration Guidelines .....	30
Section 4.08. Submission of Mortgage Files to the Servicer.....	31
Section 4.09. Purchase of Mortgage Loans By the Servicer.....	33
Section 4.10. Termination of Origination Period by Servicer for Failure To Purchase GNMA Certificates or Fannie Mae Securities.....	33
Section 4.11. Defective Documents and Non-qualifying Mortgage Loans; Repurchase of Loans by Lender.....	34
Section 4.12. Representations, Warranties and Covenants of Lender Concerning Mortgage Loans.....	35
Section 4.13. Proceeds of Commitment Fee .....	40
Section 4.14. Prohibition of Discrimination .....	40
Section 4.15. Disclosures to Borrowers .....	40
Section 4.16. Requirement of Standard Hazard Insurance and Flood Insurance.....	40
Section 4.17. Assumption Restrictions.....	44
Section 4.18. Lender To Transfer Mortgage Loans and Servicing Thereof to Servicer .....	45
<b>ARTICLE V LENDER.....</b>	<b>45</b>

Section 5.01.	Liability of Lender .....	45
Section 5.02.	Limitation on Liability of Directors, Officers, Employees and Agents of Lender.....	45
Section 5.03.	Lender Not to Resign.....	45
Section 5.04.	Maintenance of Errors and Omissions Policy and Fidelity Bond. ....	45
Section 5.05.	Lender Approval and Management.....	45
<b>ARTICLE VI CAUSES PERMITTING TERMINATION .....</b>	<b>46</b>	
Section 6.01.	Causes of Termination Defined; Remedies.....	46
Section 6.02.	No Remedy Exclusive. ....	47
Section 6.03.	Attorney's Fees and Indemnity.....	47
Section 6.04.	Liability of HHDTC. ....	48
<b>ARTICLE VII MISCELLANEOUS PROVISIONS .....</b>	<b>48</b>	
Section 7.01.	Amendments, Changes and Modifications.....	48
Section 7.02.	Recordation of This Agreement.....	48
Section 7.03.	Limitation on Rights of Bondholders.....	48
Section 7.04.	Governing Law.....	48
Section 7.05.	Notices.....	48
Section 7.06.	Severability. ....	49
Section 7.07.	Further Assurances and Corrective Instruments. ....	49
Section 7.08.	Term of This Agreement. ....	49
Section 7.09.	No Rights Conferred on Others. ....	49
Section 7.10.	Limited Liability; No Debt or General Obligation. ....	49
Section 7.11.	Discretion of the Servicer.....	50

EXHIBIT A      Targeted Areas

EXHIBIT B-1      About Recapture Tax

EXHIBIT B-2      Notice to Mortgagor of Potential Recapture

## **MORTGAGE ORIGINATION AGREEMENT**

**THIS ORIGINATION AGREEMENT** (the "Agreement"), dated as of October 24, 2025, is by and between the mortgage lending institution executing this Agreement (referred to herein as "Lender"), and the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii ("HHFDC").

### **WITNESSETH:**

**WHEREAS**, the Hawaii Revised Statutes, Chapter 201H, as amended, authorizes HHFDC to develop financing programs and help facilitate affordable homeownership; and

**WHEREAS**, pursuant to the Chapter 201H, HHFDC is authorized to carry out the public purposes described therein by making loans to Eligible Borrowers (as defined herein) so long as such loans are secured by either first mortgages or subordinate mortgages and such loans are used to purchase, construct, or rehabilitate, single-family residences with purchase prices that do not exceed purchase price limits in the State of Hawaii ("State") county (each a "County") where the borrower's residence is to be located as mandated by federal law for tax-exempt single family bond programs, and by entering into any such contracts and other instruments made in connection therewith; and

**WHEREAS**, HHFDC as bond issuer intends to finance first mortgage loans and downpayment assistance loans for eligible borrowers for the purpose of alleviating the shortage of affordable residential housing facilities and capital for investment in such facilities for low to moderate income families or persons within the Eligible Loan Area (hereinafter defined), which constitutes a valid public purpose, HHFDC may from time to time establish one or more single family loan programs (each a "Program") and set aside funds of HHFDC or issue its single family revenue bonds in multiple series to finance the purchase from the Master Servicer (as defined herein) of mortgage-backed securities of the Government National Mortgage Association ("GNMA") evidencing the guarantee by GNMA of timely payment of monthly principal and interest of qualifying FHA Insured, Department of Veteran Affairs ("VA") or Rural Development Service ("RD") Guaranteed Mortgage Loans, and mortgage-backed securities of the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac") evidencing the guarantee by Fannie Mae or Freddie Mac, as applicable, of monthly principal and interest of qualifying Conventional Mortgage Loans, which FHA Insured, VA or RD Guaranteed or Conventional Mortgage Loans are made to finance single-family residences within the Eligible Loan Area intended for use as the permanent place of residence by families or persons of qualifying incomes (the "Mortgage Loans"); and

**WHEREAS**, the Mortgage Loans and downpayment assistance loans ("DPA Loans") are to be originated and funded by the Lender on behalf of HHFDC, pursuant to this Agreement and sold and/or transferred by the Lender to the Master Servicer; and

**WHEREAS**, the Master Servicer and each Lender will enter into a separate agreement which sets out the terms and conditions upon which the Master Servicer will manage a Lender's participation in the Program;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements herein contained, Lender and HHFDC hereby agree as follows:

## **ARTICLE I DEFINITIONS**

### **Section 1.01. Definitions.**

All terms used in capitalized form and not otherwise defined herein, including the preambles hereto, shall have the respective meanings provided in the applicable invitation or Lender Manual.

The following words and phrases shall have the following meanings:

*"Acknowledgment and Acceptance"* means, with respect to a Program, the Lender response to an invitation pursuant to which a Lender offers to originate Mortgage Loans and DPA Loans in accordance with the provisions of this Agreement as evidenced by i) the Lender's submission of this Agreement executed by an authorized official of its financial institution, ii) the Lender's submission of the Lender Onboarding Contact Form, and iii) the Lender's remittance of the annual participation fee to HHFDC in the amount of \$250. The annual participation fee of \$250 is assessed per institution, not per branch. HHFDC reserves the right to adjust this fee in future program years.

*"Acquisition Cost"* means the cost of acquiring a Residence from the seller as a completed residential unit, including all of those costs set forth in Section 4.05(b) hereof; but exclusive of those costs set forth in Section 4.05(c) hereof.

*"Acquisition Cost Limitation"* means that no dwelling unit financed shall have an acquisition cost that exceeds the maximum acquisition cost based on the loan limits permitted by section 143(a) of the Internal Revenue Code of 1986, as amended. The acquisition cost shall include: (1) All amounts paid, either in cash or in kind, by the eligible borrower (or a related party or for the benefit of the seller) as consideration for the dwelling unit, including the amount of any lien or assessment to which the dwelling unit is subject; and (2) If a residence is incomplete, the reasonable cost of completing the dwelling unit, whether the cost of completing construction is to be financed with the mortgage loan. The acquisition cost shall not include the following:

- (1) The usual and reasonable settlement or financing costs, including
  - a. Title and transfer costs;
  - b. Title insurance;

- c. Survey fees or other similar costs;
  - d. Credit reference fees;
  - e. Legal fees;
  - f. Appraisal expenses;
  - g. Points that are paid by the eligible borrower (but not the seller, even though borne by the eligible borrower through a higher purchase price); or
  - h. Other costs of financing the dwelling unit, but only in cases to the extent that the amount does not exceed the usual and reasonable costs, which would be paid by the eligible borrower where financing is not provided through the use of tax-exempt bonds; and
- (2) The cost of land, which has been owned by the mortgagor for at least two years prior to the date that construction of the dwelling unit begins.

*“Acquisition Price”* means the cost of acquiring a Single Family Residence from the seller as a completed residential unit, as more fully described in Section 4.05 hereof.

*“Act”* means Chapter 201H, Hawaii Revised Statutes, as amended.

*“Administrator’s Guidelines”* means the guidelines prepared by the Program Administrator setting forth the guidelines and characteristics for the origination and delivery of Mortgage Loans and DPA Loans, as the same may be amended from time to time by the Program Administrator, as identified on the Program Administrator’s website.

*“Application Start Date”* means the date on which Lenders may commence accepting applications for Mortgage Loans, which date shall be set forth in the applicable Invitation.

*“Appraisal”* means an appraisal by an individual or firm acceptable to the Lender.

*“Average Area Acquisition Cost”* means the most current applicable average area purchase price limitations from time to time published by HHFDC for the applicable area of the State.

*“Assignment of Mortgage”* means the instrument completed and executed by a Lender, in recordable form, and pursuant to which a Lender assigns and delivers the related Mortgage and endorses the Mortgage Note to Servicer in connection with the purchase of the related Mortgage Loan by Servicer.

*“Bonds”* means tax-exempt and/or taxable single family revenue bonds issued from time to time by HHFDC.

*"Builder Reservations"* means the amount of funds reserved by a Lender from its Program Allocation for construction projects, subject to the provisions of Section 4.01(a) hereof.

*"Business Day"* means any day other than (i) a day that the Servicer is closed and (ii) a Saturday, Sunday, legal holiday or a day on which banking institutions in the State of Hawaii are closed.

*"Closing"* means any closing of a Mortgage Loan for a Mortgagor.

*"Code"* means the Internal Revenue Code of 1986, as amended, and all subsequent tax legislation duly enacted by the Congress of the United States. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect with respect thereto and applicable to tax-exempt single family bond programs or the use of the proceeds thereof (including regulations first promulgated under the Internal Revenue Code of 1954) and shall also include revenue procedures, revenue rulings, or other published determinations of the Treasury Department or Internal Revenue Service of the United States.

*"Commitment"* means a binding written Commitment by a Lender to originate a Mortgage Loan to an eligible borrower with respect to a specific Single Family Residence in accordance with this Agreement.

*"Commitment Fee"* means the fee, if any, submitted by each Lender to HHFDC in connection with its Acknowledgment and Acceptance in an amount set forth in the Invitation, which amount is not refundable except as provided herein or in the Invitation.

*"Compliance File"* means the documents detailed in the Administrator's Guidelines.

*"Condominium Development"* or *"Condominium"* means a real estate development: (i) formed pursuant to the condominium statutes of the State and a recorded declaration and other constituent documents; (ii) the unit owners of which have title to a unit in a development, and may have the right to the exclusive use of certain limited common areas; and (iii) the common areas of which are administered and maintained by, but not owned by, an owners association, which may levy assessments against each unit estate.

*"Conventional Mortgage Loans"* means a Mortgage Loan other than an FHA/VA/USDA-RD Mortgage Loan which meets the requirements of Fannie Mae or Freddie Mac.

*"Current Annual Household Income"* means the total current annualized income. For purposes of this definition, "total current annualized income" is gross monthly income multiplied by 12. Gross monthly income is the sum of monthly gross pay; any additional income from overtime, parttime employment, bonuses, income from self-employment, dividends, interest, royalties, pensions, VA compensation and net rental income, other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments,

continuation of which is probable based on foreseeable economic circumstances based upon the Mortgagor's affidavit to such effect), all as computed at the time of application for a Mortgage Loan, and confirmed at the time of Closing. Information with respect to gross monthly income may be obtained from applicable certificates and affidavits provided in the Administrator's Guidelines (collectively, the "Loan Submissions") executed by a Mortgagor during the four month period ending on the date of the Closing of the Mortgage Loan, provided that any gross monthly income not included in the Loan Submissions must be included in determining gross monthly income. Thus, for example, if the Mortgagor does not include alimony on the Loan Submissions, the Lender, in determining gross monthly income, must determine the amount of alimony and add that amount to the amount shown on the Loan Submissions. The applicable Loan Submissions include (1) Mortgagor's Income Certification included in the Administrator's Guidelines, (2) lines 23D and 23E on the Application for VA Guaranty or for HUD/FHA Insured Mortgage (VA Form 261802a, HUD 92900, Jan. 1982), and (3) the total line from the Gross Monthly Income section of FHLMC Residential Loan Application form (FHLMC 65 Rev. 10/86).

"*Debt to Income (DTI) Ratio*" means the Eligible Borrower's own debt to income ratio using 80% of the proposed mortgage principal and interest payments, plus all other stated borrower debt included in Fannie Mae, Freddie Mac or FHA/VA/RD DTI calculation, to the borrower's verified income. This ratio applies when there is a cosigner(s) of the First Mortgage Loan.

$$\frac{\text{Borrower's debt} + \text{proposed homeowner's insurance} + \text{est. property taxes} \\ + \text{proposed HOA fees} + (0.80 \times \text{proposed Principal and Interest payment})}{\text{Borrower's Income}}$$

"*DPA Loan*" means the downpayment assistance loan to an Eligible Borrower from the Lender, that provides down payment assistance for the Eligible Borrower's purchase of the Residence that meets all applicable legal requirements of the State of Hawaii. HHFDC may, in its sole discretion, determine to offer DPA Loans to Mortgagors.

"*DPA Mortgage*" means the second lien mortgage, which secures the repayment of the DPA Loan, in the form provided by HHFDC.

"*DPA Mortgage Date*" means the date on which the DPA Mortgage is executed by the Mortgagor.

"*DPA Mortgage Documents*" means the documents pertaining to a particular DPA Loan.

"*DPA Note*" means the promissory note or other document or documents executed by a Mortgagor to evidence such Mortgagor's obligation to repay a DPA Loan, which instrument shall be in the form required by HHFDC with such modifications as may be required by the terms hereof.

"*DPA Purchase Approval*" means the Program Administrator's notice to a Lender, that the loan which has an outstanding Reservation of Funds Confirmation, has been accepted for purchase by the Master Servicer, provided that specified conditions and requirements related thereto are met in accordance with the Program Administrator's required timeframe.

"*Down Payment*" is the Mortgagor's total cash payment of the property's sales contract price and may include the DPA (eligible) Loan amount provided to the eligible borrower, if applicable.

*“Dwelling Unit”* means a single family residence as provided by section 143 (k) of the Internal Revenue Code 1986, as amended.

*“Eligible Borrower”* means the definition of Eligible Borrower provided in Hawaii Administrative Rules Chapter 15-314 and/or the definition of Eligible Borrower provided in Hawaii Administrative Rules Chapter 15-317, as well as other requirements for a Mortgage Loan contained in this Agreement.

*“Eligible Loan Area”* means the State of Hawaii.

*“Existing Residence”* means a Residence which has been previously occupied.

*“Fannie Mae”* means the Federal National Mortgage Association, a corporation organized and existing under the laws of the United States or any successor thereto.

*“Fannie Mae Guides”* means the Fannie Mae Selling and Servicing Guides, as amended from time to time, as modified by the Pool Purchase Contract.

*“FHA”* means the Federal Housing Administration of the United States Department of Housing and Urban Development, or other successor to its functions.

*“FHA Insurance”* means FHA mortgage insurance issued under one of the following FHA Insurance programs pursuant to the National Housing Act:

- (a)   FHA §203(b), Home Unsubsidized (including 223(e) declining area loans);
- (b)   FHA §234(c), Condominiums;
- (c)   FHA §203(b)(2), Veteran's Status;
- (d)   FHA §203(ks), “Streamline Rehabilitation,” provided that such loan meets all of the applicable requirements of FHA, GNMA, and the Lender Manual; and provided further that no FHA Section 203(ks) loan may be originated without the prior written consent of the Servicer;
- (e)   FHA §203(h); or
- (f)   any other FHA mortgage insurance program approved by HHFDC and the Servicer.

*“FHA Insured”* means insured under FHA Insurance.

*“FHA/VA/RD Loans”* means Mortgage Loans which are FHA Insured, VA Guaranteed or RD Guaranteed.

*"First Time Homebuyer"* means a Mortgagor who has not had an ownership interest in a principal residence at any time during the three-year period preceding the date the Mortgage is executed, as more fully described in and subject to the exceptions as provided in Section 4.06 hereof.

*"Freddie Mac"* means the Federal Home Loan Mortgage Corporation, a corporation organized and existing under the laws of the United States, or any successor thereto.

*"Freddie Mac Guides"* means the Freddie Mac Selling and Servicing Guides, as amended from time to time, as modified by the Pool Purchase Contract.

*"Freddie Mac Security"* means a single pool, guaranteed mortgage pass-through Freddie Mac Mortgage-Backed Security, providing for the regularly scheduled monthly payments and any prepayments thereunder, bearing interest at the related Pass-Through Rate, issued by Freddie Mac in book entry form, guaranteed as to timely payment of principal and interest by Freddie Mac and backed by Conventional Mortgage Loans in the related mortgage pool.

*"GNMA"* means the Government National Mortgage Association, a wholly owned corporate instrumentality of the United States within the Department of Housing and Urban Development. Its powers are prescribed generally by Title III of the National Housing Act, as amended (12 U.S.C., §1716 et seq.).

*"Guide"* or *"GNMA Guide"* means the GNMA Mortgage-Backed Securities Guide or Guides, then in effect on the date of its application, if any, hereunder.

*"Hawaii Administrative Rules"* means Chapter 15-314, Hula Mae Home Mortgage Loan Program, as may be amended, and Chapter 15-317, Downpayment Assistance Loan Program, as may be amended.

*"Invitation"* or *"invitation"* means the program invitation and determinations, if any, distributed by HHFDC to each Lender (and potential Lenders).

*"Lender"* means a financial institution executing this Agreement which is an agreement to originate Mortgage Loans hereunder and sell such Mortgage Loans and the servicing in connection therewith to the Master Servicer.

*"Lender Manual"* means the guide prepared by the Master Servicer and established pursuant to this Agreement for the origination and delivery of Mortgage Loans to be purchased by the Master Servicer and the eligibility, credit and security underwriting standards applicable thereto, as may be amended from time to time by the Master Servicer, as identified on the Master Servicer's website.

*"MBS Agreement"* means the Commitment to Guarantee Mortgage-Backed Securities (Form HUD 11704) from GNMA to the Servicer.

*"Maximum Acquisition Price"* means the maximum purchase price of a Single Family Residence, as announced from time to time by the HHFDC and posted in the Administrator's Guidelines, which maximum purchase price shall be based on the "safe harbor" average area purchase prices published from time to time by the United States Treasury Department or from surveys or other compilations of acquisition prices that in the opinion of nationally recognized bond counsel represent acceptable methods for determination of such average acquisition prices for purposes of Section 143 of the Code and in compliance with any additional requirements of HHFDC. Acquisition Price limits are also subject to the applicable FHA/VA/USDA limits for each county or other specified area of the State.

*"Maximum Family Income"* means the applicable amount established by HHFDC from time to time in the Reservation of Funds Confirmation, but in no event an amount greater than that permitted by Sections 143(f) and (i)(2) the Code.

*"Mortgage"* means the written instrument securing the related Mortgage Loan and encumbering a Single Family Residence, which instrument for FHA-Insured Mortgages, VA Guaranteed Mortgages or RD Guaranteed Mortgages shall be the then-effective form required by FHA for FHA Insured Mortgages, the form required by VA for VA Guaranteed Mortgages, and the form required by RD for RD Guaranteed Mortgages, as applicable, with appropriate riders, and which instrument for Conventional Mortgage Loans shall be in the form required by Freddie Mac or Fannie Mae, as applicable, with appropriate riders.

*"Mortgage Electronic Registration System (MERS)"* means the national electronic database that tracks the ownership and servicing rights of mortgage loans.

*"Mortgage File"* means the mortgage documents listed in the applicable Lender Manual provided by the Master Servicer, pertaining to a particular Mortgage Loan and/or DPA Loan.

*"Mortgage Loan"* means a qualified first lien mortgage loan at a fixed rate of interest for a loan term of not to exceed 30 years (or such shorter term as shall be provided in the Invitation or Administrator's Guidelines for a Program) from the date of the first payment of principal and interest to an Eligible Borrower (s) evidenced by a Mortgage Note secured by a related first-lien Mortgage on a Single Family Residence located within the Eligible Loan Area and in conformity with the mortgage loan origination standards of FHA, VA and/or RD and the mortgage loan origination standards of GNMA, Freddie Mac, Fannie Mae or the Lender Manual, as applicable, which the Servicer purchases from Lender pursuant to this Agreement and the terms of which comply with this Agreement.

*"Mortgage Note"* means the then-effective form of mortgage note required by FHA for FHA Insured loans, the form required by VA for VA Guaranteed loans, the form required by RD for RD Guaranteed Loans and the form required by Freddie Mac or Fannie Mae for Conventional Mortgage Loans, as applicable, with appropriate riders, executed to evidence the Mortgagor's obligation to repay the Mortgage Loan.

*"Mortgagee Single Interest Hazard Insurance Policy"* means a mortgagee single interest hazard insurance policy or any similar policy maintained with respect to each Single Family Residence by the Servicer.

*"Mortgagor"* means any person who has a present ownership interest in a Single Family Residence subject to the related Mortgage and/or executes the Mortgage (but does not include any person who executes only the Mortgage Note as a cosigner or guarantor and who does not have a present ownership interest in the Single Family Residence).

*"Non-qualifying Mortgage Loan"* means a Mortgage Loan which does not conform to the Program, GNMA Guide, Fannie Mae Guide, FHLMC Guide or the Lender Manual purchased under this Agreement with respect to which includes but is not limited to the following examples:

- (a) The Lender fails to deliver to the Master Servicer all documents of the Mortgage Loan (described in the Lender Manual) on a timely basis, or the Master Servicer determines that such documentation for the Mortgage Loan does not conform to the requirements of the Program, the GNMA Guide, the Fannie Mae Guide, the Freddie Mac Guide or the Lender Manual.
- (b) GNMA, Freddie Mac, Fannie Mae or the Master Servicer determines that the Mortgage Loan is not of acceptable quality or is not eligible for sale under the Program, the GNMA Guide, the Freddie Mac Guide, the Fannie Mae Guide, or the Lender Manual.
- (c) Mortgagor fails to occupy the related Single Family Residence as a principal residence within 60 days after execution of the related Mortgage.

*"Notice"* means the notice required to be provided to a homebuyer at pre-closing and closing pursuant to Section 143(m) of the Internal Revenue Code. The Notice must be provided by the Program Administrator or Lender to the homebuyer and retained by the homebuyer with the Mortgage Loan and DPA Loan documents.

*"Notice Address"* means, unless otherwise designated pursuant to Section 7.05 hereof:

- (a) As to HHFDC, the address shown on the Invitation, with a copy to such parties as indicated in the Invitation.
- (b) As to Master Servicer, the address indicated in the Lender Manual.
- (c) As to Program Administrator, the address indicated in the Administrator's Guidelines.
- (d) As to Lender, the address shown in the Acknowledgment and Acceptance.

*“Notice of Acceptance”* means, with respect to each Program, the form of notice to be given by HHFDC to each Lender for such Program, with a copy to the Master Servicer and the Program Administrator, by which each Lender is notified of their acceptance to participate in a Program.

*“Origination Fee”* means a fee to be retained by the Lender as partial compensation for originating each Mortgage Loan, payable in the manner provided in Section 4.03 hereof, the amount of which shall be set forth in the applicable Invitation or Administrator’s Guidelines.

*“Origination Period”* means, with respect to each Program and subject to Section 4.10 hereof, the period for the Master Servicer’s Purchase of Mortgage Loans from the Lenders commencing on the related Application Start Date and ending on the date (or dates) set forth in the Invitation or Administrator’s Guidelines, unless extended by HHFDC with the consent of the Master Servicer.

*“Participation Fee”* means a fee payable to HHFDC by Mortgagor and/or the Builder or seller, in such amount and payable at such times as shall be set forth in the applicable Invitation or Administrator’s Guidelines.

*“Participating Lender Agreement”* means an agreement between the Servicer and each Lender as to the terms and conditions under which the Servicer will purchase a Mortgage Loan and/or DPA Loan from a Lender.

*“Planned Unit Development”* or *“PUD”* means a real estate development of separately owned lots, with: (i) contiguous or noncontiguous areas or facilities usually owned by an owners’ association in which the owners of the lots have a stock or membership interest; (ii) title to the real estate under the dwelling units being held by the individual lot owners and not by the owners’ association; (iii) the association having title to and administering the common areas, and levying monthly charges against the lot owners for common areas expenses; and (iv) membership in the owners association not being severed from the ownership of an individual unit.

*“PMI Insurer”* means any private mortgage insurance company approved by Fannie Mae or Freddie Mac, as applicable, and providing Private Mortgage Guaranty Insurance on Conventional Mortgage Loans.

*“Pool Documentation Package”* means those documents as required to be submitted to (a) GNMA in connection with the submission of a “pool” for guaranty by GNMA in accordance with the GNMA Guide, (b) Freddie Mac in connection with the submission of a “pool” for a guaranty by Freddie Mac in accordance with Freddie Mac Guides and (c) Fannie Mae in connection with the submission of a “pool” for a guaranty by Fannie Mae in accordance with the Fannie Mae Guides.

*“Pool Purchase Contract”* means the Fannie Mae Pool Purchase Contract or the Freddie Mac Pool Purchase Contract, between the Servicer and Fannie Mae or Freddie Mac, as applicable, relating to the sale by the Servicer of Conventional Mortgage Loans to Fannie Mae or Freddie Mac, as applicable, and the servicing thereof.

*"Private Mortgage Guaranty Insurance"* means a private mortgage guaranty insurance policy issued by a PMI Insurer with respect to a Conventional Mortgage Loan in accordance with the terms hereof in a form and providing coverage in an amount as shall be approved by Fannie Mae or Freddie Mac, as applicable, in accordance with the applicable Fannie Mae Guides or Freddie Mac Guides.

*"Program"* means HHFDC's programs for the financing of Mortgage Loans and Downpayment Loans.

*"Program Administrator"* or *"Administrator"* means HDS, Inc. dba eHousingPlus or any other such entity appointed by HHFDC as Program Administrator.

*"Program Allocation"* means, with respect to each Lender participating in a Program, the aggregate principal amount of Mortgage Loans for Single Family Residences that HHFDC has notified Lender it can originate for sale to the Servicer.

*"Program Documents"* shall mean this Agreement and its attached forms, the Administrator's Guidelines, the Participating Lender Agreement, and the Invitation as such documents relate to this Program, as may be amended or supplemented from time to time.

*"Purchase"* means any purchase by the Master Servicer of a Mortgage Loan or DPA Loan from a Lender pursuant to Section 4.09 of this Agreement.

*"Purchase Date"* means the date on which a Purchase of a Mortgage Loan or DPA Loan by the Master Servicer occurs as set forth in the Lender Manual.

*"Servicer"* means The Money Source, Inc., the mortgage servicing institution designated by HHFDC in the Invitation or any substitute thereafter appointed by HHFDC. The Servicer may be referred to as either as Master Servicer or Servicer in this Agreement.

*"Servicing Agreement"* means an agreement between HHFDC and the Servicer relating to the purchase and servicing of Mortgage Loans and DPA Loans originated pursuant to this Agreement.

*"Qualified Appraiser"* means an individual or firm that is approved by FHA, VA and/or RD or acceptable to the PMI Insurer and/or GNMA, Freddie Mac or Fannie Mae, as applicable, to act in such capacity.

*"RD"* means the Rural Development Service (formerly the Farmers Home Administration) of the United States Department of Agriculture, its successors and assigns. May also be referred to as "USDA".

*"RD Guarantee"* means a guaranty of a Mortgage Loan pursuant to the Rural Development Service's Guaranteed Rural Housing Loan Program, and RD Guaranteed shall have a correlative meaning.

*"Repurchase Price"* means the amount due to the Servicer from the Lender in instances where the loan is determined to be ineligible under a Program post purchase of the loan from the Lender by the Servicer, and under which such circumstances, the loan must be repurchased by the Lender from the Servicer. The repurchase price will be determined pursuant to the terms of the Participating Lender Agreement; provided that any penalty amount that is part of the Repurchase Price is approved by HHFDC.

*"Servicing Officer"* means any officer of the Servicer involved in, or responsible for, the administration and servicing of the Mortgage Loans.

*"Single Family Residence"* means a new or existing residential unit which is taxed as real property under the laws of the State, which complies with Section 4.05 hereof and which is located within the Eligible Loan Area, including a unit in a Condominium or Planned Unit Development meeting GNMA, Freddie Mac or Fannie Mae standards, and acceptable to FHA, VA or RD, as applicable, and ownership of which is in fee simple, and land appurtenant to the residential unit, (i) which is designed and intended primarily for residential housing, (ii) which is determined by qualified appraisal as provided herein to have an expected useful life of not less than 30 years, (iii) which will be occupied by the Mortgagor as his or her principal residence within a reasonable time (i.e., not later than 60 days) after the closing date of the Mortgage Loan, (iv) the Acquisition Price of which does not exceed the Acquisition Cost Limit, and (v) the land appurtenant to which reasonably maintains the basic livability of the residence and does not provide, other than incidentally, a source of income to the Mortgagor. A Single Family Residence is "new" if it has not been occupied prior to the issuance of a commitment to a mortgagor for a Mortgage Loan financing such Single Family Residence under the Program. A Single Family Residence is "existing" if it has been occupied prior to such commitment.

*"Standard Hazard Insurance Policy"* means a standard homeowner's fire insurance policy with extended coverage as approved by the Insurance Commissioner of the State, as required by Section 4.16 hereof.

*"State"* means the State of Hawaii.

*"Targeted Area Allocation"* means, with respect to each Program, that portion, if any, of the Lender's Program Allocation which must be used to make Mortgage Loans in Targeted Areas, as designated in the Invitation.

*"Targeted Area Loan"* means any Mortgage Loan funding the acquisition of a Mortgagor's residence that is located in a Targeted Area.

*"Targeted Areas"* means the areas listed as such in the Administrator's Guidelines, and subject to amendment from time to time by HHFDC. In addition to any federally designated targeted areas, HHFDC may designate areas within the State of Hawaii as targeted for purposes of program allocations, disaster recovery, or priority funding.

*“Underinsured Cause”* means any cause of damage to property subject to a Mortgage where the cost of the complete restoration of such property is not fully reimbursable by the insurance policies required to be maintained pursuant to Section 4.16 of this Agreement.

*“VA”* means the Department of Veterans Affairs, an agency of the United States of America, or any successor to its functions.

*“VA Guaranteed”* means guaranteed by the VA under the Serviceman’s Readjustment Act of 1944, as amended.

*“VA Guaranty”* means a guaranty by the VA under the Serviceman’s Readjustment Act of 1944, as amended, provided such guaranty shall be in accordance with Section 4.02 hereof.

*“Veteran”* means a Mortgagor who is a “veteran” (as defined in 38 U.S.C. Section 101) who has not previously obtained a loan financed by single family mortgage revenue bonds utilizing the veteran exception set forth in Section 143(d)(2)(D) of the Code.

## **Section 1.02. Interpretations.**

(a) In this Agreement, unless the context otherwise requires:

- (1) the terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms refer to this Agreement, and the term “heretofore” means before and the term “hereafter” means after the date of this Agreement;
- (2) words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words importing the singular number mean and include the plural number and vice versa;
- (3) words importing persons mean and include words importing firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;
- (4) any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect; and

(b) This Agreement shall be governed by and construed in accordance with the applicable laws of the State.

- (c) Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon, or to give to any person, other than the Corporation, the Lender, any right, remedy or claim under or by reason of this Agreement, or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements herein contained by and on behalf of the Corporation shall be for the sole and exclusive benefit of the Corporation, and the Lender.
- (d) If any covenant or agreement provided herein on the part of the Corporation or the Lender to be performed should be contrary to law, then such covenant or agreement shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agreement.

### **Section 1.03. Forms Attached as Exhibits**

Each form and/or report referred to herein shall be in the form set forth in the applicable Exhibit, which is appended to this Agreement, unless otherwise required by the Corporation. All such Exhibits are incorporated herein and constitute a part of this Agreement.

## **ARTICLE II REPRESENTATIONS**

### **Section 2.01. Representations, Warranties and Covenants of HHFDC.**

HHFDC represents and warrants to, and covenants with the Lender that:

- (a) HHFDC is a separate public body and a body corporate and politic, duly organized and existing under the Constitution and laws of the State. Pursuant to the Act, the Corporation has authorized the execution and delivery of this Agreement and the Indenture.
- (b) HHFDC has complied or will comply with all of the provisions of the Constitution and laws of the State including the Act and has or will have full power and authority to consummate all transactions contemplated by this Agreement and any and all other agreements relating thereto.

### **Section 2.02. Representations, Warranties and Covenants of Lender.**

Each Lender represents and warrants to, and covenants with HHFDC (each of which representations, warranties and covenants herein and with respect to any Mortgage Loan or DPA Loan originated by Lender hereunder shall survive the purchase of Mortgage Loans and/or DPA Loans originated by Lender) that:

(a) Lender is an entity duly organized and existing under the laws of the state in which it was created, or is duly chartered or incorporated under federal law, is duly authorized to transact business in the State, and customarily provides service or otherwise aids in financing mortgages located in the State.

(b) Lender agrees that during the term of this Agreement it will remain subject to supervision and examination by State or Federal authorities, as may be applicable, and that it will remain in good standing and qualified to do business under any applicable laws of the United States of America, the state of its organization and of the State. Lender agrees that during the term of this Agreement, it will not dissolve or otherwise dispose of all or substantially all of its assets and will not voluntarily consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it without the consent of HHFDC; provided, that Lender may, without violating this paragraph, consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity, as the case may be, shall be subject to the supervision and examination of the State or federal authorities, as may be applicable, shall constitute a "Lender" as defined herein and shall assume in writing all of the obligations of Lender under this Agreement (in the case of a sale of all or substantially all of a Lender's assets, HHFDC shall release Lender in writing, concurrently with and contingent upon such assumption, from all liability to HHFDC hereunder).

(c) Lender has the power to accept the terms of this Agreement and to execute and deliver this Agreement and enter into the transactions contemplated by this Agreement, and the acceptance and performance of this Agreement have been duly authorized by all necessary corporate and other action.

(d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, shall conflict with or result in any breach or violation of any of the terms, conditions or provisions of any applicable laws, including regulations, or any agreement or instrument to which Lender is now a party or by which it is bound, or constitute a default under any of the foregoing.

(e) Lender will not take any action or omit to take any action or permit any action which is within its control to be taken which would impair the exclusion from gross income for federal income tax purposes of interest on any Bonds of HHFDC.

(f) Lender is not under any cease and desist order or other order or injunction of a similar nature, temporary or permanent, of any federal or state authority, nor are there any proceedings presently in progress, or to its knowledge contemplated or threatened, which would, if successful, lead to the issuance of any such order.

(g) Lender shall furnish such documents as may reasonably be requested by HHFDC or other parties to the transactions contemplated hereby.

(h) Lender is (i) an FHA approved mortgagee, with direct endorsement underwriting authority preferred, in good standing, (ii) an approved lender in good standing for VA guaranteed mortgage loans (with automatic approval authority preferred), unless waived by the Servicer, (iii) a GNMA approved "issuer-servicer" in good standing, and (iv) if Conventional Mortgage Loans to be purchased under the Fannie Mae or Freddie Mac programs are to be originated, a Fannie Mae or Freddie Mac approved lender in good standing acceptable to the PMI Insurer, unless waived by the Servicer. The Lender will notify the Servicer in writing at such time as its status with respect to items (i) - (iv) in this paragraph (h) changes.

(i) The Lender will comply, (i) with respect to each FHA Mortgage Loan, with the National Housing Act of 1934, as amended, with all rules and regulations issued thereunder and with all applicable administrative publications, (ii) with respect to each VA Mortgage Loan, with the Serviceman's Readjustment Act, as amended, with all rules and regulations issued thereunder and with all administrative publications, (iii) with respect to each Mortgage Loan, with all the requirements of, and the "Representations and Warranties of Lender" set forth in, the GNMA Guide, Freddie Mac Guides, Fannie Mae Guides, the Lender Manual and the Administrator's Guidelines, as applicable, (iv) any and all applicable laws governing or regulating the origination of mortgage loans and (v) approved by and in good standing with the Servicer.

(j) Lender (i) is currently authorized to make mortgage loans in the State, (ii) is currently originating mortgage loans for single family residences within the Eligible Loan Area, (iii) has an office located within the Eligible Loan Area (unless otherwise waived by HHFDC) and (iv) Lender is duly authorized to transact business in the State of Hawai'i pursuant to Hawaii Revised Statutes, Chapter 201H, and applicable licensing laws.

(k) Lender agrees to indemnify and hold harmless HHFDC and its respective directors, officers, agents and employees from and against any and all claims, losses, damages or liabilities (including, without limitation, reasonable legal fees and expenses) arising out of, with respect to, or in connection with any performance, or failure to perform, by Lender of any act required hereunder or the breach of any representation or warranty made herein or breach of law.

(l) There is no litigation pending or, to the Lender's knowledge, threatened, against the Lender affecting the right of any of the present members of the Board of Directors or officers of the Lender to their respective offices or their jurisdiction or authority over the affairs of the Lender, nor in any way questioning the execution or

validity of this Agreement; there are no other legal or governmental proceedings (other than ordinary routine litigation incident to the business conducted by the Lender) pending or, to the Lender's knowledge, threatened by governmental authority or others to which the Lender is (or may be) a party or by which the Lender is (or may be) bound or by which any property of the Lender is (or may be) subject, which, individually or, in the aggregate, could have a material adverse effect on the financial position or results of the operations of the Lender.

(m) There are no bankruptcy, insolvency, reorganization or other similar proceedings (including proceedings whereby a regulatory body is to take managerial control of Lender) instituted by or against the Lender, and the Lender has not made any assignment for the benefit of its creditors or voluntarily suspended payment of its obligations.

(n) All information provided by Lender to HHFDC in connection with a particular Program will be true and correct when given and each Lender will notify HHFDC, the Program Administrator, and the Servicer in writing within three Business Days of discovering any material change in such information.

(o) The Lender will comply with the nondiscrimination provisions of federal law, including the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11246, and **all applicable nondiscrimination and fair housing laws of the State of Hawaii, including Chapter 515, Hawaii Revised Statutes.**

(p) In connection with the transactions contemplated by the Program Documents, the Lender will not directly or indirectly contract or enter into any agreement with any other mortgage lender or any other person or institution (except HHFDC or its agents) with respect to any aspect of its participation in the Program, other than any agreement expressly authorized by the Program Documents. In particular, the Lender warrants that, prior to the delivery of any Acknowledgment and Acceptance to HHFDC, it will not have communicated or agreed with any other mortgage lender or any other person or institution as to the amount of Mortgage Loans it has committed and agreed to originate under the Program.

(q) No information, certificate of an officer or statement furnished in writing, or report required hereunder, delivered to any Servicer, any Program Administrator, HHFDC or any trustee for an issue of Bonds will, to the knowledge of the Lender, contain any untrue statement of a material fact or omit a material fact necessary to make the information, certificate, statement or report not misleading.

(r) Lender shall promptly notify HHFDC, any trustee for an issue of Bonds, any Program Administrator and the Servicer, in writing, of any suspension or termination

of powers to do business as contemplated by this Agreement, or any substantial changes in personnel of Lender's loan originating staff or administration.

(s) Lender shall use diligent, reasonable efforts to become and to remain familiar with all FHA, VA, RD, GNMA and/or Fannie Mae and/or Freddie Mac, if applicable, rules and regulations applicable to the Program. Any failure of HHFDC or Servicer to inform Lender of changes in FHA, VA, RD, GNMA and/or Fannie Mae and/or Freddie Mac rules and regulations affecting the Program shall not relieve Lender of its obligations under this subsection.

(t) In instances, if any, where in the reasonable judgment of the Servicer, based upon adverse information with respect to a Mortgage Loan received by the Servicer in connection with the origination of a Mortgage Loan, inspection of a Single Family Residence is advisable, the Servicer may require the originating Lender, and Lender hereby covenants, to (A) inspect the Single Family Residence prior to Purchase of the Mortgage Loan by Servicer to determine whether it (1) constitutes a completed Single Family Residence, (2) contains land in excess of normal requirements, (3) shows evidence of use or design for use in a trade or business of the Mortgagor and (4) is occupied by the Mortgagor as Mortgagor's principal residence, and (B) certify to the Servicer in writing as to the foregoing facts.

(u) Prior to Purchase by the Servicer, Lender shall service the Mortgage Loans, which shall include posting payments and paying taxes.

(v) Each Lender represents and warrants that the Lender will fulfill all repurchase requirements and make-whole requirements under this Agreement and any related Participating Lender Agreement for a Program or any prior program agreements offered by HHFDC.

Lender shall comply with Hawaii Administrative Rules Chapters 15-314 (Hula Mae Mortgage Program) and 15-317 (Downpayment Assistance Loan Program), as applicable.

### **Section 2.03. HHFDC Oversight.**

**Lender acknowledges that HHFDC has the authority to, and retains the right to, review, audit, and monitor all aspects of program participation. Lender shall provide such reports, data, and documentation as HHFDC may reasonably require to ensure compliance with program requirements, federal tax law, and applicable State of Hawaii statutes. Lender shall provide HHFDC, the State Auditor, and the Legislature of the State of Hawai'i with access to records, reports, and loan files upon request. Lender further agrees to indemnify HHFDC for any liabilities, penalties, or losses, including IRS findings, arising from Lender's noncompliance.**

## **ARTICLE III** **ISSUANCE OF BONDS; APPLICATION OF BOND PROCEEDS**

**Section 3.01. Issuance of Bonds; Application of Bond Proceeds.** HHFDC may, from time to time, issue, sell, and deliver its Bonds on the terms and basis set forth in the applicable trust indenture for such Bonds and apply the proceeds of such Bonds in the manner required by such Trust Indenture executed under HRS Chapter 39B and applicable HHFDC bond resolutions.

**Section 3.02. No Legal or Equitable Interest of Lender in Funds or Accounts Under an Indenture.** The Lender shall have no legal or equitable right to any funds or accounts created by or pursuant to the Trust Indenture executed under HRS Chapter 39B and applicable HHFDC bond resolutions relating to the issuance by HHFDC of its Bonds, or to any of the proceeds of such Bonds, Commitment Fees or other moneys or investments contained in such funds or accounts or otherwise pledged to the payment of the principal of, premium, if any, and interest on such Bonds pursuant to the trust indenture relating to the issuance of such Bonds.

## **ARTICLE IV** **COMMITMENTS TO BUY AND SELL MORTGAGE LOANS**

**Section 4.01. Commitments To Buy and Sell Mortgage Loans; Program Allocations; Builder Reservations; Targeted Area Allocations.**

(a) Invitations to Participate; Acknowledgment and Acceptance; Program Allocations. In connection with each Program established by HHFDC, HHFDC may distribute an invitation to Lenders. For a Lender to be considered for participation in a Program, HHFDC may require a Lender to deliver an Acknowledgment and Acceptance in the form and at the time designated by HHFDC. HHFDC may also determine, in its sole and absolute discretion, to provide Program Allocations to all Lenders selected for participation in a Program. Notwithstanding the foregoing, HHFDC may, in its sole discretion, commence a Program without any Program Allocations so that participating Lenders will make Mortgage Loan reservations on a first-come, first-served basis.

Upon HHFDC's delivery of a Notice of Acceptance to each Lender with respect to a Program and subject to any reservation of a Program Allocation for any of the Mortgage Loans described in paragraph (b) of this Section 4.01, Lender agrees to use its best efforts to originate and thereafter sell and assign to the Servicer, Mortgage Loans conforming to the requirements of this Agreement in an aggregate principal amount equal to Lender's Program Allocation or otherwise allowable amount if a reservation pool is established, at the Mortgage Loan purchase price set forth in the Invitation for such Program plus, in each case interest accrued thereon, if applicable, to the date of Purchase (less unearned prepaid interest) at the rate stated in the Mortgage Note, as determined by the Servicer, all on the conditions and terms set forth in the Program Documents. The purchase price for each Mortgage Loan shall be paid in accordance with Section 4.09 hereof. The Servicer's obligation to purchase and take delivery is subject to the

availability of sufficient funds being available from HHFDC or a trust indenture relating to an issue of Bonds to purchase GNMA Certificates, Fannie Mae Securities or Freddie Mac Securities. Notwithstanding the foregoing, no Lender shall originate a Disaster Area Loan until the Servicer has notified each Lender that HHFDC has authorized the purchase of Disaster Area Loans.

Lender acknowledges that as a condition to the purchase of each of the Mortgage Loans by the Servicer, the Mortgage Loan shall (i) be current in payments of principal, interest, tax, and insurance escrows and (ii) be in compliance with the applicable requirements of FHA, VA, RD, GNMA, Fannie Mae, Freddie Mac, the Program Documents, the Administrator's Guidelines, the Lender Manual, the GNMA Guide and/or Fannie Mae Guides and/or Freddie Mac Guides, if applicable, and the PMI Insurer with respect to Conventional Mortgage Loans, if applicable.

Lender understands and agrees that Commitments, including Commitments made from Builder Reservations, if any, shall be made to applicants on a first-come, first-served basis. Lender is required to utilize procedures to ensure the application of the first-come, first-served requirement.

In its sole and absolute discretion, HHFDC may establish deadlines for Mortgage Loan reservations, Commitments, Mortgage Loan closings, and Mortgage Loan deliveries for any type of Mortgage Loan to be originated under a Program. Any such deadlines shall be set forth in the applicable Administrator's Guidelines and Lender Manual. If the Lender fails to meet any such deadline, any Mortgage Loan submitted by Lender after such deadlines shall be automatically cancelled, unless an extension is allowable under the applicable Program. In a Program with Program Allocations, HHFDC, in its sole discretion, may reallocate all or part of such unused Program Allocation either to a general pool or to other Lenders, as HHFDC deems appropriate. Upon any such reallocation, HHFDC will make provision for application of Commitment Fees on such terms as it deems equitable and in the best interests of the Program, provided that no Lender shall be entitled to reimbursement of more than the Commitment Fees it has paid and only in the event that such amounts are collected by or from another Lender.

If applicable, and in its sole and absolute discretion, HHFDC may repurchase all or any portion of a Lender's Program Allocation by paying or arranging for the payment of the Commitment Fees theretofore paid by the Lender proportionate to the amount of Program Allocation being repurchased.

If applicable, during an Origination Period with respect to a Program, a Lender, with the prior written consent of HHFDC and the Program Administrator, may transfer all or a portion of its Program Allocation to one or more other Lenders. A Lender's request for consent to such transfer shall set forth the terms and conditions of the transfer and the proposed transferee, all of which must be acceptable to HHFDC and the Program Administrator. HHFDC and the Program Administrator shall advise the affected Lenders of the decision with respect to any requested transfer by sending a notice in writing to such Lenders. In no event may a Lender charge or receive any fee or remuneration for the Program Allocation being transferred, other than

reimbursement for the pro rata portion of such Lender's Commitment Fee relating to the Program Allocation, or portion thereof, being transferred.

If applicable, all Program Allocations shall terminate automatically upon the termination of the related Origination Period. Nothing in this Section 4.01 shall be construed to permit the origination or Purchase of any Mortgage Loan following the end of the related Origination Period.

Lender shall originate Mortgage Loans and close and deliver such Mortgage Loans at such times as will enable the Servicer to Purchase such Mortgage Loans during the related Origination Period, and as set forth in the Invitation, the Administrator's Guidelines and the Lender Manual.

The provisions of each Invitation, the Acknowledgment and Acceptance and Notice of Acceptance are incorporated herein by reference and are deemed to be a part of this Agreement; provided, however, that IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN PROVISIONS OF ANY INVITATION, ANY ACKNOWLEDGMENT AND ACCEPTANCE, ANY NOTICE OF ACCEPTANCE, AND THIS AGREEMENT, THE PROVISIONS OF THE APPLICABLE PROGRAM INVITATION SHALL CONTROL.

(b) Targeted Area Set Asides; Targeted Area Pool; Targeted Area Allocations; Targeted Area Loan Amount.

(i) A portion of the funds made available by the issuance of Bonds, (or an amount equal to such funds), in the amount required by the Internal Revenue Code and the applicable Treasury Regulations equal to the Targeted Area Allocation shall be made available exclusively for the purpose of making Targeted Area Loans as provided herein, except as may otherwise be provided in the Invitation for a specific issue of Bonds. The Targeted Area Allocation, if any, shall be set forth in the applicable Invitation. HHFDC may also designate Targeted Areas within the State of Hawai'i for purposes of disaster recovery or priority funding, in addition to federally designated targeted areas.

(ii) If Program Allocations to Lenders are to be utilized, each Lender may be required to reserve for a period of one year from the Application Start Date with respect to a Program related to an issue of Bonds, the amount set forth as such Lender's Targeted Area Allocation for the origination of Mortgage Loans to finance Single Family Residences located in Targeted Areas; provided, however, that unless otherwise approved by the Lender, no Lender's Targeted Area Allocation shall exceed 20% of such Lender's Program Allocation. During such one year period from the Application Start Date, the Servicer shall not be obligated to purchase from a Lender Mortgage Loans that are originated to finance Single Family Residences not located in Targeted Areas in an aggregate principal amount greater than such Lender's total Program Allocation less the amount of such Lender's Targeted Area Allocation. The Lender shall use reasonable diligence to originate Mortgage Loans for acquisition of Single Family Residences in Targeted Areas in an amount at least equal to the Lender's Targeted Area Allocation. At the end

of 12 months, moneys previously designated for the purchase of Targeted Area Mortgage Loans may be used to purchase spot loans.

(c) Program Notices.

(i) Program Notices, including initial and updated interest rates, allocations, and compliance requirements, shall be issued by HHFDC and distributed to Participating Lenders via email and posted on the Program Administrator's website. Each Lender is responsible for monitoring such communications and ensuring staff compliance.

**Section 4.02. Mortgage Loan Terms.** Mortgage Loans shall be made only to Eligible Borrowers, as defined herein and in the Invitation, for the purpose of providing financing for the purchase of a Single Family Residence, at an Acquisition Price not in excess of the Maximum Acquisition Price for such Single Family Residence, and not for the purpose of refinancing any existing loan, or a construction period loan, bridge loan or similar temporary initial financing of 24 months or less. No Manufactured Home loans shall be originated unless expressly approved in writing by HHFDC. There shall be no minimum principal amount required for Mortgage Loans, and no application for a Mortgage Loan shall be rejected solely on the basis that the principal amount is too low.

Each Mortgage Loan to be sold to a Servicer must be evidenced by a Mortgage Note secured by a first lien Mortgage and/ or DPA second mortgage lien on the Single Family Residence acquired thereby and made in accordance with Lender's then current underwriting policies and the then current underwriting policies of FHA, VA, RD, the PMI Insurer, if any, GNMA, Freddie Mac and Fannie Mae, as applicable, and all other requirements established by this Agreement and the then current criteria set forth in the GNMA Guide, the Freddie Mac Guides, the Fannie Mae Guides, the Administrator's Guidelines or the Lender Manual, as applicable, and in any event subject to final review by the Servicer. All Mortgage Loans eligible for inclusion in a GNMA Certificate shall be insured by FHA, guaranteed by VA or guaranteed by RD, as applicable, and all Mortgage Loans eligible for inclusion in a Fannie Mae Security or Freddie Mac Security shall be insured by a PMI Insurer to the extent required by Fannie Mae or Freddie Mac.

Each Mortgage Loan (i) shall bear interest at the rate set forth in the related invitation, as modified by HHFDC from time to time, (ii) shall provide for level monthly payments of principal and interest due the first day of each month (which payments shall be accompanied by amounts for deposit in an escrow account to provide for timely payment of taxes and insurance), (iii) shall have an original term of not to exceed 360 months, (iv) shall be assumable only under the terms and conditions set forth in Section 4.17 herein, (v) shall comply in all respects with the Program Documents, the GNMA Guide, the Freddie Mac Guides, the Fannie Mae Guides, the Administrator's Guidelines, the Lender Manual and FHA, VA, RD or PMI Insurer's rules and regulations, as applicable, (vi) shall be in a principal amount not exceeding such amount as conforms to the eligibility and credit underwriting standards specified herein and the applicable limitations of Freddie Mac, Fannie Mae, FHA, VA or RD, as applicable, the Program Documents,

the Lender Manual, the Administrator's Guidelines, the GNMA Guide, the Freddie Mac Guides and the Fannie Mae Guides, and (vii) shall be the subject of a mortgagee's title insurance policy. Each Mortgage shall have attached to it written provisions as to assumption and/or acceleration in the applicable form set forth in the Lender Manual. Lender shall originate all Mortgage Loans and DPA Loans in accordance with the loan origination, eligibility and credit underwriting standards of FHA, VA, RD, Freddie Mac or Fannie Mae, as applicable, and the GNMA Guides, the Freddie Mac Guides, the Fannie Mae Guides, the Administrator's Guidelines and the Lender Manual.

Additionally, the Notices to Buyers (in the applicable form set forth in the Administrator's Guidelines and Lender Manual) must be used in connection with the origination of FHA Insured, VA Guaranteed Mortgage Loans or Conventional Mortgage Loans, respectively. A copy of the executed Notice to FHA Buyers, Notice to Veterans or Notice to Conventional Buyers, as applicable, must accompany the application for insurance or guaranty, Form HUD 92900 or Fannie Mae Form 1003, and be included in the Mortgage File.

At the time of each initial application in connection with a Program related to an issue of Bonds, Lender shall deliver to Mortgagor a copy of the form set forth in Exhibit B1 attached hereto and in the Administrator's Guidelines and Lender Manual which form shall be acknowledged by the Mortgagor and at the time of closing with a statement completed by the related Lender in the form of Exhibit B2 hereto informing the Mortgagor of any potential recapture tax for federal income tax purposes on the sale or other disposition of the Single Family Residence and containing the information necessary for the Mortgagor to determine the amount of any such recapture tax. This requirement shall not apply to Programs unrelated to an issue of Bonds or, if the Program is related to an issue of Bonds, if HHFDC and the related Servicer have received an opinion of bond counsel indicating that the federal income tax status of the interest on the related Bonds will not be adversely affected by the failure to provide such statement. HHFDC will notify each Lender, the Servicer and any trustee for such Bonds that it has received such opinion of bond counsel.

Each Mortgagor obtaining a Mortgage Loan and/or a Downpayment Assistance Loan under the Program shall complete a HUD-approved homeownership and financial counseling program prior to Closing. Completion of the counseling shall be evidenced by a certificate or letter from the counseling provider, which must be included in the Mortgage File.

With respect to a unit of a Condominium or a PUD, such unit must be acceptable to Freddie Mac, Fannie Mae, FHA, VA or the PMI Insurer, as applicable, and must meet applicable GNMA, Freddie Mac or Fannie Mae standards. There is no restriction on the percentage of Condominium or PUD Mortgage Loans that a Lender may originate.

**Section 4.03. Processing, Origination Fees and Closing Costs.** In connection with each Mortgage Loan and DPA Loan, the Lender may, as permitted by FHA, VA, RD, Freddie Mac or Fannie Mae, as applicable, charge and collect from the Mortgagor or seller of a Single Family Residence at the time of Closing of the Mortgage Loan and DPA Loan such application fees,

funding fees, tax service fee, the Origination Fee (which Origination Fee shall not in any event exceed the applicable Freddie Mac, Fannie Mae, FHA, VA or RD limits), or Discount, as shall be set forth in the related Administrator's Guidelines, and all reasonable and customary out-of-pocket costs permitted by law paid or incurred by Lender, including but not limited to notary fees, settlement fees, document preparation fees, hazard, mortgage or life insurance premiums, survey, title insurance premiums, appraisal fees, attorneys' fees, the preliminary Mortgage Loan review fee, documentary and intangible taxes, if any, recording or registration taxes, the tax service contract fees and life of loan flood monitoring fees as specified in the Administrator's Guidelines and Lender Manual, and charges, prepaid escrow deposits and similar charges. The Closing Disclosure and related loan documents shall separately and distinctly disclose the fees set forth above that are payable to the HHFDC, Program Administrator or Servicer. In addition, Lender may collect at the time of loan application (i) an application fee not to exceed the costs of the appraisal and the credit report (any moneys remaining out of the application fee must be refunded or credited at the time of Closing) and (ii) such portion of the Participation Fee as shall be set forth in the related Invitation, from the Mortgagor or Seller as permitted by Freddie Mac, Fannie Mae, FHA, VA or RD, as applicable. Such fees and expenses may be collected only once in connection with the origination of the Mortgage Loan and DPA Loan and shall not exceed limits established from time to time by federal law or State of Hawai'i law, and in any event may not exceed like amounts customarily charged in Hawai'i in cases where financing is not provided through tax-exempt bonds or HHFDC programs. The Lender may collect from the seller of a Single Family Residence the portion, if any, of the Origination Fee that may not be collected from a Mortgagor due to federal or State law restrictions. No provision of this Agreement shall be construed to exempt any instrument from the Real Property Conveyance Tax under HRS Chapter 247, except to the extent expressly provided by law.

**Section 4.04. Verification Concerning Mortgagor's Federal Income Tax Returns.** Prior to Closing, unless otherwise required by a specific Program Invitation or Administrator's Guidelines, Lender will obtain from the IRS, by filing an IRS Form 4506-T, copies of each potential Mortgagor's tax transcripts for the three immediately preceding calendar years filed by the Mortgagor. In lieu of the foregoing, the Mortgagor may indicate in the appropriate space in the Mortgagor's Affidavit that the Mortgagor was not required to file returns during any of the preceding three years for which returns are unavailable. The Lender shall verify from such tax transcripts or other available information that, during such three-year period, the Mortgagor did not claim deductions for taxes or interest on indebtedness with respect to real property constituting his or her principal residence, unless there exists an exception to the foregoing in the Administrator's Guidelines.

**Section 4.05. Acquisition Price of a Residence.** The Acquisition Price of a Single Family Residence may not exceed the Maximum Acquisition Price. The Acquisition Price of a Single Family Residence is the cost of acquiring the Single Family Residence from the seller as a completed residential unit. The Acquisition Price *includes* the following:

- (a) All amounts paid, either in cash or in kind, by the purchaser (or a related party or for the benefit of the purchaser) to the seller (or a related party or for the benefit of the seller)

as consideration for the Single Family Residence. A Single Family Residence includes property that is a fixture under local law, such as light fixtures or wall-to-wall carpeting. Thus, if the purchaser purports separately to purchase such items, the cost of those items must be included in the cost of acquisition. On the other hand, property which is not considered a fixture under local law, such as appliances, is not considered part of a Single Family Residence and the cost of acquiring such items does not have to be included in the cost of acquiring the residence (unless the acquisition costs of such items exceeds their fair market value, in which case the amount of the excess must be included in the acquisition cost of the residence). Thus, if the purchaser agrees to purchase the refrigerator, washer and dryer from the seller for \$1,000 more than the fair market value of such items, such \$1,000 must be included in the cost of acquisition. Similarly, if as part of the purchase of the Single Family Residence the purchaser agrees to pay or assume liability for a debt of the seller, the amount of such debt must be included as part of the cost of acquiring the Single Family Residence.

(b) If a Single Family Residence is incomplete, the reasonable cost of completing the Single Family Residence whether or not the cost of completing construction is to be financed with proceeds of the Mortgage Loan. Where a Mortgagor purchases a building which is so incomplete that occupancy of the building is not permitted under local law, the acquisition cost includes the cost of completing the building so that occupancy of the building is permitted. Thus, if a builder normally sells residences with an uncompleted recreation room but a completed third floor and a garage, but is selling a residence with no garage and an uncompleted recreation room and third floor to a Mortgagor, the cost of completion of the third floor (but not the recreation room) and the cost of addition of a garage must be included in the cost of acquisition of the Single Family Residence. On the other hand, if a Mortgagor purchases an existing home and then spends \$3,000 to paint it, refinish the floors and make minor repairs, such \$3,000 is not included in the cost of acquisition of the Single Family Residence.

(c) Where a Single Family Residence is purchased subject to a ground rent, the capitalized value of the ground rent shall be calculated using a discount rate equal to the yield on the Bonds, if any, calculated in accordance with Section 148 of the Code.

The Acquisition Price *does not include* the following:

(a) The usual and reasonable settlement or financing costs. Settlement costs include titling and transfer costs, title insurance, survey fees or other similar costs. Financing costs include credit reference fees, legal fees, appraisal expenses, "points" which are paid by the buyer (but not points paid by the seller, even though borne by the buyer through a higher Acquisition Price) or other costs of financing the Single Family Residence. However, such amounts will be excluded in determining acquisition cost only to the extent that the amounts do not exceed the usual and reasonable costs which would be paid by the buyer where financing is not provided through a qualified mortgage bond program. For example, if the purchaser agrees to pay to the seller more than a pro rata share of property taxes, such excess shall be treated as part of the Acquisition Price of a Single Family Residence. For illustration, if the purchaser agrees to pay the

seller more than a pro rata share of property taxes, such excess shall be treated as part of the Acquisition Price of the Single Family Residence.

(b) The value of services performed by the Mortgagor or members of the Mortgagor's family in completing the Single Family Residence (or a Dwelling Unit constituting part of the Single Family Residence). The Acquisition Price shall not include the imputed value of services performed by the Mortgagor or members of the Mortgagor's family in completing the Single Family Residence (or a Dwelling Unit constituting part of the Single Family Residence). For purposes of the preceding sentence, the family of an individual shall include only the individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants. For example, where the Mortgagor builds a home alone or with the help of family members, the Acquisition Price includes the cost of materials provided and work performed by subcontractors (whether or not related to the Mortgagor) but does not include the imputed cost of any labor actually performed by the Mortgagor or a member of the Mortgagor's family in constructing the Single Family Residence. Similarly, where the Mortgagor purchases an incomplete Single Family Residence the acquisition cost includes the cost of material and labor paid by the Mortgagor to complete the Single Family Residence but does not include the imputed value of the Mortgagor's labor or the labor of the Mortgagor's family in completing the Single Family Residence.

(c) The cost of land which has been owned by the Mortgagor for at least two years prior to the date on which construction of the Single Family Residence (or a Dwelling Unit constituting part of the Single Family Residence) begins.

**Section 4.06. First Time Homebuyer.** Except with respect to Single Family Residences located in a Targeted Area and/or Disaster Area and certain exceptions that apply to Veterans, or as otherwise provided in a specific Program Invitation or applicable Administrator's Guidelines, each Mortgagor must be a First Time Homebuyer. Each eligible borrower must not have had a present ownership interest in a principal residence at any time during the three-year period prior to Closing. For the purposes of the preceding sentence, the Mortgagor's interest in the residence with respect to which the financing is being provided is not taken into account.

In the event that there is more than one Mortgagor with respect to a particular residence, each of such Mortgagors must meet the three-year requirement. A person who is liable under the Mortgage Note (i.e., a cosigner) secured by the Mortgage but who does not have a present ownership interest in the residence subject to the Mortgage need not meet the three-year requirement. For example, where a parent of a home purchaser cosigns the Mortgage Note for a child but the parent takes no interest in the residence, it is not necessary that the parent meet the three-year requirement since the parent is not a Mortgagor of the residence. Cosigners may only provide additional security and may not be utilized to qualify a Mortgagor for a Mortgage Loan.

Examples of interests which constitute present ownership interests (and thus would result in a potential purchaser failing to meet the First Time Homebuyer requirements) are the following:

- (a) A fee simple interest;
- (b) A joint tenancy, tenancy in common, or tenancy by the entirety;
- (c) The interest of a tenant-shareholder in a cooperative;
- (d) A life estate;
- (e) A land contract or contract for deed (i.e., a contract pursuant to which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time);
- (f) An interest held in trust for the Mortgagor (whether or not created by the Mortgagor) that would constitute a present ownership interest if held directly by the Mortgagor; and
- (g) An interest in a mobile home or factory-made housing that is required to be taxed as real property under State law, is permanently affixed to realty and with respect to which the Mortgagor owns the realty on which it is affixed.

Examples of interests which do not constitute present ownership interests (and thus would not result in potential home purchasers failing to meet the First Time Homebuyer requirements) are the following:

- (a) A remainder interest;
- (b) A lease with or without an option to purchase;
- (c) A mere expectancy to inherit an interest in a principal residence;
- (d) The interest that a purchaser of a residence acquires on the execution of a purchase contract;
- (e) An interest in other than a principal residence during the previous three years; and
- (f) An interest in a mobile home or factory-made housing that is not required to be taxed as real property under State law, is not permanently affixed to realty, or with respect to which the Mortgagor does not own the realty on which it is affixed.

**Section 4.07. Program Administration Guidelines.** Requirements for Lenders to submit the Compliance File documentation to the Program Administrator are specified in the Administrator's Guidelines provided by the Program Administrator for each Program, the

provisions of which shall be incorporated herein by reference and which guidelines may be updated from time to time. Requirements for Lender to submit the Mortgage File documentation to the Servicer are specified in the applicable Lender Manual provided by the Servicer for each Program, the provisions of which shall be incorporated herein by reference.

Lenders are required to utilize the Program Administrator's Web-based (internet) "Loan Management System" for the reservation tracking and reporting processes necessary to originate Mortgage Loans under the Program and the Program Website to access all required guidelines, forms, notices and other pertinent program information.

#### **Section 4.08. Submission of Mortgage Files to the Servicer.**

(a) Lender shall submit to the Servicer, with respect to each Mortgage Loan and/or DPA Loan, the documents described in and at the times no later than those times required in the Lender Manual. Lender shall pay all costs of preparing and furnishing such files to the Servicer. The Servicer will not purchase any Mortgage Loan and/or DPA Loan that does not have Compliance Approval (as defined in the Administrator's Guidelines) by the Program Administrator. Preliminary review and approval does not assure the subsequent Purchase of a Mortgage Loan and/or DPA Loan by the Servicer in the event that factual changes occur with respect to the Mortgage File or the Program between the date of preliminary approval and such Purchase Date.

(b) Prior to the delivery of the Mortgage File to the Servicer in connection with a Purchase, the Lender shall register the Mortgage Loan and DPA Loan, if applicable, in the Mortgage Electronic Registration System (MERS) and the Lender shall file the Mortgage Loan and DPA Loan, if applicable, for record with the State of Hawaii Bureau of Conveyances or Office of the Assistant Registrar of the Land Court of the State of Hawaii.

(c) Notwithstanding the delivery procedures of this Section 4.08, the Servicer may, in its discretion in connection with a Purchase, accept Mortgage Files which contain certified copies of the Mortgage and the Assignment of Mortgage in lieu of the originals of same and a valid commitment for the issuance of a mortgagee's title insurance policy in lieu of a title insurance policy and may approve the applicable Mortgage Loan and/or DPA Loan for Purchase without such originals or certificate if the Mortgage File is otherwise complete, all other Mortgage File documents are present and the Mortgage Loan and/or DPA Loan is subject in all respects to all terms and conditions of this Agreement. The original recorded Mortgage and/or DPA Mortgage and original recorded Assignment of Mortgage, the title insurance policy and FHA Mortgage Insurance Certificate, VA Loan Guaranty Certificate, RD Guaranty Certificate or Private Mortgage Guaranty Insurance, if applicable, must be submitted to the Servicer within 90 days from the Purchase Date of the subject Mortgage Loan and/or DPA Loan. Failure to provide documentation within this timeframe may result in penalties or possible repurchase of the Mortgage Loan and DPA Loan, if applicable. The Servicer shall, upon receipt of such

originals and certified copies, if applicable, file copies of same with the related Mortgage File.

(d) The Purchase of Mortgage Loans and DPA Loans hereunder shall take place on each Purchase Date, pursuant to the schedule of Purchase Dates established by the Servicer with respect to a Program. Only Mortgage Loans and DPA Loans submitted in accordance with this Section 4.08 and which conform to the requirements of this Agreement will be purchased by the Servicer on any Purchase Date. All amounts collected by the Lender representing escrow payments for insurance and taxes with respect to a Mortgage Loan and/or DPA Loan shall be held in escrow and remitted to the Servicer not later than the Purchase Date or as directed by the Servicer. All notices to FHA, VA, RD, the PMI Insurer, Freddie Mac or Fannie Mae which are required to be given under applicable FHA, VA, RD, PMI Insurer, Freddie Mac or Fannie Mae requirements shall be given by the Lender prior to Purchase. In the event that Lender receives any payment on a Mortgage Loan and/or DPA Loan after the Purchase of such Mortgage Loan and/or DPA Loan, the Lender forthwith shall forward such payment (properly endorsed to the Servicer, if the payment was payable to Lender) to the Servicer, unless the payment is due to the Lender per the Participating Lender Agreement.

(e) The Servicer will have no obligation to purchase Mortgage Loans and/or DPA Loans unless they are eligible hereunder and conform to all requirements of this Agreement and any Participating Lender Agreement, including but not limited to bearing interest at the rate specified in Section 4.02 hereof.

(f) The Servicer will not be obligated to Purchase any Mortgage Loan unless the documents described in the Lender Manual with respect to such Mortgage Loan have been received by the Servicer for review not later than 15 days following the Closing date, or such later date as may be approved by the Servicer for good cause.

(g) After the Servicer approves the purchase of the Mortgage Loan and DPA Loan, if applicable, the Lender shall transfer Mortgage and DPA Mortgage, if applicable Mortgage in the Mortgage Electronic Registration System (MERS). The Lender shall deliver the original executed Mortgage, Mortgage Note and Assignment of Mortgage to the Servicer in the following manner: (i) the Mortgage Note shall bear the endorsement set forth on the back thereof "Payable, without recourse, to the order of Servicer," and be executed by a duly authorized officer of the Lender; (ii) the related Mortgage, together with the Assignment of Mortgage, or a true and correct copy of such executed Mortgage and Assignment of Mortgage, and assurance that the originals thereof have been delivered for recording in the office of the Clerk of the County (or Clerks of the Counties) sufficient to constitute the Servicer's ownership of the Mortgage and Mortgage Note. Lender shall further perform any other action or deed as the Servicer may direct to cause the proper filing or recording of the Assignment of Mortgage in such other places and in

such other manner, form or condition satisfactory to the Servicer as is necessary to perfect the Servicer's security interest in each such Mortgage Note and related Mortgage.

(h) All notices to insurers under any insurance policies maintained with respect to a Mortgage Loan, including the DPA Loan, for the assignment to Servicer of the servicing of such Mortgage Loan and/or DPA Loan shall be given by each Lender prior to Purchase by the Servicer. Immediately upon Purchase, written notice shall be given to the Mortgagor that servicing has been assigned to the Servicer and that future payments on the Mortgage Loan and/or DPA Loan are to be made to the Servicer. Lender shall also provide to the Servicer or HHFDC such other reports or information regarding the Mortgage Loan and/or DPA Loan being sold by such Lender as may be reasonably requested by the Servicer or HHFDC.

**Section 4.09. Purchase of Mortgage Loans By the Servicer.** For each Mortgage Loan originated by a Lender which is in compliance with all the terms and conditions of this Agreement, the applicable Administrator's Guidelines and Lender Manual and any applicable Participating Lender Agreement, for which the Mortgage File and other documents have been prepared and presented to the Servicer in the form required or permitted hereby and thereby and for which Servicer certifies that all of the other conditions of this Agreement, any applicable Administrator's Guidelines and Lender Manual or Participating Lender Agreement have been fulfilled, the Servicer will pay to Lender, under the terms and conditions specified herein and therein and in the Invitation, on each Purchase Date for each Mortgage Loan a purchase price equal to the amount set forth in the Administrator's Guidelines (in each case plus any accrued interest less unearned prepaid interest), less, the tax service contract fees and life of loan flood monitoring fees as specified in the Administrator's Guidelines and Lender Manual, as well as any amounts collected by Lender during the servicing of the Mortgage Loan prior to purchase by the Servicer, to be transferred to the Servicer.

Lender acknowledges that, as a condition of the Purchase of the Mortgage Loan by Servicer, the Mortgage Loan shall (i) be current in payments of principal and interest, taxes and insurance, if required, and (ii) be in compliance with the requirements of Fannie Mae, FHA, VA or RD, as applicable, the GNMA Guide, the Freddie Mac Guides or the Fannie Mae Guides, the PMI Insurer, the Lender Manual, this Agreement and any Participating Lender Agreement.

**Section 4.10. Termination of Origination Period by Servicer for Failure To Purchase GNMA Certificates or Fannie Mae Securities.**

The Lenders acknowledge that the Servicer with respect to a Program may terminate the Origination Period for such Program at any time upon written notice to Lenders if the trustee for an issue of Bonds or HHFDC, if a Program is not related to an issue of Bonds, fails to purchase GNMA Certificates, Freddie Mac Securities or Fannie Mae Securities in accordance with the related Program due to insufficient funds being available for such purchase. Such Servicer will not be required to purchase any Mortgage Loans which have not been purchased by the Servicer prior to the date of a notice delivered pursuant to this Section 4.10.

**Section 4.11. Defective Documents and Non-qualifying Mortgage Loans; Repurchase of Loans by Lender.**

- (a) A "Defect" will exist with respect to a Mortgage Loan if:
- (i) Any document constituting a part of the Mortgage File, in the reasonable opinion of HHFDC Servicer or a trustee for an issue of Bonds, a Non-qualifying Mortgage Loan as identified in this Agreement is defective or inaccurate in any respect or shall not be valid and binding or the Lender fails to make timely delivery of any document required for a Mortgage File;
  - (ii) Any representation or warranty of the Lender in the sole judgment of the Servicer, is untrue or incorrect in any material respect;
  - (iii) The Mortgagor fails to make any payment due under the Mortgage Loan through the first payment due under the Mortgage Loan following the purchase of the Mortgage Loan by the Servicer;
  - (iv) The Mortgage Loan is not eligible for inclusion in a Pool backing a GNMA Certificate, Freddie Mac Security or Fannie Mae Security, as applicable, pursuant to the Lender Manual, GNMA Guide, Freddie Mac Guides or Fannie Mae Guides, as applicable, or, after pooling, is required to be withdrawn from the Pool or repurchased pursuant to the GNMA Guide, Freddie Mac Guides, the Fannie Mae Guides, or the Lender Manual, as applicable.

If, following the Purchase of any Mortgage Loan, and notwithstanding the review of the related Mortgage File by the Servicer, a Defect is discovered with respect to the Mortgage Loan, then the Lender who sold the Mortgage Loan to the Servicer shall, if the Defect is susceptible to cure, cure such Defect within a period of 60 days from the time it receives notice of the existence of such Defect or such shorter period as may be required by law or this Agreement, and if any Defect with respect to a Mortgage Loan is not cured within such 60-day period, or such shorter period if applicable, or if the Defect is not susceptible of cure, the Lender who sold the Mortgage Loan to the Servicer shall, not later than 30 days after expiration of the cure period or, if the Defect is not susceptible to cure, receipt of the notice to it of the Defect, repurchase the Mortgage Loan from the Servicer for a price equal to the Repurchase Price.

In all cases, whether or not the Mortgage Loan has been repaid or otherwise satisfied, a Lender shall indemnify and hold harmless HHFDC and the Servicer, the trustee for an applicable issue of Bonds by HHFDC and the Servicer for any loss, damage, forfeiture, penalty or expenses (including reasonable attorneys' fees) incurred by any one or more of them in connection with or as a result of a Defect with respect to any Mortgage Loan sold to the Servicer by the Lender. For the purpose of this Section 4.11, the falsity of a representation by a Mortgagor respecting some fact or facts that (i) the Lender is entitled to rely upon under the provisions of this Agreement,

(ii) is of such nature that, although false, security for payment of the pertinent Mortgage Loan is not thereby adversely affected, (iii) is relied upon by the Lender in good faith, (iv) does not require withdrawal of the Mortgage Loan from the applicable Pool and (v) in the opinion of bond counsel, does not adversely affect the tax-exempt status of any related issue of Bonds, shall not be deemed a defect or inaccuracy.

The Repurchase Price of a defective Mortgage Loan shall be remitted by the Lender to the Servicer, with written notice from the Lender to HHFDC and the trustee for an issue of related Bonds of the amount of such remittance and the Mortgage Loan concerned and, upon compliance with all of the terms of this Section 4.11 by such Lender, the Servicer will assign and deliver the related Mortgage File to the Lender without recourse. The Lender hereby waives any statutes of limitations or other laws that might otherwise be raised in defense to any repurchase obligation hereunder. If a Lender fails to repurchase a defective Mortgage Loan at the time and in the manner provided in this Section, the Servicer will terminate all of the Lender's rights pursuant to Section 6.01 hereof, and may pursue any and all other remedies that may be available hereunder or otherwise at law or in equity.

(b) EACH LENDER CLOSES MORTGAGE LOANS WITH THE RISK THAT IT MAY HAVE TO REPURCHASE SUCH MORTGAGE LOANS OR AN INTEREST IN THE RELATED GNMA CERTIFICATE OR FANNIE MAE SECURITIES FROM THE SERVICER AS PROVIDED IN THIS SECTION 4.11.

**Section 4.12. Representations, Warranties and Covenants of Lender Concerning Mortgage Loans.** Lender hereby represents and warrants to, and covenants with, HHFDC, the trustee for a related issue of Bonds, the Program Administrator and the Servicer as to each Mortgage Loan delivered for Purchase that:

(a) The information set forth in each Mortgage File and the Compliance File will be true and correct at the Purchase Date, each Mortgage Loan shall have been closed after the delivery of this Agreement, and each Mortgage Loan satisfies all applicable requirements set forth in this Agreement, any Participating Lender Agreement, the applicable Lender Manual, the GNMA Guide, the Freddie Mac Guides and the Fannie Mae Guides, including full disbursement of Mortgage Loan proceeds as reflected in the HUD-1 statement;

(b) Each Mortgage Loan will be made by Lender at the price set forth in the Administrator's Guidelines with processing fees not to exceed those set forth in Section 4.03 hereof, will be secured by a Mortgage which shall constitute a first mortgage lien and/ or a DPA second mortgage lien on a Single Family Residence occupied by the Mortgagor as such Mortgagor's principal place of residence (not more than 15 percent of the total area of the residence will be used in a trade or business including child care services on a regular basis for compensation) and not an investment, rental property or a recreational home and will be located within the Eligible Loan Area, will be substantially in accordance with then current underwriting policies of Lender, the underwriting standards set forth in the Lender Manual, GNMA Guide, the

Freddie Mac Guides and/or the Fannie Mae Guides and the requirements established hereby, subject to acceptance of Freddie Mac, Fannie Mae, FHA, VA or RD, as applicable, or of the PMI Insurer under the PMI Policy will be made for the purpose of purchasing or providing permanent financing for such Single Family Residence and not for the purpose of refinancing any existing loan, other than a construction period loan, bridge loan or similar temporary initial financing of 24 months or less, will have level monthly debt service payments (plus require payments for deposit in an escrow account to provide for the timely payment of taxes, insurance and similar payments), will be made to an Eligible Borrower (s), as Mortgagor, and will not be assumable except as provided in Section 4.17;

(c) Each Mortgage Loan will provide for the final payment of the balance of all principal and interest within the time periods authorized in the invitation, if any, and the in Administrator's Guidelines;

(d) The principal amount of a Mortgage Loan will not exceed any applicable loan-to-value limits as established by Fannie Mae, FHA, VA or RD, as applicable, and GNMA, Freddie Mac or Fannie Mae, as applicable;

(e) As of the Purchase Date, each Mortgage Loan will be secured by the Mortgage as required under the Lender Manual, GNMA Guide, Freddie Mac Guides or Fannie Mae Guides, which will constitute a valid first lien on the property financed by the Mortgage Loan, eligible for sale to the agencies subject only to (i) the lien of current (accrued but not yet due and payable) real property taxes and assessments, (ii) building and use restrictions not accompanied by title reverter or forfeiture provisions on account of violation and that are not and will not be violated by occupancy and use of the improvements on the property and the property itself for the residential purposes for which the improvements were designed and constructed, (iii) rights of way and easements for roads, streets, utilities, and other similar installations, whether or not of record, provided that such rights of way and easements are either of the kind (including location, area occupied, and nature of the installation thereon) acceptable to commercial lending institutions generally, or have been taken into account and reflected in the appraisal made (and correspondingly in the loan amount) in connection with the origination of the Mortgage Loan, and (iv) other defects, irregularities, encumbrances, easements, mineral reservations and conveyances and clouds on title that are acceptable to commercial lending institutions generally; provided, however, that none of the foregoing liens or encumbrances shall be permitted if in the opinion of recognized Hawaii counsel acceptable to the Servicer such lien(s) or encumbrance(s) individually or in the aggregate materially impairs the security of the Mortgage;

(f) As of the Purchase Date, Lender shall have in its possession with respect to the property financed by the Mortgage Loan and secured by the Mortgage an American Land Title Association approved mortgagee title insurance policy, or a commitment therefor (in either case, with the title insurance premium paid, or, if unpaid, with the

Lender having the money for payment of the premium and assuming the responsibility for payment), in an amount at least equal to the outstanding principal amount of the Mortgage Loan naming Lender and its successors and assigns as insureds, and insuring that the Mortgage constitutes a first lien on such property, subject only to the exceptions described in subsection (e);

(g) As of the Purchase Date, the improvements upon the real property subject to the Mortgage Loan will be covered by a valid and existing Standard Hazard Insurance Policy and Flood Insurance Policy and Condominium insurance, as applicable, and as required by the Lender Manual, GNMA Guide, the Freddie Mac Guides or Fannie Mae Guides, as applicable;

(h) The terms, covenants, and conditions of the Mortgage Loan shall not have been and shall not prior to the Purchase be waived, altered, impaired or modified in any respect, except for such waivers, alterations and the like effected by Lender prior to the Purchase Date acceptable to Lender, GNMA, Freddie Mac or Fannie Mae, as applicable, pursuant to the Lender Manual, GNMA Guide, Freddie Mac Guides or Fannie Mae Guides, as applicable, and, if applicable, to the PMI Insurer;

(i) As of the Purchase Date, the Mortgage Loan shall be current as to principal and interest payments and payments for tax and insurance escrows and there shall be no delinquent tax or delinquent assessment lien against the property financed by the Mortgage Loan unless allowed by the Lender Manual, GNMA Guide, Freddie Mac Guides or Fannie Mae Guides, as applicable;

(j) As of the Purchase Date, Lender shall not have done any act to create an offset, defense or counterclaim to the Mortgage Loan, including the obligation of the Mortgagor to pay the unpaid principal of and interest on the Mortgage Loan unless allowed by the Lender Manual, GNMA Guide, Freddie Mac Guides or Fannie Mae Guides, as applicable, and, if applicable, the PMI Insurer;

(k) Each Mortgage shall be filed and recorded in the public records of the County in which the Single Family Residence is located, in the Bureau of Conveyances of the State of Hawaii, and any different or other recording that might hereafter be required by the laws of the State to perfect the lien of real estate mortgages against the adverse or competing claim of third parties by giving public notice thereof also shall have been accomplished as required by the Lender Manual, GNMA Guide, Freddie Mac Guides or Fannie Mae Guides, as applicable;

(l) As of the Purchase Date, as to each Mortgage, there shall be no mechanics', laborers' or materialmen's liens or claims therefor outstanding for work, labor, or materials affecting the property encumbered by the Mortgage securing the Mortgage Loan that are or might be or become liens prior to, or equal with, the lien of the Mortgage,

unless the title insurance specified in Section 4.12(f) insures against such risks and such risks are permitted by the Lender Manual, GNMA Guide, Freddie Mac Guides or Fannie Mae Guides, as applicable;

(m) To the best knowledge of Lender, the physical property financed or improved by the Mortgage Loan shall be free of material damage and shall be in general good repair on the Purchase Date;

(n) Each Mortgage Loan, at the time it shall have been made, shall have conformed to all disclosures required to be made by the Real Estate Settlement Procedures Act and the Federal Truth-in-Lending Act and all other applicable State and federal laws and regulations;

(o) Each Mortgage Loan at the time it shall have been made shall have complied with applicable State and federal usury laws;

(p) To the best knowledge of Lender, as of the Purchase Date the Mortgagor of a Mortgage Loan shall not have conveyed such Mortgagor's right, title to or interest in the property to any third party;

(q) As of the Purchase Date, Lender has no knowledge of any facts or circumstances, economic or otherwise, which may have an adverse effect on the credit of any Mortgagor, the prospect of prompt payment of any Mortgage Loan or the value of any security therefor;

(r) Lender has reviewed applicable credit reports and related documents required in connection with any application by the potential Mortgagor to assure itself, prior to approving such application, that such potential Mortgagor has the capacity to repay the Mortgage Loan;

(s) As of the Purchase Date, Lender has no knowledge of any circumstances or conditions with respect to the Mortgagor, the Single Family Residence, the Mortgage Loan or any related document that could reasonably be expected to cause prudent private investors in the secondary market to regard the Mortgage Loan as an unacceptable investment, or cause the Mortgage Loan to become delinquent or to adversely affect the value or the marketability of the Mortgage Loan, and Lender has no knowledge of any circumstances which would cause the invalidation or cancellation of the FHA Insurance, VA Guaranty or RD Guaranty of the Mortgage, or, if applicable, any Private Mortgage Guaranty Insurance;

(t) As of the Purchase Date, the Mortgagor shall have agreed to make payments on the Mortgage Loan and such Mortgage Loan is in accordance with this Agreement and the applicable Program;

(u) As of the Purchase Date, Lender has no knowledge or other reason to believe that any of the representations and statements contained in the affidavits of the seller, the Mortgagor and the Lender or any other information submitted in connection with origination of the Mortgage Loan are not true and correct;

(v) Each Mortgage and Assignment of Mortgage to Servicer shall have been filed and properly recorded prior to the Purchase of the related Mortgage Loan, and any different or other recording that might hereafter be required by laws of the State to perfect the lien of real estate mortgages against the adverse or competing claims of third parties by giving public notice thereof or to perfect Servicer's ownership of the Mortgage Loan shall also have been accomplished;

(w) To the best knowledge of Lender, after the exercise of due diligence, each Mortgage Loan shall be in compliance with the requirements of Section 143 of the Code and the applicable Program;

(x) Each Conventional Mortgage Loan shall be insured under valid and effective Private Mortgage Guaranty Insurance issued by a PMI Insurer and meeting the requirements of this Agreement, the Freddie Mac Guides and the Fannie Mae Guides if and to the extent private mortgage insurance for the Mortgage Loan is required by the Freddie Mac Guides and the Fannie Mae Guides, as applicable;

(y) Each Mortgage Loan is of acceptable quality and is eligible for sale to GNMA, Freddie Mac, or Fannie Mae whose Mortgage Loan eligibility specifications are outlined in the applicable guides and whose decision regarding acceptable quality and eligibility is determinative; and

(z) All final documentation with respect to the Mortgage Loan must be delivered to the Servicer within 90 days of the date of purchase. Failure to provide documentation within 90 days may result in penalties or possible repurchase of the Mortgage Loan.

It is understood and agreed that the representations, warranties, and covenants set forth in this Section shall survive the sale of the Mortgage Loans by Lender to the Servicer and that the representations, warranties, and covenants shall inure to the benefit of the transferees and assigns of the Servicer which may include GNMA, Freddie Mac, Fannie Mae, any trustee for and bondholders of an issue of Bonds by HHFDC and HHFDC. Upon discovery by Lender, the trustee for any applicable issue of Bonds, GNMA, Freddie Mac, Fannie Mae, the Servicer, the Program Administrator or HHFDC of a breach of any of the foregoing representations, warranties, and covenants, the party discovering such breach shall give prompt written notice to the others. Within 30 days of its discovery or its receipt of notice of breach, Lender shall cure such breach in the manner set forth in Section 4.11 hereof.

**Section 4.13. Proceeds of Commitment Fee.** The Commitment Fee, if any, submitted to HHFDC or a trustee for an applicable issue of Bonds with the Acknowledgment and Acceptance in the form of a certified or cashier's check shall be held by HHFDC or trustee for an applicable issue of Bonds and applied in accordance with the terms of the Invitation or any related indenture securing such applicable issue of Bonds.

**Section 4.14. Prohibition of Discrimination.** Lender will consider all applications in the order in which they are received, on a fair and equal basis, will not arbitrarily reject a Mortgage Loan application because of the location (other than Eligible Loan Area limitations) and/or age of the property, and will not, in the case of a proposed Mortgagor, arbitrarily vary the terms of a Mortgage Loan or the application procedures therefor or reject a Mortgage Loan applicant because of any characteristic protected under HRS § 515-3, including but not limited to race, sex (including gender identity or expression), sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency (HIV) status; provided, however, that a Lender may refuse to accept applications for Mortgage Loans to refinance construction loans if Lender desires and intends to make no such loans under this Agreement.

No Lender shall enter into any agreement or arrangement with any person, firm or corporation to prefer any applicant or group of applicants for Mortgage Loans over any other applicant or group of applicants for such Mortgage Loans without the express approval of HHFDC, nor may applications for such loans be accepted for processing, or arrangements for the acceptance or handling of such applications be made, prior to the related Application Start Date. In accepting, evaluating and acting upon such applications, Lender shall comply, if applicable, with the Federal Equal Credit Opportunity Act and Regulation B promulgated thereunder.

**Section 4.15. Disclosures to Borrowers.** Lender shall provide to each prospective Mortgagor at the time of (i) receipt of loan application, a statement in the form attached hereto as Exhibit "B1" and as provided in the Lender Manual, and (ii) the loan closing, a statement in the form attached hereto as Exhibit "B2" and as provided in the Lender Manual (or such substitute forms as shall be designated by HHFDC and provided to Lenders by the Program Administrator).

**Section 4.16. Requirement of Standard Hazard Insurance and Flood Insurance.** Unless otherwise provided in the Lender Manual, the following requirements shall apply to Mortgage Loans originated pursuant to this Agreement:

(A) The Single Family Residence securing any Mortgage Loan must be covered by the Standard Hazard Insurance meeting the following requirements:

(i) Standard Hazard Insurance Coverage in the following kinds and amounts will be carried by each Mortgagor or by the condominium association on behalf of the Mortgagor, where appropriate, or by the related Servicer under a mortgagee single interest hazard insurance policy and is required on property covered by a Mortgage Loan:

(a) fire and extended coverage insurance is required in an amount which is not less than the maximum insurable value of the property securing such Mortgage Loan or (provided that no co-insurance clause shall be applicable) the principal balance owing on such Mortgage Loan, whichever is less; and

(b) where the Lender is aware that the property is exposed to any appreciable hazard against which fire and extended coverage insurance does not afford protection, the Lender must advise the related Servicer of the nature of such hazard and the additional insurance coverage, if any, which has been obtained against such hazard. If adequate insurance has not been obtained against such hazard, the Servicer may require the Lender to obtain such coverage prior to accepting the Mortgage Loan for purchase;

(ii) such insurance must be in effect on the Purchase Date of the Mortgage Loan and the expiration date of each policy must be more than six months after the Purchase Date. The premium on each policy must have been paid in full by the Mortgagor (no "courtesy receipts" or other secondary financing of such premium is permitted);

(iii) insurance policies must be sufficient in amount and scope of coverage to meet any applicable requirements of GNMA, Freddie Mac, Fannie Mae, FHA, VA or RD, as applicable, and, if applicable, PMI Insurers;

(iv) policies containing a deductible clause as specified in the Lender Manual, applicable to either fire or extended coverage or both, are acceptable in areas where such provisions are mandatory or customary;

(v) each Mortgage Loan and DPA Loan must provide that, in the event of any loss settlement on a Standard Hazard Insurance Policy, the Mortgagor has the option of applying the loss settlement proceeds against the principal amount of the Mortgage Loan and/or DPA Loan rather than restore the property; and

(vi) each Standard Hazard Insurance Policy must be written by a hazard insurance carrier which falls into a financial category, as designated in Best's Insurance Reports of B/VI or better (the Servicer may make an exception upon specific request where the insured is an assigned risk) and each carrier must be specifically licensed or authorized by law to transact business in the State.

(B) The Lender is responsible for and warrants compliance with the provisions of the Flood Disaster Protection Act of 1973, whenever such provisions would be applicable to any property financed with a Mortgage Loan and/or DPA Loan sold to the Servicer. If the area is one identified by the Secretary of Housing and Urban Development as an area having special flood hazards, flood insurance shall be maintained in the amount (provided that no co-insurance clause shall be applicable) of the outstanding principal balance of the Mortgage Loan and/or DPA Loan or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

(C) Policies are unacceptable where: (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Servicer or its assignee, or (ii) contributions or assessments may be made against the owner of the property which could become a lien on the property superior to the lien of the Mortgage Loan and/or DPA Loan, (iii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members or (iv) the policy includes any limiting clauses (other than normal insurance conditions) which could prevent the Servicer or the Mortgagor from collecting insurance proceeds.

(D) All Standard Hazard Insurance Policies must contain or have attached the standard mortgagee clause customarily used within the Eligible Loan Area naming the Servicer, and/or its assigns, as the mortgagee. The policy must provide that the insurance carrier will notify the Servicer at least 30 days in advance of the effective date of any cancellation or modification of the policy. The Lender must (i) cause each insurance policy to be properly endorsed, (ii) give any necessary notices of transfer in order to fully protect, under the terms of the policy and applicable law, the interest of the Servicer as first lienholder and (iii) cause all insurance drafts, notices, policies, invoices and other documents to be delivered directly to the Servicer, regardless of the manner in which the insurance policy is endorsed. The Lender shall cause the Servicer's address to be used in the endorsement.

(E) The Servicer may require such additional coverage as it may deem necessary in connection with any case or group of cases.

(F) In addition to the coverage required under (A) through (E) above, Planned Unit Developments must also meet the following requirements:

(1) The PUD corporation, homeowner's association, or trust must have fire and extended coverage insurance on insurable PUD common property for at least 90% of the replacement cost or for the amount of all mortgage loans, including DPA Loans, to PUD unit owners, whichever is greater. Such insurance must name as the insured the PUD corporation, association or trust for the benefit of the PUD unit owners.

(2) The PUD corporation, association or trust must have fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the PUD unit owners if the planned unit development or subdivision has more than 50 units. The fidelity bond or insurance must name the PUD corporation, association or trust as the named insured and must be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation must be added if the policy would not otherwise cover volunteers.

(3) The PUD corporation, association or trust must have a comprehensive policy of public liability insurance covering all of the PUD common property. Such insurance must contain a "Severability of Interest" endorsement which precludes the insurer from denying the claim of the PUD unit owner because of the negligent acts of the PUD corporation, association or trust or other unit owners.

(G) Insurance coverage on Condominium units must be in conformity with the following additional requirements:

(1) A multi-peril type policy covering the entire Condominium or an individual unit policy is acceptable, as long as it provides minimum fire and extended coverage insurance on a replacement cost basis in an amount not less than 100% of the insurable value (based upon replacement cost). If there is a steam boiler in operation in connection with the mortgaged property, boiler explosion insurance must be in force in a standard form of boiler and machinery insurance policy which provides coverage at least equal to \$1,000,000 for each accident at each location or requires a greater coverage depending upon the nature of the property. If the Condominium development is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, an individual or a "blanket" policy of flood insurance on the Condominium project must be obtained in an amount which is the lesser of the maximum amount of insurance available under the act or (provided no co-insurance clause is applicable) the aggregate of the unpaid principal balances of the loans secured by the Condominium units comprising the Condominium project. The name of the insured under each required policy must be stated in form and substance similar to the following:

"Association of Owners of the Condominium for use and benefit of the individual owners (designated by name, if required)"

(2) Lender must furnish to the Servicer the original copy or photocopy of the multi-peril policy or policies and the boiler and machinery insurance policies and flood insurance policies, if any.

(3) Each such policy must contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association of Owners of the Condominium for the use and benefit of mortgagees as their interest may appear, or must be otherwise endorsed to fully protect the Servicer's interest as mortgagee. The Lender must produce a letter addressed to the Association of Owners or its agent wherein the Association of Owners has been requested to notify the Servicer whenever (i) damage to a family unit covered by a Mortgage Loan and/or DPA Loan held by the Servicer exceeds \$1,000 or (ii) damage to common areas and related facilities exceeds \$10,000. If the Servicer is expressly named under the standard mortgagee clause, no such letter is required.

(4) The Association of Owners of the Condominium must have fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association of Owners as the named insured, if the Condominium project has more than 30 units, and must be written in an amount sufficient to provide protection which must be consistent with local and Hawaii insurance laws. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation must be added if the policy would not otherwise cover volunteers.

(5) The Association of Owners of the Condominium must have a comprehensive policy of public liability insurance covering all of the common areas, commercial spaces, and public ways in the Condominium project. Such insurance must contain a "Severability of Interest" endorsement which precludes the insurer from denying the claim of a Condominium unit owner because of negligent acts of the Association of Owners of the Condominium or other unit owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. Liability coverage shall be for at least \$1,000,000 per occurrence, for personal injury and/or property damage.

**Section 4.17. Assumption Restrictions.** Assumption will only be permitted if consented to by HHFDC and authorized by the Lender Manual.

**Section 4.18. Lender To Transfer Mortgage Loans and Servicing Thereof to Servicer.** Prior to the Purchase Date, Lender shall assign and transfer each Mortgage Loan and/or DPA Loan, and the servicing thereof, to the Servicer in exchange for payment of the Purchase price on the Purchase Date as provided in this Agreement. Under the Servicing Agreement, on and after the Purchase Date, Servicer will perform all servicing functions relating to each Mortgage Loan. After the issuance date of each Pool, Servicer will be governed by the GNMA Guide, the Freddie Mac Guides or Fannie Mae Guides, as applicable, and the MBS Agreement and Pool Purchase Contract.

## **ARTICLE V** **LENDER**

**Section 5.01. Liability of Lender.** Lender shall be liable under this Agreement only to the extent that obligations are explicitly imposed upon and undertaken by Lender.

**Section 5.02. Limitation on Liability of Directors, Officers, Employees and Agents of Lender.** No director, officer, employee or agent of Lender shall be under any liability to HHFDC, any trustee or bondholders for a related issue of Bonds for any action taken or for refraining from the taking of any action in good faith pursuant to this Agreement, or for errors in judgment.

**Section 5.03. Lender Not to Resign.** Upon the receipt of a Program Allocation with respect to a Program, except with respect to the applicability of Section 2.02(b) hereof, Lender shall not resign from the obligations and duties hereby imposed on it with respect to such Program except upon determination that its duties hereunder are no longer permissible under applicable law or regulation. Any such determination permitting the resignation of Lender shall be made on the basis of evidence satisfactory to HHFDC and the Servicer. Notwithstanding the foregoing, nothing contained herein shall require the Lender to request a Program Allocation for any Program nor shall anything contained herein require HHFDC to provide the Lender with a Program Allocation for any Program.

Lenders resigning pursuant hereto shall not be entitled to reimbursement of Commitment Fees paid with respect to such Lender's unused Program Allocation.

**Section 5.04. Maintenance of Errors and Omissions Policy and Fidelity Bond.** Each Lender shall maintain errors and omissions insurance and fidelity bond coverage in amounts not less than those required by HUD, Fannie Mae, or Freddie Mac, and in any event acceptable to HHFDC.

**Section 5.05. Lender Approval and Management.** The Servicer will review each Lender's application, to determine the Lender's eligibility to participate in HHFDC's Programs. This review will be based upon the eligibility standards adopted by the Servicer. The Servicer shall also conduct an annual recertification, which will include but not be limited to, a review of the Lender's financial information, to assure that the Lender continues to be qualified to participate in the various HHFDC Programs.

The Servicer has reserved the right to modify the eligibility standards at any time during this contract period. Should the modification of terms occur, all parties bound by this agreement will be notified and the new eligibility standards will become effective upon the date of said notification. Any new Lender applications received or existing Lender recertifications performed on or after the notification date will be subject to the newly published eligibility standards.

The Servicer will enter into a separate Participating Lender Agreement with every qualifying Lender. In the event of a conflict between the terms of the Participating Lender Agreement and this Agreement, with regard to the requirements owed by the Lender to the Servicer, the Participating Lender Agreement shall control.

## **ARTICLE VI** **CAUSES PERMITTING TERMINATION**

**Section 6.01. Causes of Termination Defined; Remedies.** Pursuant to the Servicing Agreement, the Servicer will be granted the authority to suspend or terminate a Lender, if that Lender is found to be in breach of any of the terms or conditions of the Agreement or fails to qualify as a Lender or take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of Lender hereunder upon the happening of any one or more of the following events:

- (a) Failure by Lender to promptly originate and offer Mortgage Loans and/or DPA Loans complying with the requirements of this Agreement for sale to the Servicer for Purchase on behalf of HHFDC. Requirements of this Agreement include the following, as may be amended from time to time: the Hawaii Administrative Rules, IRS Code §143, HHFDC's program requirements, the Program Administrator's Guidelines, the Invitation. Lender shall be notified of amendments and any new requirements which upon notification will become effective and be made a part of this provision.
- (b) A decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against Lender and such decree or order shall have remained in force undischarged or unstayed for a period of 60 days.
- (c) Lender shall consent to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to Lender or relating to all or substantially all of its property.
- (d) Lender shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of any applicable insolvency or

reorganization statute, make an assignment for the benefit of its creditors, or voluntarily suspend payment of its obligations.

(e) HHFDC, the trustee for any applicable issue of Bonds by HHFDC, the Program Administrator or the Servicer shall have actual knowledge that any representation of or warranty by Lender to the Servicer, HHFDC, the trustee for any applicable issue of Bonds or the Program Administrator is false in any material respect.

(f) There occurs prior to Purchase of any Mortgage Loan a change in status of the Lender originating such Mortgage Loan with respect to Lender's approvals as either an FHA, VA or RD approved mortgagee, a GNMA issuer-servicer or Freddie Mac or Fannie Mae approved lender or a material adverse change in the Lender's financial condition.

(g) Lender shall fail to perform or observe any warrant, covenant, representation, agreement or condition on its part contained herein or under any agreement for a prior program offered by HHFDC and the continuance thereof for a period of thirty (30) days after written notice thereof to the Lender by HHFDC, the Servicer or a trustee or any applicable issue of Bonds by HHFDC.

**Section 6.02. No Remedy Exclusive.** Unless otherwise expressly provided, no remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement upon the happening of any event set forth in Section 6.01 hereof shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle a trustee for an applicable issue of Bonds by HHFDC, on behalf of HHFDC, to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

**Section 6.03. Attorney's Fees and Indemnity.** The Lender agrees to pay on demand all costs and expenses, including reasonable attorneys' fees, incurred by HHFDC in enforcing any of the terms, conditions or provisions of this Agreement or in defending any action, claim, audit, investigation, or proceeding arising out of or relating to this Agreement or the Lender's participation in the Program. Such costs and expenses shall specifically include, without limitation, costs and attorneys' fees incurred by HHFDC in connection with any examination, audit, enforcement action, or other proceeding initiated by the Internal Revenue Service, the U.S. Department of Housing and Urban Development, or any other federal, state, or local governmental entity relating to the qualification of Mortgage Loans, the tax-exempt status of any bonds, or the compliance of the Program with applicable law. The obligations of the Lender under this Section shall survive the termination of this Agreement.

The Lender shall indemnify and hold harmless HHFDC, its directors, officers, employees, and agents from and against any and all losses, liabilities, damages, penalties, costs, or expenses (including reasonable attorney's fees) arising from (i) the Lender's breach of this Agreement, (ii) the origination or sale of any Mortgage Loan or DPA Loan that fails to comply with Program Documents, (iii) any misrepresentation or omission by the Lender, or (iv) any enforcement action or claim brought by the Internal Revenue Service, HUD, VA, RD, Fannie Mae, Freddie Mac, GNMA, or any other federal or state agency related to the Mortgage Loans or DPA Loans originated hereunder.

#### **Section 6.04. Liability of HHFDC.**

HHFDC shall not be liable for the appointment or removal of a successor Lender or owe any duty with respect to such appointment or removal, except for its own willful misconduct. Notwithstanding any provision to the contrary in this Agreement, HHFDC shall not be liable in any respect for the appointment or removal of a successor Lender by the Servicer or HHFDC or owe any duty with respect to such appointment or removal other than as otherwise provided herein.

### **ARTICLE VII MISCELLANEOUS PROVISIONS**

**Section 7.01. Amendments, Changes and Modifications.** This Agreement may be amended, changed, modified, altered or terminated only in writing executed by the parties hereto; provided that HHFDC may amend this Agreement without the consent of Lender (i) in order to comply with any applicable law or change in law, or (ii) if the change does not adversely affect Lender (to be determined in the reasonable judgment of HHFDC) or if the change is made only on a prospective basis.

**Section 7.02. Recordation of This Agreement.** This Agreement, or a memorandum of any portion or portions hereof executed by HHFDC and Lender, is subject to recordation at the Bureau of Conveyances of the State of Hawaii, and in any other appropriate public office or elsewhere if directed by HHFDC.

**Section 7.03. Limitation on Rights of Bondholders.** No bondholder shall have any right to institute a suit with respect to this Agreement except as provided in the trust indenture for the applicable issue of Bonds by HHFDC and for the equal benefit of all bondholders with respect to any applicable issue of Bonds by HHFDC.

**Section 7.04. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Hawai'i.

**Section 7.05. Notices.** All notices, certificates or other communications hereunder, unless otherwise provided herein or in the Lender Manual to be provided by email transmission, shall be sufficiently given and shall be deemed given when delivered or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to the appropriate Notice

Address. A duplicate copy of each notice, certificate or other communication given hereunder to HHFDC, any trustee for an applicable issue of Bonds by HHFDC, the Program Administrator or the Servicer shall also be given to the others. HHFDC, the Lender, the trustee for an applicable issue of Bonds by HHFDC, the Program Administrator or the Servicer may, by a notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 7.06. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 7.07. Further Assurances and Corrective Instruments.** To the extent permitted by law, HHFDC and Lender agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

**Section 7.08. Term of This Agreement.** This Agreement shall be in full force and effect from the date hereof and shall continue in effect so long as any applicable issue of Bonds by HHFDC, GNMA Certificates, Freddie Mac Securities or Fannie Mae Securities collateralized by Mortgage Loans are outstanding or GNMA, Freddie Mac or Fannie Mac shall own any Mortgage Loans made hereunder, whichever is later. Lender may terminate this Agreement through advance written notification to HHFDC. Termination of this Agreement shall be effective no earlier than 60 days from the date of receipt of said written notification. Notwithstanding the Lender's written notification to terminate this Agreement, Lender agrees to meet its obligations with respect to any loans reserved and/or originated by Lender. Furthermore, Lender shall retain any and all liability for any and all Mortgage Loans and DPA Loans originated under this Agreement.

**Section 7.09. No Rights Conferred on Others.** Nothing in this Agreement shall confer any right upon any person other than HHFDC, the trustee for any applicable issue of Bonds by HHFDC, the Servicer, the Program Administrator, GNMA, Freddie Mac, Fannie Mae and Lender.

**Section 7.10. Limited Liability; No Debt or General Obligation.** All obligations of HHFDC incurred hereunder and any liability incurred by HHFDC with respect to any breach of any such obligation shall not constitute a debt of the County or Counties, the State, HHFDC or any political subdivision thereof nor shall any such party be liable thereon, nor shall Lender, the bondholders for any applicable issue of Bonds by HHFDC or any other persons have the right to require or compel the exercise of the ad valorem taxing power of the County or Counties or any other political subdivision of the State for the payment, obligations or other liability due hereunder and in no event shall such payment be payable out of any funds or properties other than those of HHFDC which are legally available for such purposes. HHFDC has no taxing power. No general fund or taxing power of the State of Hawai'i shall be pledged to or obligated for this Agreement.

**Section 7.11. Discretion of the Servicer.** With respect to any disputes between the Servicer and the Lender which arise concerning the terms and provisions of this Agreement or the Participating Lender Agreement, the meaning thereof, or decisions to be made thereunder, the judgment of the Servicer shall govern.

**SIGNATURE PAGE TO**  
**HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**  
**MORTGAGE ORIGINATION AGREEMENT**

IN WITNESS WHEREOF, the parties hereto, pursuant to proper corporate authority, have caused this Agreement to be duly and properly executed as of the date first above written.

**PARTICIPATING LENDER**

---

(Type or print the legal name of the  
Lender on the line above)

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

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

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

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

APPROVE AS TO FORM:

**HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION**

---

Deputy Attorney General

State of Hawaii

---

Date:

By: Dean Minakami

Its: Executive Director

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

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

[End of Document]

**EXHIBIT A**

**TARGETED AREAS/CENSUS TRACTS**

Rev. Proc 2024-08

Hawaii County, Census Tract 0211.01  
Hawaii County, Census Tract 0211.07  
Hawaii County, Census Tract 0211.08  
Honolulu County, Census Tract 0021.01  
Honolulu County, Census Tract 0024.04  
Honolulu County, Census Tract 0034.08  
Honolulu County, Census Tract 0038.01  
Honolulu County, Census Tract 0052.00  
Honolulu County, Census Tract 0053.00  
Honolulu County, Census Tract 0054.00  
Honolulu County, Census Tract 0059.00  
Honolulu County, Census Tract 0062.02  
Honolulu County, Census Tract 0063.02  
Honolulu County, Census Tract 0070.01  
Honolulu County, Census Tract 0070.02  
Honolulu County, Census Tract 0087.05  
Honolulu County, Census Tract 0093.01  
Honolulu County, Census Tract 0095.07  
Honolulu County, Census Tract 0095.10  
Honolulu County, Census Tract 0095.11  
Honolulu County, Census Tract 9817.00  
Honolulu County, Census Tract 9818.03  
Maui County, Census Tract 0318.01

Note: Kauai County does not have any Targeted Area Census Tracts.



## EXHIBIT B-1

# HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION SINGLE FAMILY MORTGAGE REVENUE BONDS ABOUT RECAPTURE TAX PRE-CLOSING NOTICE

When a homebuyer receives financing through Mortgage Revenue Bonds (MRBs), they benefit from a federal subsidy in the form of a reduced mortgage interest rate which is made possible by tax-exempt MRB proceeds. Federal law governing MRBs mandates a "Recapture Tax" of some of the benefit of the program if homebuyers meet certain criteria.

To owe Recapture Tax, a homebuyer must sell their home within the first nine years, make a net profit on the sale of the home **AND** have a significant increase in income. A significant increase in income occurs when income exceeds program income limits in the first year and increases by an additional 5% or more over the previous year, every year thereafter. All three criteria must be met for Recapture Tax to be due. If Recapture Tax is owed, it is computed and paid to the IRS for the tax year in which the home is sold.

The most Recapture Tax a homebuyer may be required to pay is the lesser of one-half (½ or 50%) of the gain on the sale of the home or 6.25% of the highest principal amount of the Mortgage Loan and DPA Loan, if applicable, during the life of the loan. (I.e., if the highest principal amount of the loan was \$500,000 (including both the Mortgage Loan and DPA Loan, if applicable) and the home is sold within 49-60 months of ownership, then \$500,000 would be multiplied by .0625 for a maximum amount of Recapture Tax of \$31,250.) This amount is considered the federally subsidized amount.

**When** a homebuyer sells their home is just as important as the amount received for the sale of the home and the household income at the time of sale. The actual Recapture Tax, if any, can only be determined when the home is sold.

### Remember

- If the home is sold *after* nine years, there is no Recapture Tax due.
- If there is no gain (net profit) on the sale of the home, there is no Recapture Tax due.
- If the homebuyer's household adjusted gross income does not increase significantly over the first nine years, there is no Recapture Tax due.

### Recapture Tax may not be due if

- The home is destroyed by fire, storm, flood or another casualty, and is rebuilt or rehabilitated within two years for use as the homebuyer's principal residence on the site of the home financed with the original federally subsidized Mortgage Loan.
- The home is sold, given away, or disposed of more than 9 full years after the mortgage loan is closed.
- The home is disposed of because of death.
- The home is transferred to a homebuyer's spouse or former spouse as an agreement of divorce, and there is no gain or loss included in the homebuyer's income from the transfer.

### INFORMATION NEEDED IN THE FUTURE

At the time of closing the Mortgage Loan (and DPA Loan, if applicable), homebuyers will receive a Notice from the Program Administrator or lender. This notice should be kept with the homebuyer's Mortgage Loan documents. The notice contains extremely important, detailed information that will be needed to determine if Recapture Tax may be owed.

The notice contains information that will be needed to complete IRS Form 8828 such as:

- The loan amount (the highest principal amount of the loan),
- Closing Date,
- Name of the Issuer of the Bonds,
- Name of the original lender that made the loan, and
- Chart that details data necessary to complete IRS Form 8828.

### FOR MORE INFORMATION

Contact the IRS to request IRS Form 8828 and instructions (both available on the **IRS Website: <https://www.irs.gov/forms-instructions>**). In the Forms, Instructions and Publications Search field, type "8828" and press enter). Review the form and instructions now. In the year the home is sold, homebuyers are required to complete and file IRS Form 8828 with their federal income tax return (even after the full 9 years). The homebuyer's household income that will be considered in the year of sale will be the modified adjusted gross income from their federal income tax return. Homebuyers should consult a tax advisor with questions.

## **EXHIBIT B-1**

<b>Borrower Signature</b>	<hr/>	<b>Date</b>	<hr/>
Co-Borrower Signature	<hr/>	Date	<hr/>
Non-Purchasing Spouse Signature	<hr/>	Date	<hr/>



## EXHIBIT B-2

# HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION SINGLE FAMILY MORTGAGE REVENUE BONDS NOTICE OF POTENTIAL RECAPTURE TAX CLOSING NOTICE

This Notice must be provided pursuant to Section 143(m) of the Internal Revenue Code. Homebuyers who receive financing through Mortgage Revenue Bonds (MRBs) benefit from a federal subsidy in the form of a reduced mortgage interest rate made possible by tax-exempt MRBs. Federal law requires that homebuyers be provided with a written statement informing them of the potential "Recapture Tax" under federal law. After a Mortgage Loan (and DPA Loan, if applicable) is closed, homebuyers will receive this detailed Notice from the Program Administrator or Lender. Homebuyers should retain this document with their permanent records as it contains information necessary to complete IRS Form 8828 if a homebuyer sells or otherwise disposes of their home within nine (9) years after closing. It contains extremely important information that will be needed to determine if a homebuyer must pay Recapture Tax. This Notice is informational to the homebuyer only. Homebuyers should consult an IRS tax advisor for official guidance because the determination of whether Recapture Tax is owed can only be made at the time the home is sold.

The letter contains information needed to complete IRS Form 8828 such as:

- The loan amount (the highest principal amount of the loan),
- Closing Date,
- Name of the Issuer of the Bonds,
- Name of the lender that originally made the loan, and
- Chart detailing data necessary to complete the computations on IRS Form 8828.

Remember a homebuyer may **not** have to pay Recapture Tax unless ALL THREE of the following are true --

- The home is sold in the first full nine years (108 months) of ownership (from the closing date), **AND**
- There is a net profit on the sale of the home, **AND**
- The homebuyer's household modified adjusted gross income exceeds the income limit in the year the home is sold.

### What is "net profit" on the sale of the home?

Homebuyers should consult with a tax advisor for official guidance. Generally, the amount received for the sale of the home minus the expenses of selling the home (i.e., commission paid to a real estate agent, advertising, legal fees, etc.) is the "Amount Realized" from the sale of the home. From the "Amount Realized" the "Adjusted Basis" of the ownership interest in the home is subtracted. The "Adjusted Basis" will be increased by any sales commission paid when purchasing the home and decreased by depreciation. A tax advisor will be helpful in determining the exact amount of the Adjusted Basis. If the total of the "Amount Realized" minus the "Adjusted Basis" is "0" or lower, a gain was not realized (a profit was not made) when the home was sold and Recapture Tax would not be owed. IRS Form 8828 would still need to be completed and filed with the IRS with the federal income tax return for the year in which the home was sold.

### What about my income?

If a profit was made on the sale of the home, Recapture Tax may be due. To determine if Recapture Tax is due, income must be considered. Review the chart included in this Notice that shows the maximum income allowable for each 12-month period following closing. The limits are the program limits for the first 12 months and then 5% more than the preceding year for each year thereafter. If the homebuyer's household modified adjusted gross income on their federal income tax return does not exceed the income limit for the 12-month period in which the home is sold, Recapture Tax is not owed. If the homebuyer's household modified adjusted gross income exceeds the income limit, Recapture Tax may be owed.

### How much Recapture Tax may be owed?

The amount of Recapture Tax owed will be the LESSER of one-half (½ or 50%) of the gain realized from the sale of the home OR the amount resulting from a calculation that uses -

- The federally subsidized amount with respect to any indebtedness, which is .0625 x the highest principal amount of the loan (Mortgage Loan + DPA Loan, if applicable);
- The holding period percentage; and
- The income percentage (the amount by which the household income exceeds the limit in the year of sale). If the household income exceeds the limit amount by \$5,000 or more, then the income percentage is 100%. If it is less than \$5,000 then divide the amount by which the household income exceeds the limit by \$5,000 and round to the nearest whole percentage.

**EXHIBIT B-2**  
**TO BE SIGNED BY BORROWERS AND NON-PURCHASING SPOUSE**

IMPORTANT CLOSING DOCUMENTS - DO NOT DISCARD

**NECESSARY IF YOU SHOULD DECIDE TO SELL YOUR PROPERTY - NOTICE TO BORROWER(S) OF MAXIMUM RECAPTURE TAX AND COMPUTATION OF RECAPTURE TAX ON DISPOSITION OF THIS PROPERTY**

Dear Homebuyer:

As previously disclosed, the Mortgage Loan you are receiving is made possible through Mortgage Revenue Bonds (MRBs). You are benefitting from a federal subsidy in the form of a reduced mortgage interest rate that may be subject to "Recapture Tax" if you sell or otherwise dispose of your home within nine years after purchase. Recapture Tax takes the form of an increase to your federal income tax owed for the year of disposition of the home.

Recapture Tax only applies if certain criteria are met. To owe Recapture Tax, a homebuyer must sell their home within the first nine years, make a net profit on the sale of the home **AND** have a significant increase in income. A significant increase in income occurs when income exceeds program income limits in the first year and increases by an additional 5% or more over the previous year, every year thereafter. Consult a tax advisor for more information.

In accordance with Section 143(m)(7) of the Internal Revenue Code of 1986, as amended, (the "Code") this Notice serves to inform you that the "federally subsidized amount" with respect to your mortgage loan is 6.25% of the projected highest principal amount of your loan (Mortgage Loan + DPA Loan, if applicable). Further, the adjusted qualifying income for each category of familial size for each year of the 9-year period beginning on the date of closing on your mortgage loan is set forth below.

**Holding Period Percentage Table**

If you dispose of your house within months*:	Holding Period Percentage	Adjusted qualifying Income Disposition, for	
		1-2 person Household	3+ person Household
1 - 12	20%		
13 - 24	40%		
25 - 36	60%		
37 - 48	80%		
49 - 60	100%		
61 - 72	80%		
73 - 84	60%		
85 - 96	40%		
97 - 108	20%		
109 or more	No Recapture Tax		

\*from closing date of your loan

By signing below, I/we acknowledge that I/we have read and understand this Notice of Potential Recapture Tax, and that HHFDC has advised me/us to consult a tax professional regarding its application.

**Borrower Signature**

\_\_\_\_\_ **Date** \_\_\_\_\_

Co-Borrower Signature

\_\_\_\_\_ **Date** \_\_\_\_\_

Non-Purchasing Spouse Signature

\_\_\_\_\_ **Date** \_\_\_\_\_

1. GENERAL - When you sell your house, you may have to pay the Recapture Tax as calculated on IRS Form 8828. Recapture Tax may also apply if you dispose of the property in some other way, such as giving the property to a relative. Whenever "sale" is used in this Notice, it also applies to other ways of disposing your house.
2. EXCEPTIONS - In the following scenarios, Recapture tax would not be due:
  - a. You dispose of your house more than nine (9) years after you close your mortgage loan;
  - b. Your house is disposed of as a result of your death;

## **EXHIBIT B-2**

- c. You transfer your house, either to your spouse or former spouse due to divorce, and you have no gain or loss reflected in your income (under Section 1041 of the Internal Revenue Code);
  - d. You dispose of your house at a loss.
- 3. MAXIMUM RECAPTURE TAX - The maximum Recapture Tax that you may be required to pay as an addition to your Federal Income Tax is equal to the "federally subsidized amount" of set forth above.
- 4. ACTUAL RECAPTURE TAX - The actual Recapture Tax, if any, can only be determined when you sell your house, and will be the LESSER of:
  - a. One half ( $\frac{1}{2}$ ) or 50% of the gain on the sale, regardless of whether it is included in your income for Federal Income Tax purposes, or
  - b. Your Recapture Tax amount, which is calculated by multiplying the following three (3) amounts:
    - Maximum Recapture Tax Amount (see "How much Recapture Tax may be owed"),
    - Holding Period Percentage (see "Holding Period Percentage Table"), and
    - Income Percentage (Described in Item 5 below)
- 5. INCOME PERCENTAGE - Calculate as instructed by IRS Form 8828.
- 6. LIMITATIONS AND SPECIAL RULES ON RECAPTURE TAX - Additional provisions and rules apply in specific circumstances such as the destruction of the property, disposition by gift, sale upon early prepayment and others.

The determination of whether you are subject to any Recapture Tax can only be made at the time you sell your property. You are encouraged to consult a tax advisor and/or Internal Revenue Service office for more details related to your personal circumstances. General Information on Recapture Tax can be found in Section 143(m) of the Code, or by logging on to [www.irs.gov](http://www.irs.gov). Review IRS Form 8828 and instructions to further understand how Recapture Tax can impact you.

**FOR YOUR REFERENCE:**

Your Loan Servicer:

Originating Lender:

Loan #:

Loan Amount:

Term in Months:

Closing Date:

Issuer:

Program:

Property Address:

County: