#### **LOAN AGREEMENT**

This LOAN AGREEMENT (hereinafter referred to as the "Agreement"), is made as of December 8, 2021, between the HONUAKAHA LIMITED PARTNERSHIP, LLP (hereinafter referred to as the "Borrower" or "HLP"), a Hawaii limited liability partnership, whose mailing address is 545 Queen Street, Honolulu, Hawaii 96813, and the HAWAII COMMUNITY DEVELOPMENT AUTHORITY (hereinafter referred to as the "Lender" or "HCDA"), a body corporate and a public instrumentality of the State of Hawaii, whose mailing address is 547 Queen Street, Honolulu, Hawaii 96813, as follows:

The Lender and Borrower intend that the following recitals shall constitute a material part of this Agreement:

WHEREAS, HCDA is a body corporate and a public instrumentality of the State of Hawaii pursuant to Chapter 206E, Hawaii Revised Statutes;

WHEREAS, HCDA is a General Partner in the Honuakaha Limited Partnership, LLP, a Hawaii limited liability partnership ("HLP");

WHEREAS, as a General Partner in HLP, HCDA owns the Honuakaha Senior Rental Housing Project completed in 1995 and located at 545 Queen Street, Honolulu, Hawaii in the Kakaako Community Development District, Tax Map Key Numbers: 1-2-1-031-021) (hereinafter referred to as the "Project");

WHEREAS, pursuant to the recorded Honuakaha Declaration of Condominium Property Regime and the Honuakaha Bylaws, the Honuakaha Association of Apartment Owners (hereinafter referred to as the "Honuakaha AOAO") is responsible for establishing and monitoring the annual operating budget, including necessary assessments, and maintenance reserves;

WHEREAS, at the September 1, 2021 regular monthly meeting of the HCDA Kakaako District, HCDA staff informed the HCDA Kakaako District Members that HLP had ceased payment of HLP's allocable share of maintenance fees for the Project due to an operating deficit as HLP's annual revenue was insufficient to cover the annual operating costs, including HLP's allocable share of the maintenance costs for the Project. Attached hereto and incorporated herein as Exhibit "A" is a copy of the approved Minutes of the September 1, 2021 HCDA Kakaako Board Meeting;

WHEREAS, at the September 1, 2021 HCDA Kakaako District Meeting, HCDA staff informed the HCDA Kakaako District Members that HLP's outstanding allocable share of maintenance fees total \$654,144.00 for October 2021 and are expected to increase to \$981,216.00 by June 2022 and that based on the foregoing, HCDA staff will be requesting authorization from the HCDA Kakaako District Members at the next monthly HCDA Kakaako District Meeting to authorize a loan up to \$1,000,000.00 to HLP to pay off the outstanding maintenance fees owed by HLP to Honuakaha AOAO (See attached Exhibit "A");

WHEREAS, on October 6, 2021, at the HCDA Kakaako District regular monthly meeting, the HCDA Kakaako District Members voted to approve HCDA staff's request to approve an unsecured, no interest, no prepayment penalty, 20-year maturity period loan of \$1,000,000.00 to HLP from the Hawaii Community Development Special Fund - Reserved Housing Subaccount for the purpose of paying off HLP's allocable share of outstanding maintenance fees; A copy of the approved Minutes of the October 6, 2021 HCDA Kakaako Board Meeting is attached and incorporated in this Agreement as Exhibit "B";

**NOW, THEREFORE, FOR VALUE RECEIVED, HLP** promises to pay to the order of HCDA, the Principal Amount as defined below and provided in this Agreement.

1. **Definitions.** The following terms shall have the meaning ascribed thereto:

"Borrower" means HLP as provided in the introductory paragraph in this Agreement;

"Event of Default" shall have the meaning provided in Paragraph 6 of this Agreement;

"Lender" means HCDA as provided in the introductory paragraph of this Agreement;

"Maturity Date" shall have the meaning as provided in Paragraph 4 of this Agreement;

"Prepayments" shall have the meaning provided in Paragraph 5 of this Agreement;

"Principal Amount" means One Million Dollars (\$1,000,000.00), or the balance thereof as shall be outstanding from time to time;

"Project" means the Honuakaha Senior Rental Housing Project completed in 1995 and located at 545 Queen Street, Honolulu, Hawaii in the Kakaako Community Development District, Tax Map Key Numbers: 1-2-1-031-021);

- 2. <u>HLP's Promise to Pay.</u> For value received, HLP promises to pay to the order of HCDA the Principal Amount of ONE MILLION AND NO/100 U.S. DOLLARS (\$1,000,000.00). The Lender is a body corporate and public instrumentality of the State of Hawaii pursuant to Chapter 206E, Hawaii Revised Statutes. The Lender or anyone who takes this Agreement by transfer and who is entitled to receive payments under this Agreement is called the HCDA.
- 3. Interest Rate. No interest will accrue on the amount advanced by HCDA to HLP.
- 4. <u>Maturity Date.</u> HLP is obligated to repay HCDA the Principal Amount advanced hereunder no later than December 8, 2041 (twenty (20) years from the date of execution of this Agreement).

THIS AGREEMENT SHALL BE PAYABLE IN FULL ON THE MATURITY DATE. AT THAT TIME, HLP SHALL REPAY THE ENTIRE PRINCIPAL

### BALANCE OF THE LOAN THEN DUE. HCDA IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME.

5. <u>Defeasance and Prepayments</u>; Notice. HLP may prepay, in whole or in part, the Principal Amount due hereunder at any time before the Maturity Date without penalty. HLP shall notify HCDA in writing in accordance with the Notice requirements provided in Paragraph 6.1 of this Agreement when making any prepayment to HCDA.

#### 6. Default by HLP; Remedies.

- 6.1. <u>Default.</u> HLP shall be in default if HLP fails to make payment to HCDA of any amounts required to be paid under this Agreement, subject to all applicable notice and cure periods contained herein. In the event of such default, HCDA may require HLP to immediately make payment in full of all amounts due under this Agreement if HLP is in default.
- 6.2. Notice of Default. If HLP is in default, as provided in Paragraph 6.1 of this Agreement, HCDA may issue a written Notice of Default to HLP stating that if HLP does not cure the default within sixty (60) days from the date of HCDA's issuance of written notice, HCDA may require HLP to immediately pay the full amount of principal due at the time. The Notice of Default shall be sent to HLP's General Partner and Limited Partner at the following addresses:

Attention: Executive Director HLP General Partner 545 Queen Street Honolulu, Hawaii 96813

Attention: Commercial Real Estate Division HLP Limited Partner, First Hawaiian Bank 999 Bishop Street Honolulu, Hawaii 96813.

- 6.3. No Waiver by HCDA. The rights and remedies provided in this Agreement may be exercised by HCDA independently or concurrently and are not exclusive of any other right or remedy provided at law or in equity. In the event that HLP is in default, and HCDA does not require HLP to immediately remit payment in full as described above, this shall not constitute a waiver of HCDA's right to require HLP to immediately remit payment to HCDA.
- 7. <u>Sale, Transfer, or Assignment of the Project.</u> In the event HLP sells, transfers, or assigns the Project to a new entity, the new entity and HCDA may renegotiate the terms and conditions of this Agreement.

- 8. <u>Headings/Captions</u>. The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.
- 9. Representation on Authority of Parties/Signatories. The person signing this Agreement represents and warrants that he is duly authorized and has the legal capacity to execute and deliver this agreement, that the performance of such party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
- 10. <u>Counterparts</u>. This Agreement may be executed in several duplicate counterparts and such counterparts, which, when executed, shall constitute a single agreement.
- 11. Entire Agreement. This Agreement constitutes the entire Agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties and cannot be modified except by a written instrument signed by both Parties.
- 12. <u>Severability</u>. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto.
- 13. <u>Governing Law.</u> This Agreement and the rights and obligations hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Hawaii.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURES FOLLOW ON THE NEXT PAGE]

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

### chllobel

APPROVED AS TO FORM:

Deputy Attorney General State of Hawaii

#### HAWAII COMMUNITY DEVELOPMENT AUTHORITY

A body corporate and public instrumentality of the State of Hawaii

"Lender"

Deepak Neupane, P.E., AIA

Its Executive Director

#### HONUAKAHA LIMITED PARTNERSHIP, LLP

By its General Partner, Hawaii Community Development Authority

"Borrower"

Deepak Neupane, P.E., AIA

Its Executive Director

Attachments

#### Exhibit A

## STATE OF HAWAII HAWAII COMMUNITY DEVELOPMENT AUTHORITY KAKAAKO MEETING

#### Wednesday, September 1, 2021

#### **MINUTES**

#### I. CALL TO ORDER/ROLL CALL

The Hawaii Community Development Authority ("Authority" or "Board"), a body corporate and a public instrumentality of the State of Hawaii met virtually (utilizing the state-supported Zoom Meeting platform) for a meeting on September 1, 2021.

Board Chairperson, Jason Okuhama, called the meeting to order at 11:16 a.m. Those present were as follows:

**Members Present:** 

Jason Okuhama, Chairperson

Kevin Sakoda Philip Hasha Chason Ishii

David Rodriguez, DOT (Ex-Officio) Craig Hirai, B&F (Ex-Officio)

Susan Todani

**Members Excused:** 

Dean Uchida, DPP (non-voting)

Wei Fang

Cultural Specialist (Vacant)

**Legal Counsel:** 

Kelly Suzuka, Deputy Attorney General Lori Sunakoda, Deputy Attorney General

**Staff Present:** 

Deepak Neupane, Executive Director Lindsey Doi Leaverton, Asset Manager

Craig Nakamoto, Compliance Assurance & Community Outreach

Officer

Francine Murray, HCDA Program Specialist

Tommilyn Soares, HCDA Secretary

A quorum was present.

#### Acknowledgement that the Meeting is Being Convened Virtually

Chair Okuhama reiterated the wording contained in the Meeting Agenda regarding the state's response to the COVID-19 pandemic, the state's efforts to slow the community spread of the virus and Governor David Y. Ige's issuance of Supplementary Emergency Proclamations which suspended Chapter 92 of the Hawaii Revised Statutes to the extent necessary to enable

public boards and commissions to conduct business without holding meetings open to the public.

With regard to the foregoing, Chair Okuhama reiterated wording contained in the Meeting Agenda noting that HCDA welcomes public attendance via the Zoom link and HCDA's YouTube Channel contained in the meeting agenda, HCDA also welcomes public comment and public participation via submission of written and or verbal testimony (consistent with the social distancing guidelines and Emergency Proclamation directives in effect).

Chair Okuhama stated that individuals, if any, from the public who have requested to provide testimony are on standby and will be permitted to speak during the public testimony session of the specific agenda item.

#### II. APPROVAL OF MINUTES

1. Regular Meeting Minutes of August 4, 2021

Minutes were approved as presented.

#### III. ACTION ITEM

2. Request to Establish a Permitted Interaction Group Pursuant to Hawaii Revised Statutes §92-2.5 (b) to Review the HCDA's Reserved Housing Program and Make Recommendations to the Authority on Maintaining Long-Term Affordability of Reserved Housing Units.

The Authority anticipates convening an executive meeting pursuant to HRS  $\S92-5(a)(4)$ , to consult with the Board's attorneys on questions and issues pertaining to the Board's power, duties, privileges, immunities, and liabilities and HRS  $\S92-5(a)(8)$ , to deliberate or make a decision upon a matter than requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order for the subject agenda item.

Mr. Deepak Neupane, Executive Director presented the staff report. Mr. Neupane noted concerns regarding the long-term affordability of Reserved Housing, particularly from the Community as well as HCDA's board members because of the recent Association fee increase at Ke Kilohana. Therefore, there is an interest to create a Permitted Interaction Group to review HCDA's Reserved Housing program and make a recommendation to the Authority.

The request and recommendation is to establish a Permitted Interaction Group to review the HCDA's Reserved Housing Program and make recommendations to the Authority in maintaining long term affordability of the Reserved Housing Units.

Member Sakoda questioned whether the action item should have been placed on the General Agenda.

Mr. Neupane noted, currently Kakaako is the only district with Reserved Housing units, therefore it was placed on the Kakaako agenda.

#### **Public Testimony**

Chair Okuhama called for public testimony. There was no request to provide verbal testimony.

#### **Motion**

Member Sakoda motioned for the Authority to establish a Permitted Interaction Group to review HCDA's Reserved Housing program and Make Recommendations to the Authority on Maintaining a Long-Term Affordability of Reserved Housing Unites.

Member Hasha seconded the motion.

Mr. Neupane conducted the roll call vote. Motion passed with 7 yes votes and 2 excused.

Member Okuhama named the following members to the P.I.G.:

- 1. Member Kevin Sakoda
- 2. Member Chason Ishii
- 3. Member Phillip Hasha; and
- 4. Member Susan Todani
- 3. Authorize the Executive Director to Defer the Payment of Shared Equity to Allow the Owners of Ke Kilohana Unit 1409 to Change the Title to their Unit by Removing the 1% Interest Owner?

HCDA Asset Manager, Ms. Lindsey Leaverton Doi, provided a summary of the staff report and noted this is an Administrative item for board action. The owner of Ke Kilohana Unit 1409 is requesting to change the title to the unit without triggering the payment of shared equity. According to the Unit Deed, Mr. Yasuma holds an undivided 99% interest in the property while Ms. Fuller holds an undivided 1% interest as Tenants in Common. Ms. Fuller decided to move back to Japan and is no longer interested in maintaining her 1% ownership and would like to transfer her 1% ownership to Mr. Yasuma.

Member Sakoda asked why someone would set up a unit as such.

Mr. Yasuma noted that he provided the down payment as well as monthly payments and at the time Ms. Fuller did not have a job and they agreed it was a fair agreement.

There were no further questions or comments from board members.

#### **Public Testimony**

Chair Okuhama called for public testimony. There was no public testimony.

#### Motion

Member Hasha motioned for the board to authorize the Executive Director to Authorize the Executive Director to Defer the Payment of Shared Equity to Allow the Owners of Ke Kilohana Unit 1409 to Change the Title to their Unit by Removing the 1% Interest Owner?

Member Ishii seconded the motion.

Ms. Leaverton Doi conducted the roll call vote. The motion passed with 7 Yes votes and 2 excused.

#### IV. INFORMATION & DISCUSSION

4. Financial Position and Operations of the Honuakaha Limited Partnership, Owner of the Honuakaha Senior Rental Housing Project, located at 545 & 547 Queen Street, Honolulu, Hawaii and Identified as Tax Map Key Numbers: 1-2-1-031-021.

The Authority anticipates convening an executive meeting pursuant to HRS §92-5(a)(4), to consult with the Board's attorneys on questions and issues pertaining to the Board's power, duties, privileges, immunities, and liabilities for the subject agenda item.

Executive Director Neupane presented the staff report and noted that the Honuakaha Senior Rental Project is located next door to the HCDA's office. He added that as he came on board as the Executive Director in October 2020, he was unaware of the issues with the Honuakaha Senior Rental Project and discovered through discussions with the HCDA's Asset Manager and ASO it was obvious that the Honuakaha Limited Partnership (HCDA General Partner, First Hawaiian Bank Limited Partner) is in financial trouble. Mr. Neupane wanted to bring this item to the board and provide an update to board members.

The project is a combination of several components that include 93 fee simple units that have been sold, 150 units for Senior Rental Housing – financed through low income housing tax credits, there is also a commercial component where Legal Aid Services of Hawaii is renting and also includes HCDA's offices.

Mr. Neupane added that the Honuakaha Senior Rental Housing Project includes 141 Studio units that are being rented for \$600.00 per month and 9 one-bedroom units at \$700.00 per month. He also stated that the last rental increase was in 2013. There is currently an operating deficit of \$25,000.00 per month, and also recently discovered that HCDA is delinquent in its share of maintenance fees that totals close to \$800,000.00. Mr. Neupane noted that he is working on a financial plan that will include looking into other financial liabilities, if any. He noted for the board that the details of the financial plan will be given to the board in executive session.

#### **Public Testimony**

Chair Okuhama called for public testimony. There was no public testimony.

#### **Executive Session**

Member Ishii motioned to enter Executive Session. Member Hasha seconded.

Chair Okuhama called for a voice vote; all members unanimously affirmed. Chair Okuhama requested the following people to participate in the Executive Session: HCDA Deputy Attorney General, Ms. Kelly Suzuka & Lori Sunakoda, HCDA Executive Director, Mr. Deepak Neupane, HCDA Secretary, Ms. Tommilyn Soares, and HCDA Program Specialist, Ms. Francine Murray.

Pursuant to Section 92-5(a)(4), Hawaii Revised Statues, the Authority convened in Executive Session at 11:43 a.m.

The Authority met in Executive Session until 12:56 p.m.

Chair Okuhama reconvened the meeting in public session at 12:56 p.m.

#### V. REPORT OF THE EXECUTIVE DIRECTOR

- 5. Monthly Report and Other Status Reports
  - a. Approved permit applications that did not require HRS 206E-5.6 public hearings

Mr. Neupane provided an update on HCDA's vacant positions and noted that Mr. Mark Hakoda joined HCDA as a Planner, there was an offer made to fill the Kalaeloa position. HCDA is pending Governor's approval to fill two more positions – 1 Secretary and 1 Project Manager position. Mr. Neupane added that by October 1, 2021 all of HCDA's vacant positions, with the exception of one Program Specialist IV position, will be filled.

There were no questions or comments from board members.

#### Public Testimony

Chair Okuhama called for public testimony. There was no public testimony.

#### VI. ADJOURNMENT

There being no further comment or questions on the Report of the Executive Director, Chair Okuhama thanked those who joined the meeting on Zoom and adjourned the meeting at 12:58 p.m.

run,	October 6, 2021
Wei Fang, Secretary	Date approved by Board

#### Exhibit B

# STATE OF HAWAII HAWAII COMMUNITY DEVELOPMENT AUTHORITY KAKAAKO MEETING

#### Wednesday, October 06, 2021 MINUTES

#### I. CALL TO ORDER/ROLL CALL

The Hawaii Community Development Authority ("Authority" or "Board"), a body corporate and a public instrumentality of the State of Hawaii met virtually (utilizing the state-supported Zoom Meeting platform) for a meeting on October 06, 2021.

Board Chairperson, Jason Okuhama, called the meeting to order at 9:32 a.m. Those present were as follows:

Members Present: Jason Okuhama, Chairperson

Kevin Sakoda Philip Hasha Wei Fang Chason Ishii

David Rodriguez, DOT (Ex-Officio) Craig Hirai, B&F (Ex-Officio)

Members Excused: Susan Todani

Dean Uchida, DPP (non-voting) Cultural Specialist (VACANT)

Legal Counsel: Kelly Suzuka, Deputy Attorney General

Lori Sunakoda, Deputy Attorney General

**Staff Present:** Deepak Neupane, Executive Director

Lindsey Doi Leaverton, Asset Manager

Carson Schultz, Director of Planning & Development - Kakaako Craig Nakamoto, Comp. Assurance & Comm. Outreach Officer

Garet Sasaki, Administrative Services Officer

Tesha Malama, Director of Planning & Development - Kalaeloa

Francine Murray, HCDA Program Specialist

Tommilyn Soares, HCDA Secretary

A quorum was present.

#### Acknowledgement that the Meeting is Being Convened Virtually

Chair Okuhama reiterated the wording contained in the Meeting Agenda regarding the state's response to the COVID-19 pandemic, the state's efforts to slow the community spread of the virus and Governor David Y. Ige's issuance of Supplementary Emergency Proclamations which suspended Chapter 92 of the Hawaii Revised Statutes to the extent necessary to enable

public boards and commissions to conduct business without holding meetings open to the public.

With regard to the foregoing, Chair Okuhama reiterated wording contained in the Meeting Agenda noting that HCDA welcomes public attendance via the Zoom link and HCDA's YouTube Channel contained in the meeting agenda, HCDA also welcomes public comment and public participation via submission of written and or verbal testimony (consistent with the social distancing guidelines and Emergency Proclamation directives in effect).

Chair Okuhama stated that individuals, if any, from the public who have requested to provide testimony are on standby and will be permitted to speak during the public testimony session of the specific agenda item.

#### II. APPROVAL OF MINUTES

1. Regular Meeting Minutes of September 1, 2021

Minutes were approved as presented.

#### III.ACTION ITEM

2. Consider Authorizing the Executive Director to Make a Loan of Up To One Million Dollars (\$1,000,000.00) from the Hawaii Community Development Special Fund, Reserved Housing Subaccount, to the Honuakaha Limited Partership to Immediately Pay Off the Maintenance Fees Owed to the Association of Apartment Owners of Honuakaha.

The Authority anticipates convening an executive meeting pursuant to HRS §92-5(a)(4), to consult with the Board's attorneys on questions and issues pertaining to the Board's power, duties, privileges, immunities, and liabilities for the subject agenda item.

HCDA Executive Director, Mr. Deepak Neupane, provided a summary of the staff report for this item. Mr. Neupane noted that he has put together a financial plan to address the situation. He explained the planned rent increases for current residents and greater increase for new residents. He added saying he has been contacted by multiple developers and affordable housing managers who are interested in purchasing the building. Mr. Neupane stated he has met with the Limited Partner, First Hawaiian Bank, and they have discussed different options moving forward. Lastly, Mr. Neupane explained his recommendation regarding the terms of the loan.

There were no questions or comments from board members.

#### Public Testimony

Chair Okuhama called for public testimony. There was no public testimony.

Member Sakoda motioned to enter Executive Session. Member Hasha seconded.

Chair Okuhama called for a voice vote; all members unanimously affirmed. Chair Okuhama requested HCDA Deputy Attorney Generals, Ms. Lori Sunakoda and Ms. Kelly Suzuka,

HCDA Executive Director, Mr. Deepak Neupane, HCDA Secretary, Ms. Tommilyn Soares, HCDA Compliance Assurance & Community Outreach Officer, Craig Nakamoto, and
HCDA Program Specialist, Ms. Francine Murray to join the board in Executive Session.
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Pursuant to Section 92-5(a)(4), Hawaii Revised Statues, the Authority convened in
Executive Session at 9:44 a.m.
The Authority met in Executive Session until 11:10 a.m.
*************************
Chair Okuhama reconvened the meeting in public session at 11:10 a.m.

#### Motion

Member Fang motioned for the Authority to authorize the Executive Director to make a loan of up to one million dollars (\$1,000,000.00) from the Hawaii Community Development Special Fund, Reserved Housing Subaccount, to the Honuakaha Limited Partnership to immediately pay off the maintenance fees owned the Association of Apartment Owners of Honuakaha.

Member Sakoda seconded the motion.

Mr. Neupane conducted the roll call vote. Motion passed with 7 votes and 2 excused.

#### IV. REPORT OF THE EXECUTIVE DIRECTOR

- 3. Monthly Report and Other Status Reports
  - a. Approved permit applications that did not require HRS 206E-5.6 public hearings

Mr. Neupane chose to stand on the written report as presented. He added saying that HCDA has filled three positions that were vacant: Kalaeloa Program Specialist, Project Director, and Planning & Development Secretary. Mr. Neupane noted there is still one more vacant position and HCDA has requested for the Governor's approval to fill that position.

There were no questions or comments from board members.

#### **Public Testimony**

Chair Okuhama called for public testimony. There was no public testimony.

#### V. ADJOURNMENT

There being no further comment or questions on the Report of the Executive Director, Chair Okuhama thanked those who joined the meeting on Zoom and adjourned the meeting at 11:14 a.m.

hu	Approved 11/03/2021
Wei Fang, Secretary	Date